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Record No. 5087

In the Supreme Court of Appeals of Virginia at Richmond

ELMORE PAYTON GILL, JR.

v.

EDWARD LOUIS HAISLIP, AN INFANT, ETC.

FROM THE CIRCUIT COURT OF HENRICO COUNTY

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. 5087

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 9th day of October, 1959.

ELMORE PAYTON GILL, JR., Plaintiff in Error,

against

EDWARD LOUIS HAISLIP, AN INFANT, ETC., Defendant in Error.

From the Circuit Court of Henrico County

Upon the petition of Elmore Payton Gill, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Henrico County on the 13th day of April, 1959, in a certain motion for judgment then therein depending wherein Edward Louis Haislip, an infant, who sues by Virginia P. Haislip, his mother and next friend, was plaintiff and the petitioner was defendant.

And it appearing that a suspending and *supersedeas* bond in the penalty of ten thousand dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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page 12 }

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INSTRUCTION NO. 9.

The Court instructs the jury that if you believe from a preponderance of the evidence that the plaintiff requested the defendant to stop the automobile and let him out but that the defendant refused to do so and immediately thereafter the accident occurred, then you are told that the plaintiff was not a gratuitous guest in the automobile at the time of the accident and in this event, the plaintiff is entitled to recover against the defendant upon showing by a preponderance of the evidence that the defendant was guilty of ordinary negligence which was the proximate cause of the accident.

Refused.

E. W. H., JR.

page 13 } INSTRUCTION NO. C.

The Court instructs the Jury:

That the fact that the Defendant's automobile left the traveled portion of the highway and struck the telephone pole in question is not itself evidence of even simple negligence and the jury should not consider it as such in determining whether or not the Defendant was guilty of gross negligence.

Refused.

E. W. H., JR.

* * * * *

page 14 } INSTRUCTION NO. D.

The Court instructs the Jury:

That it was the duty of the Plaintiff to exercise ordinary

care for his own safety and if the jury believe from the evidence that he failed in this duty and that said failure proximately caused or efficiently contributed to the injuries received by him, then he cannot recover in this action and your verdict should be in favor of the Defendant.

Refused.

E. W. H., JR.

* * * * *

page 15 } INSTRUCTION NO. H.

The Court instructs the Jury:

That if they believe from the evidence that the Defendant was guilty of gross negligence as defined in these instructions and that the Plaintiff was guilty of ordinary negligence, and that both efficiently contributed to the Plaintiff's injuries, they must not attempt to weigh or compare such negligence but must find for the Defendant.

Refused.

E. W. H., JR.

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page 16 } INSTRUCTION NO. I.

The Court instructs the Jury:

That if they believe from the evidence that the sole proximate cause of the accident here in question was a blowout of one of the tires on the automobile operated by the Defendant, then their verdict should be in favor of the Defendant.

Refused.

E. W. H., JR.

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INSTRUCTION NO. 1.

The Court instructs the jury that since the plaintiff was a gratuitous guest in the automobile driven by the defendant in order to recover against him he must show by a preponderance of the evidence that he was guilty of gross negligence which constituted a proximate cause of the accident.

Granted.

E. W. H., JR.

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page 18 }

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INSTRUCTION NO. 2.

The Court instructs the jury that at the time and place of the accident it was the duty of the defendant to exercise slight care for the safety of the plaintiff, or that degree of care which a person of ordinary prudence exercising slight care for the safety of others would have exercised under the same or similar circumstances, particularly in regard to lookout, speed, in no event in excess of 25 miles per hour, and control of the automobile.

If you believe by a preponderance of the evidence that the defendant failed in the performance of the duty mentioned, in any particular, then he was guilty of gross negligence, and if you further believe from a preponderance of the evidence that such gross negligence, if any, constituted the sole proximate cause of the accident, then you will find your verdict for the plaintiff and fix his damages in accordance with the instruction on damages.

Granted.

E. W. H., JR.

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page 19 }

INSTRUCTION NO. 3.

The Court instructs the jury that gross negligence, or the lack of slight care for the safety of others, is substantially

and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character, as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to a present duty, and to utter forgetfulness of legal obligations so far as other persons may be affected. It is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another.

The Court further instructs the jury unless the jury believe from the evidence that the defendant was guilty of gross negligence as thus defined, they should find in favor of the defendant.

Granted.

E. W. H., JR.

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page 20 } INSTRUCTION NO. 4.

If you find your verdict in favor of the plaintiff, then it shall be your duty to assess damages and in doing so you may take into consideration the following:

1. Any doctors and hospital bills which have been incurred by the plaintiff for medical attention and hospitalization as a result of said injuries, if any, and such doctors and hospital bills as he may reasonably be expected to incur in the future as a result of said injuries, if any;
2. Ambulance bill;
3. Loss of earnings sustained by the plaintiff for the six weeks following this accident;
4. Disfigurement which the plaintiff has sustained as a result of said injuries, if any, and such as he may reasonably be expected to have in the future as a result of said injuries, if any;
5. Physical pain and mental suffering endured by the plaintiff in the past, if any, and such as he may reasonably be expected to endure in the future as a result of said injuries, if any;
6. Any injuries to the person, according to the degree and probable duration thereof.

and from these, as proven by the evidence, assess such damages as will fairly and justly compensate the plaintiff for any injuries suffered and losses sustained, not to exceed the sum sued for in the motion for judgment.

Granted.

E. W. H., JR.

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page 21 }

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INSTRUCTION NO. 5.

The Court instructs the jury that according to United States Life Tables, 1945-51, a recognized scientific mortality table, a white male 19 years of age, which is the race and age of the plaintiff, has a life expectancy of 50.45 years.

Granted.

E. W. H., JR.

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INSTRUCTION NO. 6.

The Court instructs the jury that no presumption arises that the defendant was guilty of gross negligence upon a mere showing that the plaintiff was injured. The burden of proof in this case is upon the plaintiff to establish by a preponderance of the evidence that the said defendant was guilty of gross negligence, and that such act constituted a proximate cause of the injuries complained of.

If, upon the evidence as a whole, you are undecided whether such case has been made out, you should find for the defendant. A verdict should not be based upon speculation, surmise, conjecture, or sympathy, but must rest entirely upon the evidence in the case and the instructions of the Court.

Granted.

E. W. H., JR.

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page 23 }

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INSTRUCTION NO. 7.

The Court instructs the jury that the law places upon every person the duty to take such precautions for his or her own safety as a reasonably prudent person would have taken under like circumstances and conditions, and a failure to do so would constitute negligence.

You are told, therefore, that if you believe from a preponderance of the evidence that the ability of defendant to operate his automobile was affected by his having drunk intoxicants on the night of the accident, and that such condition on the part of the defendant was known to the plaintiff, or in the exercise of ordinary care, should have been known to him, and that a reasonably prudent person acting with ordinary care would have declined to enter or continue to ride in the automobile with the defendant operating the same, but nevertheless, the plaintiff entered and rode in said automobile, notwithstanding an opportunity to decline to ride or to alight, and that any such intoxicated condition on the part of the defendant was a proximate cause of or efficiently contributed to cause the accident, then you should find your verdict for the defendant.

Granted.

E. W. H., JR.

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In the Circuit Court of the County of Henrico.

April 13, 1959.

This day came the parties in person and by counsel and the defendant having filed his grounds of defense herein issue is joined.

Whereupon came a jury- to-wit: Charles H. Duggins, Emmett W. Barrow, Sr., Harry W. Johnson, Sr., William H. Bowles, Fred H. Dietrich, Harold G. Roepke, Jr., and W. P.

Pearsall who were sworn the truth to speak upon the issue joined and a true verdict give according to the evidence.

And the jurors aforesaid having heard the evidence and being instructed by the court and hearing argument of counsel retired to their room to consult of their verdict and after sometime returned and in open court found the following verdict.

"We the jury on the issue joined find in favor of the plaintiff and assess his damages at $9,075.00"

Signed

C. H. DUGGINS, Foreman.

Thereupon the defendant, Elmore Payton Gill, Jr., by counsel moved the court to set aside the verdict of the jury and enter up final judgment for the defendant upon the ground that the verdict is contrary to the law and the evidence and without evidence to support it in that there was no evidence of gross negligence on his part efficiently contributing to the accident in question and because the plaintiff was guilty of contributory negligence as a matter of law; or, in the alternative to set aside the verdict of the jury and
page 25 } award him a new trial upon the grounds that the Court erred in the admission and in the exclusion of certain evidence, in failing to sustain the defendant's motions for mistrial, in the giving of certain instructions and in the refusal of others, and for other errors of the court apparent upon the face of the record, which motion the court doth overrule, to which the defendant objected and excepted.

Therefore it is considered by the court that the plaintiff recover of the defendant the sum of NINE THOUSAND SEVENTY-FIVE AND 00/100 ($9,075.00) DOLLARS with interest thereon to be computed at the rate of six (6%) per cent per annum from the 13th day of April, 1959, until paid, and his costs by him about his suit in this behalf expended, to which the defendant likewise objected and excepted.

And the defendant having indicated his intention to apply to the Supreme Court of Appeals of Virginia for a writ of error from and *supersedeas* to this judgment, it is ordered that execution thereof be suspended for a period of four months and thereafter until said petition for a writ of error is acted upon by the said Supreme Court of Appeals of Virginia, if such petition is actually filed in the said Appellate Court within the required time, upon condition, however, that

the said defendant or someone for him shall, within fifteen days from this date, enter into bond in the Clerk's Office of this court with surety to be approved by its Clerk in the penalty of Ten Thousand 00/100 ($10,000.00) DOLLARS conditioned as provided by Section 8-477 of the Code of Virginia of 1950, as amended.

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Received and filed in office June 10, 1959.

Teste:

HELEN D. CLEVENGER, Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Elmore Payton Gill, Jr., hereby gives notice of appeal from the judgment entered herein on April 13, 1959, and makes the following Assignments of Error:

(1) The Court erred in overruling the defendant's motion for a mistrial on account of plaintiff's counsel telling the jury in his opening statement that the plaintiff lost his job because of the accident sued upon for the reasons stated on pages 3 through 14 of the Transcript.

(2) The Court erred in refusing to strike the testimony of Police Officer Hayden that the speed limit at the scene of the accident was twenty-five miles per hour for the reasons stated on page 29 of the Transcript.

(3) The Court erred in overruling the defendant's objection to allowing Police Officer Hayden to testify why he did not charge the defendant with driving under the influence of intoxicants for the reasons stated on pages 36, 37, 38, 39 and 40 of the Transcript.

(4) The Court erred in overruling the defendant's objection to the witness Cecil C. Bailey being allowed to testify that his employer was unable to hold the plaintiff's job open for him during the six weeks that he was unable to work following the accident for the reasons stated on pages 3 through 14 and 105 through 112 of the Transcript.

(5) The Court erred in overruling the defendant's objec-

tions to the testimony of the witness Horace R.
page 28 } Griffin relating to the attributes of a barber school
graduate and the factors generally recognized as affecting a barber's desirability or placement and success in the barbering trade, for the reasons stated on pages 119, 120 and 121 of the Transcript.

(6) The Court erred in refusing to strike out all of the testimony of the witness Horace R. Griffin for the reasons stated on pages 119, 120, 121, 124, 125, 131, 132, 274 and 275 of the Transcript.

(7) The Court erred in overruling the defendant's motion to strike the evidence made at the conclusion of the plaintiff's case for the reasons stated on pages 195 through 199 of the Transcript.

(8) The Court erred in overruling the defendant's objection to the plaintiff's counsel's question to the witness Dr. A. M. Wash concerning a definition of traumatic arthritis for the reasons stated on pages 219 and 220 of the Transcript.

(9) The Court erred in overruling the defendant's motion to strike the evidence made at the conclusion of all of the evidence for the reasons stated at page 274 of the Transcript.

(10) The Court erred in granting Instruction No. 2 at the request of the plaintiff for the reasons stated on page 276 of the Transcript.

(11) The Court erred in refusing Instruction No. C offered by the defendant for the reasons stated on page 276 of the Transcript.

(12) The Court erred in refusing Instruction No. D offered by the defendant for the reasons stated on page 277 of the Transcript.

(13) The Court erred in refusing Instruction No. H for the reasons stated on page 277 of the Transcript.

(14) The Court erred in refusing Instruction No. I for the reasons stated on page 277 of the Transcript.

(15) The Court erred in overruling the defendant's motion to set aside the verdict and enter judgment for the defendant, or, in the alternative, to grant the defendant a new trial for
the reason that the verdict was contrary to the law
page 29 } and the evidence, without evidence to support
it and plainly wrong, and for other reasons stated on pages 281 through 287 of the Transcript.

J. B. BROWDER, p. d.
Counsel for the Defendant.

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Transcript of all the evidence and other incidents of the above when tried on April 13, 1959, before Honorable Edmund W. Hening, Jr., Judge and a jury.

Appearances: Mr. Harry P. Anderson, Jr. and Mr. David E. Satterfield III, counsel for the plaintiff;
Mr. J. B. Browder, counsel for the defendant.

* * * * *

Received and filed in office June 9, 1959.

Teste:

MARGARET B. BAKER, Dep. Clerk.

page 3 } In Chambers.

Mr. Browder: May it please Your Honor, in connection with the pre-trial conference and the list of expenses given me it was alleged that the plaintiff had lost innumerable weeks from work. In discussing that with Mr. Anderson he told me that his client had been working for Larus & Brother for a couple of weeks before this accident occurred, and that while he was able to return to work, that at some period thereafter, when he went back to work Larus & Brother told him they had not been able to hold the job open for him; they had no job for him.

As a consequence he was out of work for a considerable time, thereafter. As a matter of fact, I do not think he has ever gone back to Larus & Brother, or any work of that type; but he has been learning the barbering trade. They have summonsed the personnel manager from Larus & Brother as a witness; I suppose to testify to those facts.

I believe that the law is that a person can only recover of a defendant for such time as he is unable to work as a direct result of the injuries received and not because of the fact that some employer would not keep the job open for him, or something to that effect.

page 4 } *Corpus Juris Secundum,* Volume 25, Section 40, Page 512 says that "There can be no recovery for mere inability to find work after the injury as distinguished from an inability occasioned by plaintiff's incapacitation from labor because of the injury." I have not had a chance to digest it any further: I do not know whether Mr. Anderson has or not. My belief is that that is the rule.

The Court: Gentlemen, I would like to continue this discussion after Court has been convened.

Note: At this point Court and counsel enter the courtroom, court is convened shortly after ten a. m. Following the selection of a jury and the swearing of the court reporter, the Court states as follows:

Before the jury.

The Court: I believe there is a matter that the attorneys desire to take up with the Court.

Gentlemen of the jury, at this time there is a matter that the Court will discuss with the attorneys before we get into the case.

There will now be a recess, and during this recess page 5 } or any recess that we take hereafter, luncheon recess, or any other break in the case, you are not to discuss the case with anyone or allow anyone to discuss it with you. Of course you may discuss it among yourselves but not in the presence of other people. At no time are you to get information about the case from any source except from the witnesses on this stand under oath. If anything to the contrary occurs the Court instructs you to report it to the Court and I will deal with it.

Note: At this point Court and counsel retire to Chambers, as follows:

In Chambers.

The Court: Is there anything else you care to state?

Mr. Browder: I want to say this, Your Honor, in addition to that statement I made generally from *Corpus Juris Secundum* to the effect that you cannot recover simply because you cannot find a job or because your employer lets you go. In many states, I don't know that it has ever been discussed in Virginia, in many states plaintiffs do not recover page 6 } for loss of wages, as such; you recover for loss of your ability to earn wages, so that it makes no difference whether you were earning at the time, or whether you were not, or whether you had the job, or lost your job, on what you are entitled to recover. In most states I believe it is for the loss of your ability to earn money. Here in this instance we feel very strongly that the evidence in the case should be limited to what time he was unable to perform his usual work, because otherwise it would be bringing in

extraneous matter; because the jury will sympathize with him because he couldn't find a job, or he might go on indefinitely missing some twenty years, so far as we know. We do not think it is a proper element of damages. If it were, it would put the defendant at the complete mercy of a man's employer, because the employer could fire him for any reason on earth he wanted to in the absence of a contract of hire and the defendant would be liable.

That is all I want to say on that point. If Your Honor agrees with me on it, I do not think any of these witnesses should be allowed to testify that his employer did not give him his job back, because that would then be bringing in a matter that could be brought in only for sympathy.

page 7 } The other matter I want to bring to the Court's attention—something that has been handed to me in the past five minutes before ten o'clock—is this instruction that undertakes to take this out of the guest doctrine rule and hold this plaintiff was a passenger entitled to ordinary care. We came here prepared under the pleadings in this case to try a guest case. It is alleged he is a guest. I just want to bring this to your attention right now. If there is going to be any effort made in that direction, then we feel like it is in the teeth of the pleadings and should not be allowed.

Since it is an instruction that is going to be offered, I do not know this is the proper time to mention it. Certainly it seems to me to introduce evidence or something to take this out of the guest case rule, that you certainly cannot do it under these pleadings. I do not know whether this is a good statement of the law, or not. If it is then this certainly is not proper in this pleadings.

Mr. Anderson: In regard to the first point: I think we are premature, in passing on the point of loss of wages, because that is really a matter of argument. What

page 8 } we intend to show is that this boy was working at the time of the accident, that he was physically unable to return to work for X number of weeks, that when he was able to return to work he had no job.

Now Mr. Browder says that it would create a feeling of sympathy if it were allowed to be shown that he lost his job. Well, by the same token it would create a prejudice against the plaintiff if we were not allowed to show that here was a man who wanted to work, who went back to work, who, according to his employer, was a good worker and would have had the job but he could not hold it open for him; he has tried to find work and he did find work for a short period of time,

and for that reason he went to this barber school to take up the barber trade.

If we are not allowed to show that, then we are going to be seriously handicapped because the jury might get the notion that here is just a malingerer who has been in an accident, who wants to get a lot of money and is not interested in working any more.

I think if the Court reaches a conclusion that we are permitted to show and to argue and the jury to consider only those damages from loss of wages which occurred by
page 9 } reason of this inability to work, then that can be taken care of in an instruction, and for that reason I think we are premature in the argument.

I am not going to make any statement that this man lost X number of dollars. But I am going to make the statement that he did, in my opening statement, have loss of wages. We feel, as to the merits of claiming loss of wages, that the test is that would he have gone back to his old employment but for this accident? The answer is yes. And that he is entitled to be compensated and to recover for all losses occasioned by the accident.

But, as I say, I think that can be handled by an instruction. We certainly have the right to bring his employer in to show that here was a good worker, a man that wanted to work, a man that came back to work but didn't have any job when he came back.

Mr. Browder: I think, the whole point we are making is if the plaintiff will introduce his evidence as to how long the man necessarily was unable to go back to work then no further reference should be made by the plaintiff as to whether he has been working or has not been working.

Mr. Anderson: That must necessarily come out.
page 10 } Mr. Browder: Why?
Mr. Anderson: It has to because it is the truth.

Mr. Browder: There are a whole lot of things which are true that do not come out in court. They are not admissible. It is true that the defendant is insured but it is not admissible in court. I think here they are trying to create sympathy in the jury's mind. Unless the matter is relevant to some issue in this case I do not see any reason—

Mr. Anderson: I certainly feel that there will be nothing that is improper that cannot be covered by an instruction, and the fact that this boy is going to barber school I think that has to be explained.

Mr. Browder: I do not think he has to say that he is going to a barber school. I do not see what that has to do with it.

Mr. Anderson: It has a lot to do with it.

The Court: As I understand, Mr. Anderson, the plaintiff in his opening statement will not make a reference to dollars and cents for loss of wages, and that you are going to have evidence as to what the length of time was that he
page 11 } was unable to go to work, and then with reference to the subsequent question Mr. Browder raises, I believe that is something that I will not have to rule on at this time. On your representation of what is going to follow, I will get to it later, perhaps after you have the medical in and what not.

I will reserve ruling on the matter, making a question of advisement and see what the other evidence will be.

On this other question that Mr. Browder has raised with regard to the instruction, apparently you have some theory of the law on which this instruction is based. You are not proceeding on the theory now that it is an ordinary negligence case, are you?

Mr. Anderson: Well, I think on the theory that the lesser is included with the greater, the greatest burden that we would have would be to show gross negligence. Within that would come ordinary negligence on the theory that there was a request to stop the car and let this boy out.

The Court: Do you have any Virginia authority on that?

Mr. Anderson: No Virginia authority, but there are the three cases that I have cited. One of them is a
page 12 } Georgia case which—

The Court: Does Georgia recognize the gross negligence rule?

Mr. Anderson: Yes, sir. They say this: That one riding by invitation and gratuitously in another's automobile—

Note: Following a discussion hereon, the Court states:

The Court: I think we can more properly reach that later. I am not going to rule on that at this time. We can also take care of the matter on instructions.

Note: Court and counsel now return to the courtroom and are before the jury. Thereupon the witnesses are sworn and excluded upon motion made by Mr. Anderson. During the opening statement to the jury by Mr. Anderson, he states as follows:

Before the jury.

Mr. Anderson: * * * At the time of this accident
page 13 } Haislip was working for Larus & Brother. He was a tray boy carrying trays of cigarettes from one

place to another, and he lost some time from work as a result of it. When he went back to work he found that they could not hold his job open for him. So he tried to seek other employment and couldn't.

Mr. Browder: If Your Honor please, isn't that right in the teeth of the Court's ruling? I think it is. I thought he said he was not going to say that.

Mr. Anderson: That is not my understanding.

The Court: I do not remember that the Court made a ruling at the time in Chambers, but I understood that counsel would not in his opening statement go into that.

Mr. Browder: That is correct. I will now have to ask for a mis-trial, if Your Honor please.

Mr. Anderson: I said that I would not go into dollars and cents. I understood—

The Court: The Court was under the impression you were not going to be as broad as that.

Mr. Browder: I ask that a mis-trial be declared, Your Honor, on the ground that the matter was brought to the Court's attention before the Court in Chambers, page 14 } and counsel has stated exactly what I understood was not going to be stated, and that makes it impossible for us to get around it now.

Mr. Anderson: That is not my understanding, Your Honor. I thought the ruling was I would not go into any dollars and cents loss, and that the jury would be instructed as to what loss of wages they could consider.

The Court: The Court understood that there was only going to be a very general allusion to it in the opening statement. In view of the Court's understanding of what the plaintiff was going to say in his opening statement, the Court suggests you finish your opening statement without any further reference to the incident. Mr. Browder, your motion is overruled.

Mr. Browder: I note the exception, sir.

Note: Thereupon the opening statements were concluded and the taking of evidence is begun, viz:

page 15 } R. M. HAYDEN.

City of Richmond Police Officer, introduced as a witness in behalf of the plaintiff, first being duly sworn, testified as follows:

R. M. Hayden.

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Will you please state your name, residence, and age?

A. R. M. Hayden, 3714 Bolling Road; twenty-five.

Q. What is your occupation?

A. Police Officer for the City of Richmond.

Q. What, if any, are your duties relating to automobile accidents within the City of Richmond limits?

A. I investigate all accidents that happen that I am called to investigate in the City of Richmond.

Q. Are you in a particular division which devotes its full time to that?

A. Yes, sir. I am with the Traffic Safety Division.

Q. Have you had any training in traffic accident investigation?

A. I have had approximately three years of experience and I attended a three week course in accident investigation.

Q. Did you have occasion to investigate an automobile accident on August 10, 1958 at Hatcher Street just off Williamsburg Avenue?

A. I did.

page 16 } Q. What time did you receive the call?

A. Approximately 10:35 P. M.

Q. What time did you arrive at the scene?

A. Some three to five minutes later.

Q. What automobiles did you find involved in this accident?

A. I found a 50-51 Mercury coupe with Virginia license A13-570.

Q. Just a minute. I want to hand you some photographs—I hand you two pictures showing the front view and also the view of the windshield of an automobile and ask you if that is the vehicle, automobile to which you refer?

A. Yes, sir. That's it.

Mr. Anderson: We ask that these be introduced, if Your Honor please, as Plaintiff's Exhibits 1 and 2.

The Court: Gentlemen of the jury, these exhibits are for you to observe at this time, and also, all exhibits that are introduced in the case accompany you to your jury room when you take the case. Each of you are permitted to look at the exhibits for such time as you may want.

The exhibits have been received as Plaintiff's Exhibits 1 and 2.

R. M. Hayden.

page 17 } Note: The above two photographs are now marked and filed as Plaintiff's Exhibits 1 and 2.

By Mr. Anderson: (Continuing)

Q. Where did you find this automobile at the scene of the accident?

A. Up against the Vepco pole.

Q. With what had the automobile collided?

A. The Vepco pole.

Q. I want to show you a map made by the Bureau of Surveys and Design for the City of Richmond and ask you to identify the street that you have been referring to? Come on up here before the jury.

Note: The witness steps down from the witness stand and stands before the jury.

Q. Can you see it all right? Point out the street that you have been referring to.

A. This is Hatcher Street and this is Williamsburg Road.

Q. Now, the telephone pole that you refer to, Officer, approximately where is that located?

A. Approximately here. (Pointing on map.)

Q. Would you mind putting an "X" where that telephone pole is located.

A. (Doing so.)

Q. Would you put your initials right over here?

page 18 } A. (Doing so.)

Mr. Anderson: I guess we had better introduce this while we have it as Plaintiff's Exhibit 3.

Note: The above identified map is now marked and filed as Plaintiff's Exhibit No. 3.

Q. Officer, I have two pictures here I would like for you to see and ask you: Can you identify the telephone pole in this picture?

A. That is it.

Q. That was it, and does it have a light on it?

A. It does.

Mr. Browder: Can he mark it, please, Harry, so the record will be clear? Let him make an "X" at the top of it.

Mr. Anderson: All right.

R. M. Hayden.

Note: The witness places an "X" on photograph.

Mr. Anderson: Put your initials there.
The Court: Mr. Anderson, let me suggest that we mark that Plaintiff's Exhibit 4 at this time.

Note: The above photograph is now marked and filed as Plaintiff's Exhibit No. 4.

Q. Officer, I have another picture here, can you identify that?
page 19 } A. Yes, sir.
Q. What does that show?
A. That shows Williamsburg Avenue looking away from the river.
Q. Away from the river?
A. At the intersection of Hatcher Street?
Q. I see, sir. All right, thank you.

The Court: You want to introduce that as Plaintiff's Exhibit No. 5?
Mr. Anderson: Yes, sir.

Note: The above identified photograph is now marked and filed Plaintiff's Exhibit No. 5.

Note: The witness resumes the witness stand.

Q. Officer, what is the speed limit in this area?

Mr. Browder: If Your Honor please, I object to that on the ground that it is a matter of a conclusion.
Mr. Anderson: I do not think it is, Your Honor. This man's job is the enforcement of the speed laws.
Mr. Browder: He can testify as to whether there are any signs out there and that is all, I think, he can testify to.

By Mr. Anderson: (Continuing)
page 20 } Q. Are you aware, Officer, what the speed limit is in this area?

Mr. Browder: Just a minute. If Your Honor please, the speed limit is purely a matter of law. It is not a matter of conclusion. Unless there are some signs posted out there it is purely and simply a question of what kind of district it was.

R. M. Hayden.

The Court: I will sustain the objection at this time.
By Mr. Anderson: (Continuing)
Q. Is this area posted, Officer?
A. Yes, sir.
Q. What is it posted for? What is the speed limit posted?
A. 25 mile zone speed limit.
Q. What was the condition of the surface of the street?
A. It was dry.
Q. Were there any defects in the street?
A. None that I could see.
Q. Was there any traffic control device where the accident occurred?
A. No, sir.
Q. What kind of locality was it, the area where the accident occurred?
page 21 } A. It would be open country.
Q. What was the condition of the street as to light or darkness?
A. It was lighted.
Q. And the two photographs that have been introduced as 4 and 5 show the various, some of the street lights in this area, is that true?
A. Yes, sir.
Q. Was there anything to obstruct the driver's vision of Hatcher Street or the pole with which the automobile collided?
A. Not that I could find.
Q. Was his automobile defective in any way so far as you know?
A. So far as I know it wasn't.
Q. What was the condition of the weather?
A. Clear.
Q. The surface of Hatcher Street is what?
A. Concrete.
Q. When you arrived at the accident, did the driver of the vehicle identify himself?
A. Yes, sir.
Q. Who was he?
A. Elmore Payton Gill.
Q. Where was he when you arrived?
page 22 } A. He was standing to the left, I believe, of the car; driver's side.
Q. Did he make any statement to you about the occurrence of the accident?
A. Yes, sir. I questioned him about the accident, and—

R. M. Hayden.

Mr. Anderson: Talk a little louder, please Mr. Hayden.

A. He stated that he had been traveling down Williamsburg Avenue and in making a left turn into Hatcher Street east, he blacked out. And the first thing he knew he was up against the pole.

Q. When you say he was traveling down Williamsburg Avenue and made a left turn, would that be going toward the river or away from the river?

A. Toward the river.

Q. He said he was going toward the river?

A. Toward the river.

Q. Were there any tire marks of any nature at the scene of the accident?

A. Couldn't find any.

Mr. Browder: Could not find any, is that what you said?

A. Right.

Mr. Browder: You are not talking quite loud page 23 } enough.

Q. What was Mr. Gill's condition as to intoxication or sobriety?

A. In my opinion he was definitely intoxicated.

Q. Why do you say that?

A. He had a heavy odor of alcohol on his breath. And in questioning him he stated that he had had four or five beers since 4:00 o'clock that afternoon. He was very unsteady on his feet. His eyes were red. And he would not respond to my questions as a person would normally do. He had to hesitate before he would answer any questions.

Q. Was Mr. Haislip present at the scene of the accident when you arrived?

A. No, sir, he wasn't.

Q. So you did not, you were not able to talk with him, then.

A. No, sir.

Q. Did you have occasion to see him after the accident?

A. Yes, sir.

Q. What was that?

A. In the Medical College emergency room.

Q. Who investigated this accident with you?

A. Officer B. W. Hughes.

Q. Do you know where he is now; is he working today?

R. M. Hayden.

A. He is off this morning. He is probably
page 24 } home.

Q. Did Mr. Gill leave your presence once you arrived at the scene of the accident?

A. No, sir.

Q. You took him under custody?

A. Yes, sir.

Q. Do you recall in the Traffic Court of the City of Richmond to the criminal charge placed against Mr. Gill whether he pleaded guilty or not guilty?

Mr. Browder: If Your Honor please, the best evidence of that would be the charge itself. Do you have it, Mr. Anderson? I have no objection to you introducing the records of the Court. That is certainly the best evidence.

Mr. Anderson: I think it is proper. This is a plea made in court. I think it is proper for the Officer to testify as to that.

The Court: Objection overruled.

Mr. Browder: I note the exception, of Your Honor please.

A. Yes, sir. He pleaded guilty.

Mr. Anderson: I have no further questions.

page 25 } CROSS EXAMINATION.

By Mr. Browder:

Q. What did he plead guilty to, Mr. Hayden?

A. Reckless driving—personal injury.

Q. You did not charge him with driving under the influence of intoxicants, did you?

A. No, sir.

Q. You did not offer him a blood test, did you?

A. No, sir.

Q. You did not offer him a balloon test, did you?

A. No, sir.

Q. He had a lick on his head and he also had hurt his knee, had he not, sir?

A. Yes, sir.

Q. All right, sir. He had no attorney at the trial of the case, did he?

A. I don't believe he did. No, sir.

Q. Although the plaintiff was present in court two days after the accident with Mr. Anderson representing him, was he not?

R. M. Hayden.

Mr. Anderson: Objection. The plaintiff was not in court. He could not be; he was in the hospital.

Q. Was Mr. Anderson there representing the plaintiff at that hearing?

page 26 } A. I believe he was there. Yes, sir. I don't know who he was representing. I don't know.

Q. Mr. Hayden, did you see a Mrs. Butler there at the scene of the accident that night?

A. No, sir.

Q. You did not; you would not say she had not been there, but you do not remember seeing her.

A. No, sir.

Q. When you got to the scene of this accident this young man was already there, is that right?

A. Yes, sir.

Q. You say he was talking rather hesitantly?

A. Yes, sir.

Q. You understood him to say that he was proceeding down the hill and making a left turn?

A. Yes, sir.

Q. I see. The plaintiff told you he was going the other way, though, did he not, when you talked with him?

A. I never did talk with him.

Q. You never did talk to the plaintiff?

A. No, sir.

Q. You saw him in the hospital but you never talked with him, is that right?

A. The doctors were working on him when I arrived.

Q. Where is this speed sign you are speaking of

page 27 } out there?

A. Which direction, sir? In which direction?

Q. Either direction; where are they?

A. There is one at, as you come toward the river on Williamsburg Avenue, there is one up about the, right in front of the Nelsen Funeral Home, about the 1400 block.

Q. How far is that from here?

A. Four or five or six blocks. And the one coming in the City on Route 5, or Hatcher Street, just after you come over the railroad tracks, there is a 25 mile zone speed sign. And coming up through Fulton I believe the next sign is down in that flat bottom there after you cross the railroad tracks. I believe there is a sign posted speed limit there 25.

Q. Where is that now, is that Williamsburg Avenue?

R. M. Hayden.

A. This side of Fulton. Yes, sir. Just after you get off Main Street onto Williamsburg Avenue.

Q. Way back around by the gas works, you mean.

A. Yes, sir.

Q. That is a mile from here, is it not?

A. I think it is the next speed limit sign.

Q. You are not even certain there is a sign there, are you?

A. No, sir.

Q. So there isn't any sign within a mile of this young man, from the direction he was coming, was there?

page 28

Mr. Anderson: Objection. He stated, Your Honor, that there was one four or five blocks down on Williamsburg Avenue.

Mr. Browder: I thought we all understood that that was on the other side of this accident.

By Mr. Browder:

Q. Isn't the Nelsen Funeral Home between the accident and the Byrd Airport?

A. That's right.

Q. So if they, as the plaintiff and defendant both contend now, were making a right turn, there was nothing within a mile of him back towards the City, was there?

A. About a mile, I reckon.

Q. Yes, sir. And during the course of that mile you pass the bag factory on your left and a row of tenement houses on your right, go all the way through the gas works—don't you wind through the gas works?

A. (Nodding head.)

Q. Come through the congested business section of Fulton, do you not?

A. Yes, sir.

Q. Up the other direction you are talking about, five blocks the other way past this accident, there are houses built on both sides of the street along there for five or six blocks, are there not?

page 29

A. Yes, sir.

Q. At this particular point there is not a house of any description, or building of any description, within over three hundred feet, is there, Officer Hayden?

A. That's right.

Q. Is that right, sir?

A. That's right.

R. M. Hayden.

Q. There is an open field on the right and a park on the left and a big open field straight ahead of him, is that correct, sir?
A. Yes, sir.

Mr. Browder: May I ask Your Honor to strike out the Officer's testimony that this is a 25 mile speed zone upon the ground that there has been no proof of an speed sign which would have any effect on this accident, and upon the ground that the evidence is clear that there is no residential or business district here.

Mr. Anderson: I think the Officer has testified with reference to three signs that are in this area. Furthermore, I think that he has the right to state the speed limit in this area since he is charged with enforcing the speed law in the City of Richmond. Now he has named either three or four
page 30 } signs to the best of his recollection, that are in this area, and they ring the entire area where this happened. They may not be right at the spot, but they ring the area. I think that that is sufficient.

The Court: The Court will overrule the motion at this time.

Mr. Browder: I note the exception, sir.

By Mr. Browder: (Continuing)

Q. I do not believe I asked you about the sign you referred to on Hatcher Street as you come into the City on Route 5, you said by the underpass?
A. Yes, sir.
Q. Is that on the other side of the underpass, the Richmond side or Henrico County side?
A. On the Richmond side.
Q. Just as you enter the City, just as you pass through that?
A. Yes, sir.
Q. And from there to the scene of this accident is what, three-quarters of a mile?
A. Yes, sir.
Q. All right, sir. Now, Mr. Hayden, you were out there and there was plenty of light, is that correct, sir?
A. Yes, sir.
Q. There was no question about you being able
page 31 } to see the pavement, was there; is that correct?
A. No, sir. You could see it all right.
Q. You looked and you did not find any evidence of a car leaving any tire marks in the road out of control, did you?

R. M. Hayden.

A. No, sir.

Q. This pole that you found there was thirty-five feet from the intersection, was it not? You may look at your notes.

A. It was a little over thirty-five.

Q. A little over thirty-five feet?

A. Yes, sir.

Q. And it was, if anything, it was at the far end of any curve that may be in the street going right, is that not correct, as shown on that plat?

A. That's right.

Q. Is that right?

A. It's right at the junction of the curve, where the curve straightens out to go east on Hatcher Street.

Q. So that when the car struck the pole, the car had been going straight for some little distance, had it not?

Mr. Anderson: Objection. It calls for a conclusion. Mr. Browder has objected to this witness drawing a conclusion and I am going to do the same thing.

The Court: Objection sustained.

page 32 } By Mr. Browder: (Continuing)

Q. This is a picture showing the street—I am looking at Plaintiff's Exhibit No. 4—the pole is at the far end of this view you have here, is it not?

A. Right here. This is the pole. That's right. That is the pole.

Q. It wasn't this pole over on the left now, was it?

A. No, sir.

Q. It was the pole on the right.

A. (Nodding head.) Right.

Q. Now I will show you two small photographs and ask you if you can identify what they are?

Mr. Anderson: May I see those, please?

Mr. Browder: Excuse me.

A. This is the pole, looking east on Williamsburg Avenue.

Q. You can see the street light on it, can you not?

A. Yes, sir.

Q. Which way is that looking? (Handing second photo)

A. This is looking west from Hatcher toward Williamsburg Avenue. This is the pole.

Q. Both of them show the pole.

A. This is the pole.

R. M. Hayden.

Mr. Browder: I would like to offer these two photographs in evidence, if Your Honor please.

page 33 } The Court: They will be identified as Defendants Exhibits 1 and 2.

Note: The above identified photographs are now marked and filed as Defendant's Exhibits 1 and 2.

Q. Mr. Hayden, is this a true representation of the way that car looked in every particular as well as you can recall it when you were there that night?

A. Yes, sir, looks like it to me.

Q. Looks like that to you?

A. Yes, sir.

Q. Anything about it that looks any different from the way it looked to you there that night?

A. None that I can tell.

Q. None that you can recall. Will you come over to the jury and point out to them the right front tire on that car, please sir?

Note: The witness steps down from the witness stand and stands before the jury.

A. The right front tire?

Q. Yes, sir. The right front tire.

A. (Witness pointing on photograph)

Q. That tire is practically off of the rim and chewed up, is it not?

A. Looks like it has been worn. Yes, sir.

Q. Does it look like it has been run off the rim

page 34 } flat, to you?

A. It's flat. Yes, sir.

Q. It looks like it has been run flat, does it not?

Mr. Anderson: Objection, Your Honor.

Mr. Browder: I have a right to ask him that. He is on cross examination.

Mr. Anderson: I think it is a matter of conclusion.

Mr. Browder: He has a right to explain.

Mr. Anderson: The picture speaks for itself. It is a question of argument.

The Court: I sustain the objection, to the form of the question.

Mr. Browder: I note the exception.

R. M. Hayden.

By Mr. Browder: (Continuing)

Q. Did you examine that tire closely enough to have seen a hole in it, Mr. Hayden?

A. No, sir.

Q. You do not know whether there is one there or not?

A. No, sir.

Note: The witness resumes the witness stand.

The Court: Mr. Browder, I do not believe you are offering this as an exhibit?

page 35 } Mr. Browder: No, sir. It has already been introduced as an exhibit.

The Court: Which one is that?

Mr. Browder: Exhibit 1.

The Court: Plaintiff's Exhibit 1 is the picture referred to about the tire being flat.

By Mr. Browder: (Continuing)

Q. Now, Mr. Hayden, this gentleman here, Mr. Gill, when you talked to him he told you that he was making a turn at the corner and that he blacked out and he didn't know exactly what did happen thereafter.

A. That's right.

Q. You described the fact that when you walked up and saw this gentleman he was standing outside of the car on the left side.

A. Yes, sir.

Q. And as soon as you walked up you were met with a heavy odor of alcohol?

A. Yes, sir.

Q. And you were out in the open; you were not in the car when you got that whiff of alcohol?

A. No, sir.

Mr. Browder: All right. Thank you, Mr. Hayden.

page 36 } RE-DIRECT EXAMINATION

By Mr. Anderson:

Q. Mr. Hayden, in regards to Mr. Browder's questioning you about charging this man with drunk driving, would you explain to us why you did not charge him with drunk driving?

Mr. Browder: If Your Honor please, I object to why he

did not charge him with driving under the influence. It brings up almost any conceivable answer the Officer might want to make. It leaves him free to roam and to say anything on earth he may think.

The Court: I sustain the objection, Mr. Anderson.

Mr. Anderson: If Your Honor please, I think that he has a right to explain what was asked of him on cross examination. Mr. Browder raised the point, "You didn't charge him with drunk driving, did you?"

Mr. Browder: That is right.

Mr. Anderson: He has a right to explain that.

Mr. Browder: He does not have a right to come out and answer why. I do not know what he is going to say.

By Mr. Anderson: (Continuing)

page 37 } Q. Can you explain to us, Officer, the reason for not placing a charge against this man for drunk driving?

Mr. Browder: If Your Honor please, that is exactly the same thing only in another question.

The Court: All right, gentlemen. Suppose we take a recess and I will discuss this with you all.

Gentlemen of the jury, we will take a recess for a few minutes. I give you the same admonition as before.

Note: At this point recess is had; Court and counsel retire to Chambers, as follows:

In Chambers:

The Court: I would like to hear your views on this point, gentlemen.

Mr. Anderson: My reason for asking the question, if Your Honor please, is because Mr. Browder has raised the point that if this man was intoxicated the Officer did not charge him with drunk driving. Now if it is not cleared up to show the reason why he did not charge him with drunk driving, then that leaves a question in the jury's mind: Well, he must not have been as intoxicated as the Officer claimed him

page 38 } to be or else he would have charged him with drunk driving. I think we certainly have the right to clear that up.

You might further say that it is an effort on the part of the

defendant during cross examination to impeach the witness.

The Court: Is there anything else you want to say?

Mr. Browder: I want to say this: The way the question is now put to him as to why he didn't do something is a question I do not believe is ever permissible. He may have done it because he thought the defendant was badly hurt and felt sympathetic with him, or he was a friend of the defendant's. It calls for any kind of an answer. I have had people come out with the darndest answers when they throw that question at them.

A lawyer asked the plaintiff in a case down in Brunswick County, "Why didn't you go to the doctor more than you did?" She came out and said it was because her son had injured his eye with a firecracker two years before that, and the doctor said it would cost $2,000.00 to repair the damage to his eye. And with that the jury gave her $4,000.00, when the case was only worth about $200.00. They felt very
page 39 } sorry for her. That is the kind of question you cannot ask.

Mr. Anderson: We can eliminate that right now, Your Honor. We can bring the Officer in and ask him the question now. I do not know what his answer will be, but if it is in the realm of this—going outside his official duties as a police officer—then the Court can strike it and not permit it. If it is an explanation which throws light as to the question of intoxication, then I think the Court should permit it.

Mr. Browder says that the question "why" is never permissible. I disagree with him there. On direct examination where you are not permitted to ask leading questions it is one of the few ways that you have of eliciting information, by asking a witness why.

The Court: He has testified in his opinion when he arrived the defendant was definitely intoxicated. He stated his reasons. Then you brought out that he pleaded guilty, but you did not bring out what he pleaded guilty to. Then Mr. Browder brought it out that he pleaded guilty to careless and reckless driving, and he also brought out that he did not charge him with operating under the influence. I believe the Court is going to reverse its ruling and allow the
page 40 } question to be asked.

Mr. Browder: All right, sir. We note the exception, sir.

Note: At this point Court and counsel return to the court-

room, court is reconvened, and the hearing continues before the jury as follows:

Before the jury.

The Court: The Court reversed its ruling and will permit the witness to answer the last question.

By Mr. Anderson: (Continuing)

Q. Officer Hayden, Mr. Browder asked you whether you charged this man with drunk driving, and your response was no.

A. That's right.

Q. I asked you why it was that you did not charge him with drunk driving?

A. It is up to the Commonwealth to prove that the driver hadn't had anything to drink from the time the accident happened until I first saw him.

Q. In other words, you did not see him driving.

page 41 } A. I didn't see him drive.

Q. The motor was not running when you got there?

A. No, sir. I either had to see him drive or I had to have a witness that saw him drive.

Q. You did not have that.

A. I didn't have that.

Q. Now, Officer, I show you Plaintiff's Exhibit No. 5 and ask you if you can mark the telephone pole. Would you come over here?

Note: The witness steps down from the witness stand and stands before the jury.

Q. Can you barely see on that photograph the telephone pole that was hit?

A. Yes, sir. Over there.

Q. Would you put an "X" by that with your initials?

A. (Doing so.)

The Court: Which exhibit is that?

Mr. Anderson: Plaintiff's Exhibit No. 5.

Q. All right. Thank you. Now, one other question, Officer Hayden, have you actually measured the distance of this

R. M. Hayden.

pole from the intersection, or from the curb line, the nearest curb line of Williamsburg Avenue?

A. Yes, sir.

Q. What did you find the actual measurement to be?

A. Approximately eighty-four feet.

page 42 } The Court: That is what distance now?

Q. Will you state what distance that is?

A. That is eighty-four feet from the east curb of Williamsburg Avenue to the pole on Hatcher Street.

Q. East curb? I thought, it looks like it runs east and west, does it not?

A. What's that?

Q. You refer to the river as south?

A. That's south. Yes, sir.

Q. Williamsburg Avenue would generally run north and south, is that right?

A. At that particular location I carry it as north and south. Further down at Fulton where it bends it goes east and west.

Mr. Anderson: All right. I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Browder:

Q. When you referred to the signs, the different ones, you used different directions; which curb is it you are talking about; the pole is eighty-four feet from which curb?

A. From this curb.

Q. From this curb?

page 43 } A. Making a line from the north side of the intersection and the south side, just making an imaginary line and measuring there.

Q. The curb was eighty-four feet—

A. Yes, sir.

Q. —Eight-four feet from this point here, was it not?

A. Yes, sir.

Q. From the apex of the curb as you are going sort of south or southeast on Williamsburg Avenue to turn due south?

A. Yes, sir.

Q. Eight-four feet.

A. Approximately eight-four.

Q. I thought you testified, or did I correctly understand

you, Mr. Hayden, you testified when you walked up to the scene of the accident you saw this man standing on the left side of his car and you asked him if he had been driving the car?

A. Yes, sir.

Q. And he said he was.

A. Yes, sir.

Q. If you needed anybody else to testify he was driving drunk you could have gotten the information from Haislip if you wanted to, could you not?

A. No, sir.

page 44 } Q. You did not attempt to do that?

A. No, sir. Haislip was in the ambulance and gone when I arrived.

Q. I mean you could have put it off for a day of two and went up and talked to him, could you not?

A. I probably could have.

Mr. Browder: All right. That is all.

By the Court:

Q. Mr. Hayden, would you step up to the jury, please. Would one of you get the other side of Plaintiff's Exhibit No. 3 and let the Officer take the side nearest to him. Now, Mr. Hayden, would you place as near as you can these posted signs that you referred to?

A. It doesn't show on Hatcher Street. Hatcher Street comes down here and ends at Potomac, I believe. The sign is back down here.

Q. That is beyond what is shown at the bottom of Plaintiff's Exhibit 3?

A. Yes, sir. The one on Williamsburg Avenue I don't believe it's, it goes back up to Nelson Street on here.

Q. The point to the right of Plaintiff's Exhibit 3, the sign you referred to there is beyond what is shown on Plaintiff's Exhibit 3 to the right. You also referred to a third sign; where would that be?

page 45 } A. That would be on the other side of Fulton and Williamsburg Avenue, back over in here.

Q. That is to the top left of Exhibit No. 3 which is also not shown?

A. Yes, sir. It's not shown on here, either.

Q. All right, now, with your pencil, from the information you got from the defendant and your investigation show

generally the direction from which the defendant was coming and which direction he was going?

A. (Doing so.)

Q. State what that is.

A. That is going toward the river.

Q. South on Williamsburg Avenue making a left turn east on to Hatcher?

A. Yes, sir.

Note: The witness resumes the witness stand.

The Court: Are there any further questions of this witness?

Mr. Anderson: I have no further questions.

Mr. Browder: I have none.

Witness stood aside.

page 46 } S. ELMER BEAR,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Will you please state your name, residence, and age?

A. My name is S. Elmer Bear. Do you want my residence?

Q. Yes, sir.

A. 202 Tuckahoe Boulevard.

Q. Your age?

A. My age, nearest birthday: 38.

Q. What is your occupation?

A. Oral Surgery.

Q. And what is Oral Surgery?

A. Oral Surgery is the treatment, diagnosis of the teeth, soft tissues and associated structures adjacent to the mouth.

Q. Where did you graduate from dental school?

A. Northwestern University.

Q. Where did you go after that?

A. I interned in Oral Surgery at Johns Hopkins Hospital.

page 47 } Q. Is that when you began to specialize?

A. That is when I began to specialize.

Q. That is in Baltimore?

A. Yes.

S. Elmer Bear.

Q. After Johns Hopkins where did you go?
A. I spent two years in the Army as an Oral Surgeon.

Mr. Browder: I concede the Doctor's qualifications, but you may carry it as far as you want.

Q. Where did you go after that?
A. I did graduate study at the University of Michigan in Oral Surgery and I interned two years at the Henry Ford Hospital in Detroit.
Q. Then you came to Richmond to practice?
A. Came to Richmond to practice.
Q. Do you do any teaching or lecturing?
A. Yes, sir.
Q. Where is that?
A. Medical College of Virginia.
Q. What is your position there?
A. Associate Professor in Oral Surgery.
Q. Was there a building at the Medical College recently dedicated in the name of Bear?
A. Yes.
Q. After whom was that named?
page 48 } A. After my father.
Q. He was an oral surgeon?
A. Yes.
Q. Have you had any papers published in this field?
A. Yes.
Q. Are you certified by any Boards?
A. American Board of Oral Surgeons.
Q. Are there any other oral surgeons in Richmond so certified?
A. No. That wouldn't mean there are none that are not qualified.
Q. I understand. Doctor, when did you first see Edward Haislip?
A. With Your Honor's permission? (Looking at file) I first saw Haislip on the 10th of August.
Q. 1958?
A. 1958.
Q. What was his appearance at that time?
A. Well, he had some various facial deformities. There were extensive lacerations that had been closed. He had a large repaired through and through laceration of the left upper lip, extending from beneath the eye along the nose.

S. Elmer Bear.

Q. You saw him, then, after he had been scrubbed and sewed, his lacerations had been sewed?

A. His lacerations had been closed and he had page 49 } been cleaned up.

Q. I want to show you two pictures and ask you if they correctly portray the appearance of the plaintiff when you saw him in the hospital?

A. Yes, I would say so.

Mr. Anderson: If Your Honor please, we offer these as Plaintiff's Exhibits 6 and 7.

The Court: They will be so received.

Note: The above two photographs are now marked and filed as Plaintiff's Exhibits 6 and 7.

Q. Doctor, when you first saw him did you examine him?

A. Yes.

Q. Will you tell us what you found, referring to these pictures 6 and 7? Would you explain it to the gentlemen of the jury?

A. He had a, what we call—Would you mind me getting up here?

Q. No, sir.

The Court: Excuse me one minute. When you are referring to one of the photographs look on the back before testifying and state the exhibit number if you will.

Note: The witness steps down from the witness stand and stands before the jury.

page 50 } Q. That is referring to Exhibit 6.

A. I think I ought to use 6; that ought to be sufficient.

Q. All right.

A. He had what we consider a through and through laceration, extending from beneath the right left eye into the mouth, and including the skin and mucous membrane. This had been closed. He had extensive lacerations beneath the chin as are illustrated here. He had a laceration of the, what we consider the right cheek bone—to put it in lay terms. He had a laceration of the frontal region between the eyes, and he had lacerations adjacent to the right eye and eyelid. That is essentially, that was all that could be seen in examining the

patient, except a shift of the lower jaw, which doesn't show in here.

Q. What did you find with reference to his jaw?

A. There was a limited, definite limited motion, operation of the patient. There was some shifting of the mandible, or lower jaw, to the left side primarily. There was evidence of mobility in the region of the chin and some deformity in this region. There was also evidence of missing teeth in the upper jaw, which were, there was no evidence of this being a primary injury at the time. There were also lacerations and abrasions inside the mouth consistent with what we found with the outside.

page 51 } Q. Did you find any fractures?

A. Yes, we did.

Q. What were they?

A. He had a fracture, a compound fracture of the left mandible in the region of the symphysis. Putting it in more common lay terms there was a fracture on the left side of the chin.

Q. Could you better explain it by the use of this? (Indicating model of skull)

A. I think so. May I use this? What is this?

Q. Crayon.

A. Will it come off? I suppose so, yes.

Q. You may use it.

A. He had a fracture between the lateral and cuspid tooth extending inferiorly through the alveolar and body of the mandible, roughly in this fashion. This was all that could be seen clinically. I mean by direct vision.

By evaluation of the patient it was determined that he had a fracture of the left condyle, which is of the mandible which is illustrated here; and one on the right. Because of the deviation to the left side, I believe I got the sides right, to the left side, there was more, one would conclude there was more displacement on the left than on the right. This was later confirmed in x-rays.

page 52 } Q. What kind of fracture is that in the front that you referred to?

A. This is known as a compound fracture of the mandible.

Q. What is a compound and simple fracture?

A. By definition a compound fracture is any fracture which exposes itself to the outside surface.

Q. You mean it breaks through the skin?

A. Outside. Considering outside or contaminated area. The

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other fractures were considered simple fractures. This is the technical classification.

Q. What are the mechanics of the fracture injuries that you have described?

A. What do you mean by mechanics, specifically?

Q. Well, by what is the classical blow to the chin that causes these fractures?

A. The type of this injury is consistent with a, what we call a passenger seat type of accident. It may result from a physical blow, it may result from a fall in which the total, most of the impact is on the chin, or from hitting the dashboard or some direct object with the lower third of the face.

Q. So the fractures of the condyles as you have shown there, would they be by direct blow on the condyles or indirect blow?

page 53 } A. Usually, well, it's a reflex, sort of a bound-back thing. When hit directly, roughly so, in the front, the chances of a condylar fracture bilaterally is fairly good. One might expect it, if the blow is severe enough. If you were hit from the side, you wouldn't.

Q. Were any x-rays taken?

A. Yes, x-rays were taken at the Medical College.

Q. Do you have those with you?

A. They are not particularly good x-rays, but you get used to it after while. This is not meant to be criticism. They are just dark and hard to see, for a great many people to see, at any rate.

Q. Can you just hold them up to the light there and maybe point out the fractures for the jury?

Mr. Browder: We admit he had them. You do not have to show them at all, as far as we are concerned.

A. This is not meant to be critical. To illustrate why we are not critical, this is a difficult area in which to get good film. I don't know—I think that area you can see, this is a fracture of the right condyle or the right neck of the mandible on a lateral view. This view here shows the fracture through the, what we call the symphysis or the anterior portion of the mandible.

Q. Would you separate those which you just referred to from the others?

page 54 } A. And this is the best film when seen under proper light, but I don't believe you can see it

unless you have a pretty bright light. This is the most demonstrable film, of the injuries.

Q. Could you just point out there what that shows?

A. This film shows marked displacement or certainly moderate displacement of the left condyle with a bowing in of the head of the condyle, and the same is true on the right, only to a lesser degree.

Q. Would you keep those films together? Now, how were these fractures treated, Doctor?

A. They were treated by immobilizing the lower jaw, reducing the fracture in the front manually and bracing his teeth into occlusion to the proper—

Q. What do you mean by reducing the fracture?

A. Well, taking it under anesthesia, local anesthesia and heavy intra-venous sedation.

Q. Was this done in the operating room?

A. This was done in our clinic which is preferable to our use, generally speaking. We actually manipulate the bone to the proper position and then fix them and hold them with what we refer to as interarch appliances or intermaxillary appliances.

Q. When did you do this?

A. I did not do this until August 12, 1958.

page 55 } Q. Why did you wait until August 12th to do it?

A. The soft tissue or facial injuries were of sufficient magnitude, and there was enough swelling to make it rather impossible or certainly not advisable to go into his mouth until he had had a chance to perhaps begin healing, and the swelling to subside.

Q. Would you explain to us just briefly the anatomy of the jaw bone and the joint? I believe the joint is known as the condyle, is that right; you have used that term?

A. The articulating aspect of the lower jaw is considered the condyle, and it is one part of the joint. It is one-half of the joint. The other is the base of the skull.

Q. Would you just briefly explain that to us?

A. The upper portion here, this articulating—Just a moment. This upper portion is known as the head of the condyle; the lower is known as the neck. The prominence in which it rests is known as glenoid fossa. The articulating surface in front is known as the articular eminence, which is an important aspect. It is immediately anterior to the auditory canal. The joint is held in place primarily by what we refer to as a capsular ligament, made up of a number of small ligaments.

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Q. Without going into detail as to the ligaments, what about the joint itself? Is there any—

page 56 } A. The joint has a nerve. It is one of the few in the body. It is a two compartment joint and this is made by a piece of cartilage we call the meniscus, which resides between the head of the condyle and the articulating surface. And it actually spreads this joint apart and forward. It puts it in two pieces.

Q. What is the purpose of this piece of cartilage?

A. The purpose of this piece of cartilage is to permit adequate and free function, since this is the most active joint in the body.

Q. All right, sir Now, you say that the fracture, that the fractures were immobilized by what means?

A. By putting arch bars of a specific nature on the lower teeth. This is done by using ligature wire and wiring them to the teeth, and after this is done, to the upper jaw and then to the lower jaw, the teeth are brought into proper occlusion and maintained. This is done by rubber bands, small rubber bands, or wires. In this case both were used.

Q. Now, does this present any risk of infection?

A. The surgical procedure doesn't present any surgical risk. The nature of the injury in the chin, the symphysis area, being a compound fracture, automatically raises a problem of infection process.

Q. During this period when the jaw is immobilized, can it be opened and closed?

page 57 } A. No.

Q. How does a person eat during this period?

A. What do you mean by "eating"? If they eat solid food he doesn't.

Q. He eats liquids?

A. He lives on liquids and puree foods.

Q. For what period of time were these bars applied to his jaw?

A. Well, traction was applied for—In other words, he was immobilized from August 12th until September the 17th.

Q. How many days was he in the hospital?

A. My recollection is that he was in about seven days. From the 10th until the 17th. Yes.

Q. So his jaw was immobilized approximately six weeks, then, is that right?

A. That's right.

Q. He was in the hospital about seven days?

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A. He was in the hospital a week and immobilized approximately six weeks, I guess.

Q. During the time that he was in the hospital were any pain relieving drugs given?

A. Yes.

Q. What were they?

page 58 } A. Upon admission he was given some Demoral, which is one of the narcotics. The following day he was controlled again with Demoral, and on the day of the operation he was given Demoral on several occasions.

Q. After leaving the hospital, did he stay under your treatment and care?

A. Yes.

Q. What was his course?

A. His course was relatively uneventful. We had some little problem keeping his occlusion the way we wanted it.

Q. You mean keeping his mouth closed?

A. Keeping the mouth closed exactly the way we wanted. This is not necessarily unusual.

Q. What amount of pain and discomfort attends injuries such as Mr. Haislip sustained?

A. Certainly it is inconvenient. I would say that they have, certainly initially, a good deal of discomfort.

Q. What injury, if any, did his teeth suffer as a result of this accident?

A. As I stated, there were some teeth already missing in the upper jaw which were not, as far as we could determine, associated with his injury, this injury. He had on the lower right cuspid region, which is the third tooth, sometimes referred to as the lower eye-tooth, was fractured. The crown was cracked off. On the left side he had in the region of the fracture, he had one tooth which appeared non-vital. Subse-

page 59 } quent to that the other tooth, the left cuspid has also died.

Q. So that is two teeth that have become non-vital and one with the crown—

A. With the crown off and is likely to become non-vital.

Q. You attribute this, you say, to this accident?

A. I do.

Q. How do you explain the reason for the delay in this other tooth, the one over on the right, I believe, becoming non-vital?

A. On the left?

Q. On the left.

A. I guess the best explanation is that because of the severity of the blow there is a gradual death in some instances

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and a strangulation of the nerve or pulp chamber, and it is due to a pulp which dies, which does not recover. It becomes inflamed and literally, under the microscope, I guess one could say it strangulates and dies, and you may have initial signs of vitality which gradually disappears.

Q. What, in your opinion, do you expect to happen to the teeth in this area of the injury?

A. Well, he already has three that are in jeopardy. I think a fair estimate would be that in the region of the fracture or the region of the blow one might eventually expect a fifty per cent non-vital tooth. In other words, the number

page 60 } of teeth remaining probably fifty per cent of them may become non-vital.

Q. How many teeth are in this area? ?

A. Other than the ones involved there are four others. I am wrong, three others.

Q. How can these teeth be treated?

A. The ones that are already dead?

Q. The ones that are already dead.

A. Perhaps the best way to treat them is to remove the pulp canal or the tissue, dead tissue in the canal, and do what we call a root canal and root section; and the one on the right will have to have an addition to that, a crown preparation.

Q. How much will this treatment cost?

A. I would say, and I don't do all that work, but I mean on the basis of experience I would say it would run about a hundred dollars a tooth.

Q. Is this the standard or prevailing rate?

A. I will say this would be rather conservative, a conservative approach to the total cost.

Q. Doctor, what history did Mr Haislip have of injury to the jaw previous to August 10, 1958?

A. 1952 his record shows—this was not elicited too well from the patient, certainly not at the time of his injury—but his history, his records shows he had sustained a

page 61 } fracture roughly in the same regions, both condyles were injured and there was a transgress fracture of the symphysis of the mandible, which is again the same general area.

Q. The injuries which you have described to us, could they be attributable to this accident six years previous?

A. Six years?

Q. Six years previous.

A. You mean with reference to the teeth?

Q. To the teeth, yes.

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A. No, certainly not with the right cuspid because that was a fresh injury. And it is very unlikely with the left cuspid and lateral, because they were in this fracture, immediate fracture site, and that—

Q. Would that lapse of time have anything to do with it, the six year period?

A. Well, after six years, one expects under normal circumstances to have some indication of trouble if he is going to have any.

Q. How about with reference to the fractures to the jaw?

A. One cannot say with any real certainly with reference to the joints.

Mr. Browder: If Your Honor please, if he cannot say with reasonable certainty we do not want him speculating. We object to that.

page 62 } Mr. Anderson: I think he may state what his opinion is which are probabilities.

Mr. Browder: Then let him speak of probabilities as reasonable certainties, at least.

The Court: I believe the Doctor may state what he believes to be a reasonable certainty, what he thinks the reasonable medical probabilities are.

Q. My question, Doctor, is with reference to the fractures that you have described, the three fractures that you have described. To what injury do you attribute these fracture? The one in—

A. You mean—

Q. —back in 1952 or the one—

A. Oh. Oh, I see. No, the injuries as sustained on these films were the result of his injury of 1958.

Q. What is the present condition of Mr. Haislip's jaw joints?

A. He has some limitation of motion with some evidence of what we technically call crepitation, but in lay terms is known as cracking, of the right joint and occasionally on the left.

Q. This cracking, is this something that you can hear and feel?

A. Yes. You can actually feel it, and you can

page 63 } hear it. In these type of injuries it is more audible in some people than in others.

Q. What, in your opinion, Doctor, will be the future of these joints?

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Mr. Browder: This is, as I understand it, a reasonable medical certainty, is that correct, Your Honor?

Mr. Anderson: I am asking "in his opinion".

The Court: That is the rule. Yes.

A. Yes. I doubt that he will get any better from his present condition.

Q. So the present disability as you have described it you believe will continue?

A. I think he will continue to have some limitation, yes.

Q. What, in your opinion, Doctor, causes this limitation, discomfort in the jaw joints?

A. Well, there are several factors involved. The primary one being the head of the condyle has now altered its position. In addition to that, the meniscus or the piece of cartilage between the two bone surfaces has been damaged. The exact extent of which we cannot determine. And it has also been altered in its position.

Q. What is traumatic arthritis?

page 64 } A. Traumatic arthritis is: Trauma being a blow; Arthritis being an inflammation of the joint. And putting the two terms together one can reasonably assume that traumatic arthritis is the result either from a severe blow or a trauma over a period of time. And in this case I would have to concede that if he developed traumatic arthritis, which is a persistent pain and sometimes increased limitation of motion, it would have to be associated with the injury.

Q. I believe you have stated that the most active joints in the body are the jaw joints, is that true?

A. Yes. I think that is true.

Q. Is this of any significance in giving your opinion as to the future course of these joints?

A. Well, we are dealing with the joint, active joint which is not now in its ideal condition. That is all I would project.

Q. For what period of time, Doctor, was Mr. Haislep, in your opinion, unable to work?

A. Six weeks.

Q. While he was under your care, did you refer him to any other doctors?

A. Yes. He was referred to Dr. Virgil May, I believe, in reference to a knee injury. He was subsequently seen by Dr. Leroy Smith in reference to lacerations about the face and in reference to possible repair subsequently.

page 65 } Q. How about Dr. Irby?

A. Oh, yes. Dr. Irby did see him for a complete physical and evaluation while in the hospital.

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Q. I am going to hand you a bill and ask you if that is your bill for services to date?
A. Yes, it is.
Q. That bill is for $425.00, is that correct?
A. That is correct.
Q. Is that bill within the standard or prevailing charges for such services as you have rendered?
A. I would think so, yes.

Mr. Anderson: We offer this as Plaintiff's Exhibit No. 8.

Note: The above identified bill in the amount of $425.00 is now marked and filed as Plaintiff's Exhibit No. 8.

Mr. Anderson: I have no further questions. You answer Mr. Browder.

CROSS EXAMINATION.

By Mr. Browder:
Q. Dr. Bear, the last time you had occasion to see this young man was on the 14th of February?
A. No, I have seen him subsequently, I think.
Q. But the subsequent visit was in connection
page 66 } with testifying in the law suit and not to treat him, is that right?
A. The last visit was when, was on April 6th in which I determined that the left lower tooth was no longer vital. It was the lower left cuspid.
Q. That was not present back in February?
A. No. That is not unusual.
Q. If I understand you correctly, Doctor, you say he has chipped one tooth and he has lost two and he may lose half of the third one, or he may lose another one or two, is that the sum and substanc of it?
A. I prefer to use the term that the teeth are dead rather than having lost them. We hope to be able to treat them.
Q. You are trying to keep them even though they are devitalized?
A. Yes.
Q. Which are they? Are they the jaw teeth?
A. No, these are known as the lateral, left lateral and left cuspid and left lower eye tooth.
Q. Can you point it out down here?

(Note: Using the model skull.)

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A. Yes. In the front: this one and this one.

Q. This one and this one?

A. On the bottom. On the bottom.

page 67 } Q. That is about at the site of the fracture he had?

A. It is at the site of the fracture. The fracture arising between the two of them.

Q. And when you last saw him, or the last several times you have seen him, you have noticed some crepitation or some slight cracking sound in his jaw, is that correct?

A. That is correct.

Q. However, that I believe you said you thought would probably stay with him?

A. Yes, I think so.

Q. But he wasn't having any pain in connection with it, was he?

A. He has pain on excursion. In other words, as he opens his mouth.

Q. Yes, sir.

A. And when he reaches his limitation, which is somewhat impaired, he has a pain.

Q. Doctor, I note on the top of the second page of your letter to Mr. Anderson of March 12th you said that the patient it not now having any discomfort. Is that something that has changed since then?

A. Yes, if I said it. That is because on my last examination he did.

Q. I see. All right.

page 68 } A. This is consistent with the problem, unfortunately.

Q. Now, Doctor, this is something that would come, you say, may come from injuries such as he received in this accident?

A. Would you ask me that again?

Q. I say, the pain from having any crepitation may come from injuries such as he received in this accident?

A. Yes, indeed.

Q. By the same token it may have come from injuries received in the previous accident to virtually the same area of the mouth?

A. I think that is possible.

Q. Well, if one was probable, why isn't the other one probable? If you are going to have trouble from three fractures of your jaw, would you not be more apt to have trouble from five fractures at virtually the same place?

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A. One would assume that, I suppose, but not—

Q. Didn't the history you got—Did you not get the history he had five fractures in the previous accident of his jaw?

A. Well, the fractures are in the same precise area on the region of the chin and also on the body. The exact description varies in the history and is a little on the vague side, and it is sometimes hard to determine the exact accuracy for this reason.

page 69 } Q. How many did you get a history of in the previous accident?

A. Transverse fracture of the right, I mean of the symphysis; he had a fracture of the left condyle and the right condyle; and I believe he had a fracture of the body, of the right body of the mandible, posteriorly; and he also had the loss of some upper front teeth at that time. One might determine it was a maxilla that was fractured.

Q. All right. The teeth that he has missing in the upper portion of the jaw now were missing before this accident, missing from the previous accident, is that correct?

A. They were missing. I can only assume they were missing from the previous accident.

Q. Have all the roots been taken out of them?

A. On the basis of my films, yes.

Q. His teeth seem, don't they run at rather irregular angles? They are not straight across like they should be, are they?

A. You mean his, or—

Q. His.

A. They are. Because of the early loss of teeth, in other words, early in the fact that he was only about thirteen and lost numerous upper front teeth, there would follow a certain shifting of teeth and so forth.

page 70 } Q. So that his teeth are not lined up like you would like to have them, are they, and they have not been since the previous accident?

A. Not on the upper, no.

Q. How about the lower?

A. The lower, I think, is in pretty good alignment.

Q. Are they?

A. Yes.

Q. Are they all straight across, parallel with one another?

A. They are not supposed to be.

Q. How?

A. They are not supposed to be. Very few people's are. I

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would say that their position is not, has not been altered by the accident. That's the only way I can answer that.

Q. I understand they were not in the very best of alignment to begin with, were they?

A. No.

Q. Maybe I misunderstood you or you misunderstand me; do you have normal teeth, Doctor, upper teeth?

A. Do I, Yes.

Q. They are parallel with one another, are they not? They do not run at angles to one another, do they?

A. Mine don't happen to, but his are a little twisted.

Q. His do, do they not, Doctor?

page 71 } A. Yes. Not strikingly so, though.

Q. Doctor Bear, the mere fact that he had these fractures would not ordinarily cause him any trouble, would it?

Mr. Anderson: Which fractures are you talking about?

Mr. Browder: These fractures of the jaw.

Q. Let me ask you this question: What do you mean in your letter rendered September 15th that you saw no reason for, you thought his recovery would be uneventful with the exception of the scars?

A. The position was as satisfactory as one could hope for under the circumstances due to the nature of the injury.

Q. Yes, sir.

A. But the mere fact that the condyles were injured and that he had no immediate discomfort in September, after all that was when I had just taken him down, we expect a normal limitation at that time. But as time goes on, depending upon the degree of improvement, one must then re-evaluate the problem.

Q. I see. He did not have perfect occlusion following the first accident, did he, Doctor, on the left side?

A. Following the first accident?

page 72 } Q. Yes.

A. On the left side?

Q. Yes.

A. No. He was missing a bunch of teeth on the upper, so one couldn't determine.

Q. You were able to get his jaw back in the same occlusion he had before; that is, his teeth met as well as they did before?

A. Yes. Yes, I think we got quite a good result there.

Leroy Smith.

Mr. Browder: All right, Doctor, thank you.
Mr. Anderson: I have no further questions.

Witness stood aside.

The Court: At this point the Court will take about a five minute recess. I will give you the same admonition, gentlemen of the jury, as I gave you previously.

Note: At this point a short recess is now had following which the hearing is resumed before the jury as follows:

page 73 } LEROY SMITH,
a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Will you please state your name and occupation to the gentlemen of the jury?
A. My name is Leroy Smith. I am a physician practicing here in Richmond; practicing the specialty of plastic and oral surgery.
Q. What is plastic surgery, Doctor?
A. Plastic surgery is that part of surgery which deals with the replacement and reconstruction of tissue that has been damaged, usually pertaining particularly to the superficial tissues such as the skin, fat muscles and so forth.
Q. You have been practicing your specialty in Richmond for how long?
A. Since 1940, sir.
Q. And your office is where?
A. 1805 Monument Avenue.
Q. Do you hold any position at the Medical College of Virginia?
A. Yes, sir. I am Associate Professor of Sur-
page 74 } gery at the Medical College of Virginia.
Q. Have you written any papers, published any papers on this subject?
A. Yes, sir, I have.

Mr. Browder: I concede the Doctor's qualifications.
Mr. Anderson: All right, sir.

Leroy Smith.

Q. Doctor, when did you see this boy Haislip?

A. I saw Mr. Edward Haislip for the first time on February 18, 1959.

Q. Did you take a history from him at that time?

A. Yes, sir, I did, sir.

Q. What was that in general?

A. The facts were, that I got from the history was, the patient was injured in an automobile accident several weeks ago. The exact time I do not have a record of. He was treated at the Medical College of Virginia following the accident and stayed there until he was discharged by his physicians who were treating him.

Q. By whom was he referred to you?

A. He was referred to me by Mr. Anderson for examination.

Q. Did Dr. Bear also request—

A. And Dr. Bear. Elmer Bear also asked for me to see him.

page 75 } Q. What were your field findings upon examination

A. At the time I saw Mr. Hailslip the patient exhibited the following scars, which were healed:—

Q. With reference to those scars, Doctor, would you refer to this photograph, which is Plaintiff's Exhibit No. 6; I understand you did not see this man in this condition.

A. Yes, sir.

Q. Would you refer to the scars which you found and point them out on the photograph to the gentlemn of the jury?

A. Could I step down?

The Court: Yes, sir.

Note: The witness steps down from the witness chair and stands before the jury.

A. At the time I saw the patient, as I stated, these scars were healed. In other words he had been discharged from the treatment of his physician and I was looking at him with reference to the damage that had been done and had healed at this time. And these are the following scars that I saw:

He had two scars, healed, just above the right eyebrow between the eyebrow and the hair line. These measured approximately an inch or inch and a quarter in length. He had an irregular scar just above the nose, between the eyebrows, which

measured a little over an inch in length. The next most important scar in the right side was this one below the
page 76 } right lower eyelid, which was approximately about a half inch below the eyelid edge and extended outward and diagonally toward the ear and this measured approximately an inch and a half in length. There were several minute scars, I say by that, that is, those scars that measured less than an inch long, that were healed over the right cheek between the nose and the ear. There was a large irregular scar on the chin, most of the scar being under the chin, which was in a "U" shaped manner, measuring over-all length of approximately two and a half inches.

The worse scar that he had was on the left side of the nose. This scar began just about the level of the tip of the nose, that is on the side, and extended downward and around the nose and into the upper lip. Practically perpendicular with the left side of the upper lip.

These scars at the time that I saw them, they were all healed. There were no scabs or any evidence of infection of that nature. However, they were noticeable in that the scars were irregular. The skin edges, that is the skin on each side of these scars, was raised. They were slightly widened in some parts of them, that is, the scar itself was widened and most of them showed evidence of intense redness.

The most deforming scar that I saw was the one on the left side. That extended into the upper lip. At the time
page 77 } I saw him there was a little what we call "lip lag" which was due to the stiffness of this scar.

I did not find any evidence of any nerve damage, that is, a superficial nerve damage or disturbance of sensation around any of these scars at that time.

Note: The witness resumes the witness chair.

Q. Did you find another scar in the—

A. Ear lobe. It does not show on that photograph, sir.

Q. And did you find one, I am referring to—I believe there is one on the—

A. Bottom lip. Yes, sir.

Q. —bottom lip. That was not the result of this accident?

A. That is quite true, sir. And there was also—I did not see it on there—there was a small scar just below the left ear lobe which measured about a half inch in length.

Q. All right, sir. Now, Doctor, what if anything can be done to improve these scars?

Leroy Smith.

A. In spite of the fact that these scars have healed in such condition that I have described, these scars can be improved by partial incision. That is, incising or cutting out the widest part of them and then sand papering the entire scar. By sand papering we mean actually abrading the surface of
page 78 } the skin following our incision of these scars, and then we have to resew them following the abrasion.

Now this will do two things. One is, it will narrow the scars. The second thing it will make the scars smooth.

I mentioned that the level of the skin on the two sides was unequal and irregular. And when you sand it, or abrade it, that makes these scars, the skin edges on each side smooth, so that when you look at these people it doesn't look quite as irregular and it looks smoother. Therefore the scar is not quite as noticeable.

Q. What will this involve, Doctor? Will he require any hospitalization?

A. It would require approximately three days or four days of hospitalization, and would have to be done under general anesthetic.

Q. You mean in the operating room?

A. That is right, sir.

Q. What is the approximate cost per day of hospitalization?

A. About $22.00 a day, sir.

Q. What would your charges be for this work?

A. We would charge $200.00, sir.

Q. Your bill to date for making this evaluation, I believe, is $100.00, is that true?
page 79 } A. I have $15.00, sir.
Q. I might be wrong, sir.

A. Well, I don't want to—I don't have a copy of the bill, do you have a copy of it? I have the statement on my charge card, sir.

Q. All right, sir. So it is $15.00, then.

A. Yes, sir.

Mr. Anderson: I do not believe I have any further questions.

CROSS EXAMINATION.

By Mr. Browder:

Q. Dr. Smith, you only saw this young man once, that was back when?

Leroy Smith.

A. February 18th.
Q. Of this year?
A. Of this year.
Q. No arrangements have been made to have any of this work done, have there?
A. No, sir.
Q. The most noticeable scars he has are the ones from the previous accident, are they not, Doctor? The one on his chin and the one back of his ear?

Mr. Anderson: I object. I think the one on his chin is one from the most recent accident.
page 80 } Mr. Browder: The one on the left side of his chin was from the previous accident.

A. The chin was from this accident; the lip was from another accident.
Q. I mean from this one. (Indicating on plaintiff) This one here is from the previous accident.
A. That is right, sir.
Q. Is that right?
A. Yes, sir.
Q. And these in the back of his ear here, back of his head here are from a previous accident, are they not?
A. There is one, just anterior to it, a smaller scar, that was from this accident, just—
Q. Here?
A. That's right. That's right.
Q. The ones back here we see are from a previous accident?
A. Yes, sir.
Q. The one from the previous accident is the widest of them all, is it not?
A. I would say so, sir.
Q. Is that one you plan to excise, too, when you do this work?
A. I have made my statement, sir, for the ones that were pertaining to this accident, sir.
page 81 } Q. But if you were going to do it you would certainly recommend that he have work done on that scar, too, would you not?
A. I certainly would, sir.
Q. If you can improve those scars he has, they will be practically eliminated, will they not, Doctor?
A. They will be improved. I cannot eliminate them. They will be improved.

Leroy Smith.

Q. It will be very difficult to see them, will it not?
A. It should be rather difficult.

Mr. Browder: Thank you very much, Doctor.

RE-DIRECT EXAMINATION.

By Mr. Anderson:
Q. Doctor, assuming that you do this work, these scars will they be permanent or will they not?
A. They will be permanent, sir.
Q. Mr. Browder raised the point that you have not seen this man since February 18th, 1959—I do not want to prolong this matter, but—

Mr. Browder: I wanted to be sure. I was not trying to trap him.

Q. Would you take a look at him now and see what you have told us about these scars obtains to the same
page 82 } as it did back in February?
A. February?
Q. Yes, sir.

Mr. Anderson: Stand up, Eddie, and just go around—

Note: Dr. Smith examines the plaintiff's scars.

A. I would say the noticeable difference is that there is not quite as much hardness, and certainly not as much redness; that is, as there was in February. Other than that the condition is the same.
Q. You would recommend this work to be done?
A. Yes, sir.

Mr. Anderson: All right. I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Browder:
Q. Let me ask you one more question, Doctor: Did I understand when you talked to him, there was no evidence of any nerve damage or anything around any scars at the time you saw him?
A. That's right. That I could spy.

Q. No numbness or anything of that type?
A. That's right, sir.

page 83 } Mr. Browder: That is all. Thank you very much, Dr. Smith.

Witness stood aside.

VIRGIL R. MAY,
a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Would you please state your name and occupation to the gentlemen of the jury?
A. My name is Virgil Robert May, Jr., and I practice orthopedic surgery in Richmond.
Q. Where did you graduate from medical school, Doctor?
A. I graduated from the Medical College of Virginia in 1943.
Q. Where did you go after that?
A. Following graduation I went to Pennsylvania, took my internship and also a residency in orthopedic surgery.
Q. Is that when you began to specialize?
page 84 } A. I began at that time.

Mr. Browder: I concede the Doctor's qualifications.
Mr. Anderson: All right, sir.

Q. Do you hold any position at the Medical College?
A. I do.
Q. What is it?
A. I have a faculty rank at the Medical College at clinical, associate, and orthopedic surgery.
Q. Have you had any papers published in this field?
A. Yes, I have.
Q. Doctor, when did you see the plaintiff here, Edward Haislip; when did you first see him?
A. The first time I saw Edward Haislip was in August 14, 1958. I saw him at the request of Dr. Elmer Bear.
Q. Where did you see him?
A. At the Medical College of Virginia.

Virgil R. May.

Q. Were you able to make an examination, orthopedic examination of him at that time.

A. I did, sir.

Q. What did that reveal?

A. From the orthopedic standpoint I was primarily—

Q. Excuse me. I do not believe we explained this, Doctor: Just what is orthopedic surgery?

page 85 } A. It is that specialty dealing with the restoration, the restoration of function of the bones and joints, primarily below the facial aspects. In other words the back and extremities.

Q. All right, sir, go ahead, and tell us what you found when you saw him.

A. When I first saw this man, he was in his bed, of course, and at the time that I saw him he complained of primarily his face bothering him. He also complained of some pain in his low back area and particularly over on the right side. I saw him approximately three to four days following the initial accident. He wasn't feeling too well at that particular time. I didn't get him up out of the bed, although I did examine him while he was in bed. He had tenderness in the right hip region; he had tenderness, that is when I pressed on his back, in the lower portion of his back. There was a bruised area in the right hip region, in the posterior aspect. In other words, the buttocks.

Q. You could see this bruised area?

A. I could see that bruised area at that time.

Q. I believe he left the hospital under the care of Dr. Bear, did you see him subsequent to his release from the hospital?

A. I did not. I saw him in consultation with Dr. Bear and I did not feel it necessary that I see him unless Dr.

page 86 } Bear would like for me to do so. And I think he was discharged approximately a week after coming into the hospital.

The last time that I saw him was in March of this year, for a checkup. At that time he stated that he had gotten along pretty good, as far as his back was concerned, or as far as his hip was concerned. It was not bothering him any more.

Q. When you say you saw him in March, did you examine him with reference to his low back?

A. I did, sir.

Q. What did you find?

A. At that particular time I found that he had minimal amount of tenderness. In other words, when I would palpate his low back region he would complain of some pain. I found

no other evidence. I did not find muscle spasm. Of course the bruised area had cleared up by that time. I found no deformities of his legs or of his low back region. He held himself erect. There was no holding himself to one side or the other.

Q. With reference to his bone and joint injuries, in your opinion, what if any injury did he sustain as a result of this accident?

A. I feel that he sustained an initial injury to his back. I felt, and also to his right hip, primarily a bruising
page 87 } effect and probably a strain of his low back.

Q. What is your prognosis?

A. My prognosis from my stand point is very good. I feel he will make a complete recovery.

Q. That is from the low back and hip?

A. From the low back and from his right hip region.

Q. Doctor, did you find that he had a history of a previous injury?

A. I have found that he has had a history of a previous injury. I understand he gave a history of having an injury in about 1952.

Q. Was that in the area of the low back?

A. No, this was in the area of the higher area. In other words, it's higher than the low back region. It's in the lower stomach and kidney region, which is higher than the low back region.

Mr. Anderson: I have no further questions. You answer Mr. Browder, please, sir.

CROSS EXAMINATION.

By Mr. Browder:

Q. You did not get any history of any previous back trouble at all, then, Doctor?

A. No, sir.

page 88 } Mr. Browder: All right. Thank you very much.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Dr. May, your bill for services to date is $40.00, is that correct?

A. Right. That includes the x-rays and all. Yes, sir.

Asa Shield.

Mr. Anderson: We would like to introduce this as Plaintiff's Exhibit 9.

Note: The above bill in the amount of $40.00 is now marked and filed as Plaintiff's Exhibit No. 9.

Mr. Anderson: Thank you, Doctor.

Witness stood aside.

page 89 } ASA SHIELD,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Dr. Shield, will you please state your name and occupation to these gentlemen of the jury?

A. Asa Shield, Doctor of Medicine.

Q. Are you a medical specialist?

A. Yes.

Q. What is that specialty?

A. I specialize in nerve diseases: neurologist and psychiatrist.

Mr. Browder: I admit the qualifications of Dr. Shield, too.

Mr. Anderson: All right, sir.

Q. Doctor, would you tell us briefly about your specialty; I believe you said neurology and psychiatry, what are they?

A. Well, neurology and psychiatry—Neurology is the phase of medicine that has to do with the brain, the cord, and nerves coming off from the brain and the cord to the body. And psychiatry is dealing with the nervousness and functions, how the patient gets along in regard to his personality, whether he gets along sick.

page 90 } Q. Do you hold any position at the Medical College?

A. Yes, sir.

Q. What is that?

A. I am associate professor of Neurology and Psychiatry.

Q. Doctor, when did you first see Edward Haislip, the plaintiff?

A. I saw him on February 20th.

Asa Shield.

Q. 1959?
A. 1959, sir.
Q. What were his presenting symptoms?
A. That day his complaints were of recurring headaches, uncomfortableness of the face in the area of the scars. Stated on the left side of his nose, that is where a scar was, on the side of his nose, he said it hurt. Particularly if the weather was cold. And he said he had some diziness that would come and go when he would stoop over or bend over. Everything would go around and around.
Q. Is that unlikely with a normal person who has received no injury?
A. I would say a person who is well and normal doesn't have recurring headaches, he doesn't have this complaint on his left-hand side of his nose, and he doesn't complain of going around and around when he stoops over.
Q. Did you take a history from him?
page 91 } A. Yes, sir.
Q. What was that?
A. Well, he gave me these complaints: I asked him what he was doing. He said he was at the barber school now, and says that about once a week he has these attacks, when everything would look black, and "I just have to stop barbering, at least for a few seconds." And he has been having these symptoms for four or five weeks, or maybe longer. And he says, "I know I am nervous." Patient stated his face was cut about three months ago. He was in a car and was told that this car hit a telephone pole and he went through the windshield. He woke up, or came aware, and said that his mother was there, and he was in the Medical College Hospital. And he stated that to the best of his information he was there about a week. Since then he has not been back to work. He went back to his former job—

Mr. Browder: If Your Honor pleases, may we at this time get into this question we started out with earlier this morning about this man's work record, and so forth? I object to that part of it. Now we have got to face it.
The Court: Is this a necessary part of the examination at this time?
Mr. Anderson: I think it is. It is part of the history that he obtained from the man. If Mr. Browder wants
page 92 } to bring in matters of history that I do not think are material or relevant he certainly is going to attempt to do so.

Asa Shield.

The Court: I think we are getting back specifically to the matter we took up in Chambers. Is that a necessary part of the history at this time, of this witness?

Mr. Anderson: Well, no, sir.

Q. Doctor, suppose you just leave out the part that he went back to his former job and so forth. Leave that out of the history.

A. All right, sir. The patient was born February, *1950,* in Richmond; second child; had the usual childhood diseases; had no serious illnesses as a youngster, that he knew of, that he recalled. He had an appendectomy some four or five years ago at the Medical College. He said he fractured his right wrist in rolling down a hill about a couple years ago and he was treated at the Medical College. He fell out of a tree about two stories high "He broke his jaw." And at that time he cut off the tip of his index finger, and the scar on the lower left lip that he pointed to on that side was due to that injury.

He said about a year ago he was hit by an automobile and had one kidney injured. Hospitalized at the Medical College at that time.

page 93 } Then I got the history about his father and mother, which wasn't too pertinent, and the history about him going to school and about his work record after that.

Q. How about his examination at that time?

A. The neurological examination?

Q. Yes, sir.

A. The examination at that time showed three things: He had the differences in the two sides of his face. We call that—They were, each side didn't look alike. And there was a little flattening-out of this fold and facial asymmetry so-called; had slight unsteadiness of gait—slight—Pardon me. Slight unsteadiness of station. When he closed his eyes with his feet together, like that, he was a little swaying. That was slight. When he put his hands out in front of him, like that, he would shake. That was slight. But they were the only three findings of any significance so far as I was concerned, at the initial examination.

Q. Did you see him again?

A. Yes, sir. I saw him again on April 6th. And the patient said he was somewhat better, but his complaints were similar. On his re-examination he still had the facial differences, scars on the face, which affected the movement of his

face, and the patient had very slight, fine tremor of extended hands, but it was—

Q. That was the same finding as before?

page 94 } A. Same finding. This was quite slight. The patient standing with his eyes closed swayed a little and was aware of his slight sway.

Q. Doctor, to what do you attribute the pain and discomfort on the left side of his nose where the scar is?

A. Well, he says it is uncomfortable when it gets real cold. I attribute that to the fact of the reduced circulation on that side.

Q. That, of course, in kind, would be attributable to this accident?

A. Be attributable to the blood vessels being cut and scars. Yes, sir.

Q. To what do you attribute the pain and discomfort on the right side of his chin and right eye?

A. I think those discomforts are due to the scars he got in his accident, along with the headaches, nervousness, and vertigo. Looks like to me when he went through the windshield I think he, as he said, he was sort of befuddled, didn't remember. He said he was told that, somebody said he walked to the ambulance, or car, or something or other. He didn't remember anything about it. So I think that his going through the windshield and cutting his face, breaking his jaw, and bruising the side of his face and cutting up, was sufficient to give him a sconcetory unawareness, unconscious-

page 95 } ness. I think that could cause his headaches and slight vertigo that is left over.

Q. What is the significance, Doctor, of the history of—Back in 1952 I believe he broke his jaw, is that right?

A. And also in '52 he sustained an injury to his kidney, the kidney and liver area. I got that from the Medical College. He evidently recovered from that, because he hurt that, I think, in October, and he started—

Q. October of 1952?

A. No, that was—(Referring to files).

Q. Do your records indicate anything in October of 1952?

A. Yes, sir. This time he fractured his jaw and also fractured both condyles. That was February of 1952. He fell from a tree. Stated he, in February, 1952, he fell from a tree and was admitted to the Medical College of Virginia. At this time he hurt his right index finger, which still shows as a result of scar at the present time. He also fractured

his jaw; and the next admission to the hospital was in October, '52.

Q. That was for the kidney and liver—

A. At which time he was hit by a car and final diagnosis was contusion or bruising of the right kidney.

Q. What significance is that in relation to your
page 96 } findings?

A. Well, they said that he was studied in November and studied again in December. His recovery was good at this time. He evidently recovered from that, according to this: He was asymptomatic, no need for treatment. So I assume—

Q. What does asymptomatic mean?

A. Had no symptoms. I assume that he had recovered from it.

Q. I see. So getting back to my question I asked you: What significance is this past history in relating to your findings and his injury of August 10, 1958?

A. The only thing I can say from the record I got from the Medical College he recovered from that and it would have nothing to do with this.

Q. Doctor, I have a bill here, I do not know whether it is correct or not, I am sure it isn't; do you have an up to date bill?

A. No, sir, I do not. I just—

Q. You do not have one?

A. No, sir.

Q. Can you tell us what it would be? I hand you—

A. The up to date bill would be $125.00.

Q. $125.00. Would you mind just making a notation on that?

A. (Apparently making notation on paper writing).

page 97 } Mr. Anderson: We offer this as Plaintiff's Exhibit No. 10, if Your Honor please.

Note: The above paper-writing is now marked and filed as Plaintiff's Exhibit No. 10.

Q. What does the future hold for this boy, Doctor, with reference to your findings?

A. I think he ought to get better. He certainly was better April 6th when I saw him, over February 20th. I don't know how long he is going to have headaches. When he bends over a little bit he will have some of this dizziness associated

with these headaches. Looking from those things he ought to get better. The fracture, scarring, of course, is a thing that perhaps he can get some help with surgery from that, but I don't think they will ever be completely obliterated. Maybe they can be, but I wouldn't think so. So I should think that from his nervousness, headaches and vertigo he ought to improve in time. I don't know what the time is, six months or a year. He ought, certainly ought to get better. Whether he will get completely well or not I cannot say. With the scarring he has there, I don't think his face will ever straighten out like it used to be.

Mr. Anderson: All right, thank you, Doctor. Answer Mr. Browder, please.

page 98 } CROSS EXAMINATION.

By Mr. Browder:

Q. Dr. Shield, this young man had several accidents before, did you also get a history that he had had an unusual degree of nervousness before?

A. Yes, I got a history that he had been nervous before.

Q. So bad he actually quit school in about the eighth grade, was it not?

A. He said he quit school because of nervousness and because he had to go to work, I think. Those are the two things he told me.

Q. That is rather unusual for a young man, is it not, to quit school on account of nervousness?

A. I think it is unusual for them to quit school on account of nervousness, but I don't think it is unusual to on account of having to go to work. Maybe one influenced the other.

Q. I understand that. I believe you expressed in one of your reports: with that prior history it is somewhat difficult to completely evaluate this nervousness that he has now on the basis of whether the accident caused it, or whether it was something he had before the accident; is that a fair statement of it?

A. I said a person of nervous history, vulnerable
page 99 } to head injury, there would be increasingly nervousness as a result.

Q. Did you not also say that based on the prior history it was a little difficult to tell how much of his trouble was due to the prior nervousness and how much was due to the acci-

dent, his unsteady gait and unsteadiness of hand, and so forth?

A. I would say that with the past history of nervousness which he gave, and the history of all the other things he gave, it would seem to me, to be fair, my impression of the boy was that he was pretty honest in trying to appraise, in an accurate kind of a way. And he said that he had been nervous before, and he had some headaches before but these headaches were different from what he had had before. I think it is awfully hard to say just exactly whether, in a case like that, whether the accident had increased his nervousness or not. I don't think the accident would have caused all of his nervousness. But a person who is nervous is more vulnerable to be made more nervous by an accident.

Q. And with people who are nervous, it isn't a constant matter of being the same way all the time: you feel better some times, and worse at other times, is that not true, Doctor?

A. That's right.

Q. This young man, when you saw him in Feb-
page 100 } ruary, gave you the history of the trouble he had
had. This unsteadiness when he leaned over, or vertigo as you call it, had come on about a month before that, around the middle of January?

A. Well, it's—I can tell you exactly what he told me. He said that this business had come on and was so bad he had, that blackout spells sort of made him stop barbering, but he was a little bit better now.

Q. Speaking of those blackout spells, Dr. Shield, I believe I noticed in your report you said that Mr. Haislip said he had no recollection of the accident or hitting the pole, is that correct?

A. He told me that he had no recollection of the accident itself.

Q. I see.

A. That is, actually hitting the pole. That he really didn't sort of become aware of things, as he told me on February 20th, until he, one of the first things he became aware of was his mother was at the hospital.

Q. I am talking about this retrograde amnesia, did he have any of that in connection with it?

A. He had an amnesia which may have been a little retrograde, because he didn't remember hitting, he didn't remember the car hitting whatever it hit. As far as he knows, in

telling me, he didn't know whether the car hit
page 101 } anything or not. He was told that. He was told
that is what happened to him. He didn't remember going through the windshield. He was told he went through the windshield.

Q. I see. He does remember the facts leading up to it, though?

A. The impression I had he didn't remember hitting the pole.

Q. I wish you would tell the gentlemen of the jury, if you will, is it uncommon in accident cases where a person gets a lick on the head or face or something for their memory—maybe to be knocked out for a second, half second, two or three seconds—to forget things prior to the accident?

A. That is quite common.

Q. Quite common?

A. Could be, yes.

Q. Sometimes it occurs and sometimes it does not, is that not true?

A. Yes, sir.

Q. You have a spell of blackout, do you not, when that happens?

A. I wouldn't say that. I don't think you have much feeling. A person, I might go out here, any of us, may go out, have an accident which may be so severe that we may not know, be able to recall the fact that we got in the car here in front of
the courthouse and went ten miles to where the
page 102 } accident occurred. I think that is what you are
talking about it being retrograde, going back?

Q. Yes, sir.

A. You can get hit on your head and everything, you may not only be unaware of what happened right then, but you may be unaware of what happened a few minutes or a half hour before. That is very possible.

Q. Did you get any history of that type from Mr. Haislip in this case?

A. I got a history he had been riding in the car, I think. He didn't remember hitting. He didn't remember the compound.

Q. I believe you said when you saw him April 6th he was feeling better, he wasn't having headaches then, was he?

A. He said on April 6th he was feeling better. And he stated he was somewhat better than he was when we saw him

on the 20th. Upon questioning him he says he has similar complaints. He has no headache today. That was the 6th. However, he stated he has headaches. He had one on April the 4th. That the headaches last thirty to forty minutes and are relieved by taking two aspirins.

Q. When he had these vertigo spells, they lasted for only a few seconds?

A. They last only a few seconds. That is
page 103 } characteristic of the stoop-over, like that. It lasts very short.

Q. Neither the headaches or vertigo caused him to stop his work at the barber college, he kept right on?

A. He said that the headaches or the vertigo was not as severe as it was to stop him, and he—I am looking for it, I have it here—he said, actually, that he was so anxious to do barber work that he wouldn't let it stop him. Therefore, his headaches were not as severe; his dizziness was not as severe.

Q. You noted in one of your reports there that he gave you a history of having had some back trouble back in January, 1953; did he not say he had intermittent back pain back at that time?

Mr. Anderson: Objection. I think the Doctor should be quoted correctly. I think he said he had a kidney injury.

Mr. Browder: I do not think I am misquoting him. Turn to page 2 of your notes of April 6th.

A. January, 1953.

Q. Read what you say there, Doctor?

A. See, what he was doing, he was having this—Let's see. In October '52, that's when he was hit by this car and he had a contusion. He hurt the right kidney. And then
page 104 } on November 25th he was further studied for the kidney. And then we come down to January '53. He was seen because of intermittent back pain. That was all, as far as I can see, all the same thing. It started off on October 10, 1952.

Q. I did not misquote you, then, did I, Doctor, when I said "intermittent back pain back in January, 1953"?

A. Then he was found to be improving. That's right. But I think that is all tied up with his kidney. That cleared up in '53.

Q. You are reading from some report from some other hospital?

Asa Shield.

A. I went down to get the report from the—
Q. Medical College Hospital?
A. That's right.
Q. But that was part of the records—
A. This all cleared up, as far as I can see, in January '53. He was found to be improved.
Q. Yes, sir.
A. Then in September '53 there was noted that he was seen and that he was all cleared up. That the x-rays, everything were negative, the Pyelogram.

Mr. Browder: All right, Doctor, thank you very much, sir.

Witness stood aside.

page 105 } The Court: Gentlemen of the jury, we have a rather long case today and we must finish it today due to a number of matters that I have for tomorrow. Consequently, I ask that you be back here not later than fifteen minutes to 2:00 o'clock.

During the luncheon recess keep in mind the same admonition which applies at all breaks: Do not discuss the case with anyone or allow anyone to discuss it with you.

Note: Recess for lunch is now had until 1:45 P. M., at which time the hearing is resumed before the jury as follows:

Mr. Anderson: Cecil Bailey.
Mr. Browder: Your Honor, Mr. Bailey's testimony will be along the lines discussed before the trial, as I understand it.
The Court: Gentlemen, I had better see counsel in Chambers.

Note: At this point Court and counsel retire to Chambers, as follows:

page 106 } In Chambers.

The Court: I was trying to see what American Jurisprudence had to say on this subject.
Mr. Browder: I could not find anything on it in a hurried look for it, Your Honor.
Mr. Anderson: I think, Your Honor, that there are two

different questions here. One is the question of whether the damages are claimable by virtue of loss of a job, although physically able to go back to work, up to the time when he is gainfully employed. Two, whether we can put on evidence to show that he attempted to return to work, to show the man's intentions to work.

Mr. Browder: I do not charge him with any bad faith in connection with it.

Mr. Anderson: If we are not allowed to show that the jury can reasonably draw the conclusion that here is a man who was injured and is malingering. He had a job but didn't go back to try to get the job. There is no explanation of why he did not return.

Mr. Browder: You brought it on yourself when you made that remark in your opening statement. It was understood that we were not going to say anything about it, I thought.

Mr. Anderson: No, it was not. I disagree
page 107 } with you.

The Court: Let me ask you this: As I recall the evidence up to now, Dr. Bear stated the man was able to go back to work after six weeks, is that not correct?

Mr. Anderson: That is right.

The Court: And, of course, unknown to me is the question of when he applied to go back to work. I assume it was at the end of that period, or before that period.

Mr. Browder: We are willing to concede they would not hold the job for him.

The Court: You are not asking for anything in the way of loss of earnings past the point, the doctor stated to be six weeks, when he could return to work, are you?

Mr. Anderson: I think that is a matter that we can decide on when the instructions are presented. But as to whether we can show that after this six week period he attempted to go back to work, I think we are certainly entitled to show that.

Mr. Browder: For what reason? That is what I would like to know. You cannot prove everything you
page 108 } want to prove. There can be but only one reason and that is to get before the jury the fact that the man has not been able to work since, because his job was no longer available.

Mr. Anderson: No, the reason is—Well, that may be part of it. What I am primarily concerned with, and what I say we have got the right to show at this time is, that after this six weeks period when the doctors said he was ready to go

back to work, he tried to go back to work. We have got to give some explanation why this man isn't working.

The Court: So far as I know it is not in the record here that he isn't working.

Mr. Anderson: There is—I am going to introduce the man from the barber school.

Mr. Browder: A man has a right to change jobs if he wants to. What has the barber school got to do with it?

Mr. Anderson: Well, the fact that he is trying to acquire another trade since—

Mr. Browder: We certainly are not liable for his failure to make a living as a barber.

Mr. Anderson: I am not saying that you are responsible for his inability to make a living as a barber. We

page 109 } do not know whether he is going to be able to make a living as a barber as of yet.

Mr. Browder: I do not see what he has done since has a thing in the world to do with this case. The barber shop or anything else. If you want to bring in something extrenuous in order to get in something that is inadmissible—

Mr. Anderson: I think it is very material. I think certainly it can be covered by an instruction if the Court decides we cannot claim it. The Court can certainly give an instruction that all the damages for which you are liable are the six weeks he was unable to work, according to the medical evidence.

The Court: Do I understand that insofar as the witness Bailey, whom you are now offering, you are going to endeavor to show through him that the plaintiff was employed by this company at the time of the accident at so much salary, that sometime subsequent to the injury he returned to work and at that time the job was no longer open because the job had been filled by someone else, the employer could not wait during that period? Is that all the evidence you expect to show?

Mr. Anderson: That is exactly it.

The Court: That is all you intend to show by

page 110 } this witness?

Mr. Anderson: That is all.

The Court: All right. Well then, specifically, are you endeavoring to claim anything beyond what your medical testimony indicates, that the fellow was able to go back to work at the end of six weeks?

Mr. Anderson: That is a matter, Your Honor, for instructions and for final argument. I am going to argue the point, but the chances are we will get limited to the six weeks.

The Court: The medical evidence thus far, it seems to me, unless there is some change in the testimony, some new phase of the testimony that has not been developed up to now, that that is the period we would be talking about. Do you have any specific objection to what the plaintiff proposes to offer through this witness?

Mr. Browder: Yes, sir. I object to it very strenuously. Again, that is what we took up with the Court. What I understood the Court's ruling was that the point could be raised when it came up, that Mr. Anderson was not going to mention it in his opening statement. That is the page 111 } reason I asked for a mis-trial at that time. Mr. Anderson did not understand it that way. I do not doubt his good faith at all. I think his statement to the Court was he would not say anything about it.

Mr. Anderson: I think you misunderstood.

Mr. Satterfield: You misunderstood. He said he would not mention any dollars and cents.

Mr. Anderson: I stated I would not mention any specific amount.

Mr. Browder: My objection at that time and now is, that any evidence of his wanting to work and his job not being available, that in itself was prejudicial. So you went right into the teeth of what my objection was. At any rate, you certainly cannot prove something that has any more extrenuous purpose. It is bound to have an effect upon the jury. It is not supposed to be there that he lost more salary than he was legally entitled to.

Mr. Anderson: It is material to show that this man is not malingering.

Mr. Browder: I do not claim he is malingering.

Mr. Anderson: We have to show it.

The Court: In other words, the principal pur- page 112 } pose of your offering this witness is to show when he was able to work, according to what the doctor told him, and when he reapplied for the job?

Mr. Anderson: That is right.

The Court: All right. Well, generally speaking I am going to allow you to examine this witness along the general lines as indicated. If anything specific comes up and Mr. Browder wants to object to it again he is free, of course, to make any further objections.

Mr. Browder: Do I understand the Court holds that this witness can testify that the man had been working for them, if he kept on and had not had the accident they would have

kept him on, but that when he came back several weeks after the accident that they had to let him go because they could not keep the job open but two weeks; is that admissible? If it is there is no use of my objecting to that again.

The Court: That is the evidence I am going to let him testify to.

Mr. Browder: I will note the objection and exception right now so I will not have to make it in there.

The Court: All right, sir.

page 113 } Note: Court and counsel now return to the courtroom, and are before the jury, viz:

Before the jury.

CECIL C. BAILEY,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Will you please state your name and occupation to these gentlemen?

A. Cecil C. Bailey, personnel manager for Larus & Brother Tobacco Co.

Q. Mr. Bailey, as personnel manager, are you acquainted with the employees of Larus & Brother Tobacco Company?

A. Yes, sir.

Q. Do you have occasion to see them at work daily?

A. Yes, sir.

Q. How many times a day?

A. It varies. Could be anywhere from one to three to five times a day.

page 114 } Q. Who does the hiring for Larus?

A. I do.

Q. Are you acquainted with the plaintiff here, Edward Haislip?

A. Yes.

Q. What was your association with him?

A. Well, I hired him, and—

Q. When did you hire him?

A. July 29, 1958.

Q. You understand that he was in an automobile accident on August 10, 1958?

Cecil C. Bailey.

A. That's right.

Q. I believe he came back to get his, to go back to work, did he not?

A. We first had a slip from Dr. Bradley at the Medical College stating that he had been in an accident on the 10th of August.

Q. Yes, sir.

A. And wanted us to hold his job for him.

Q. Yes, sir.

A. But, we gave him a couple of weeks to report back to work after the accident. We had to replace him. We just couldn't hold the job. The job that he was on was carrying trays to the cigarette packer and you have to have a man there all the time.

page 115 } Q. I understand that. Did he come back? Did Haislip reapply?

A. Yes. He came back later and reapplied. I didn't have an opening for him at that time.

Q. What was his rate of pay the last week that he worked? Rather than giving us the hourly wage, approximately what would it amount to in a week?

A. About fifty-four or fifty-six dollars a week. That would vary, because they make incentive. They have to carry so many trays. If the machines produce pretty good it is possible for them to make ten to fifteen per cent extra.

Q. He would make a minimum, you say, of fifty-four to fifty-six dollars a week?

A. Yes, sir.

Q. What kind of worker was this man?

A. Well, he must have been satisfactory for the time he was there because they hadn't replaced him. And you can either carry trays or you can't carry them. Once you start, I mean, they don't wait. You got to pick them up and move.

Q. Is that on your feet eight hours a day?

A. Yes, sir. He sets down very little, except during the rest periods.

Q. How much do those trays weight, approximately?

A. Thirty to thirty-five pounds.

page 116 } Q. How far do you have to carry them?

A. That depends. It could be as far as from here to Miss Clevenger over there.

Q. About twenty to thirty feet?

A. Something like that, or it could be—

Q. Or it could be what?

Cecil C. Bailey.

A. Ten feet, if you are right at the packer.
Q. Did you have occasion to see this man at work?
A. Yes, I have seen him at work?
Q. Was he a desirable employee so far as you were concerned?
A. Nobody complained about him, if that is what you mean. I didn't have any complaint. Usually if they don't do the work right the foreman will tell you, or send him out, or tell you he wants somebody to replace him.
Q. During the time he was employed, did he miss any time from work?
A. No, sir. Not as I know of, except after the accident.
Q. I mean before the accident.
A. Not that I know of.
Q. So he worked approximately two weeks, then, before the accident?
A. That's right.

Mr. Anderson: All right, sir, I have no further
page 117 } questions.

CROSS EXAMINATION.

By Mr. Browder:
Q. Do you remember when it was he came back and applied for the job, Mr. Bailey?
A. I don't know exactly, no, sir. I didn't make any record of the date.
Q. You have had openings that you could have used him in since then, though, have you not?
A. I probably have. In fact, I tried to get in touch with him once since then, but I couldn't locate him. I couldn't wait.

Mr. Browder: All right. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Anderson:
Q. When was that, Mr. Bailey, that you tried?
A. In the last four or five weeks.
Q. Within the last four or five weeks, that would be in March, then?
A. I would say about a month ago.

Horace R. Griffin.

Mr. Anderson: I have no further questions.

Witness stood aside.

page 118 } HORACE R. GRIFFIN,
a witness introduced on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Griffin, will you state your name, age and residence to these gentlemen over here?

A. Horace R. Griffin, age thirty-three, 3409 Howard Road, Richmond, Virginia.

Q. Your occupation?

A. I am the chief barber instructor at the Richmond Barber School on West Broad Street, 721 West Broad Street.

Q. How long have you been an instructor at the barber shop?

A. Approximately three years.

Q. You say that school is located where?

A. At 721 West Broad Street. We also have a school for our beginning students at 18 North 4th Street.

Q. What is the purpose of this school?

A. The purpose of this school is to teach the student the fundamentals of barbering.

Q. How many students do you normally have?

A. Well, anywhere from forty-five to fifty-five. That's the most we can handle at one time.

page 119 } Q. How many do you have now?

A. Oh, I say approximately fifty.

Q. How long is the school? What period of time does it run?

A. It is a six months course for the full course.

Q. Is it accredited?

A. Yes, sir. By the State Board of Education and also by the Veterans' Administration.

Q. After a man finishes a school, do you attempt to place him in a job?

A. Yes, sir.

Mr. Browder: If Your Honor pleases, I do not know what the purpose of this is. I can predict what it is. I cannot see where it has any conceivable relevancy to this case.

Horace R. Griffin.

The Court: I will ask counsel for the plaintiff the purpose of the examination?

Mr. Anderson: I think that the next question or two will point out the relevancy of this man's testimony, Your Honor.

Mr. Browder: It may also be highly prejudicial against the defendant, Your Honor.

Mr. Anderson: I think I have a right to ask the question.

If Mr. Browder has an objection to it why he can
page 120 } state it.

Mr. Browder: I think we ought to be able to see some relevancy in the witness's testimony before the question is asked. I have to object to it before the harm is done, if any harm is to be done.

The Court: It is pretty hard for the Court to rule on it at this stage, Mr. Browder. I will reserve the ruling until the next question or so is asked.

Mr. Browder: I note the exception.

By Mr. Anderson: (Continuing)

Q. Mr. Griffin, what factor or attributes of the individual man are generally recognized as affecting his desirability or placement and afterwards success in the barbering trade?

Mr. Browder: Before you answer that. May it please Your Honor, I do object to that upon the ground that we are dealing here with a case of a man who was involved in an accident while undertaking one specific job and now to turn over into something else that he thinks he would like to do and to undertake and to try to say that that has any relevancy to this case, I cannot see. It seems to me necessarily prejudicial. I might very well make a living practicing law and

decide I want to be a movie star. I might not be
page 121 } suitable for it, but that does not mean that my

damages are in any way related to the fact I cannot be a movie star. That is the way I feel about it. I very strongly object to it.

Mr. Anderson: Your Honor, we feel this way: That we have the right to show how this accident has affected this man's capacity to earn a living in the fields in which his education and background permit him to work. We intend to link this up and we say that it is relevant for that purpose.

Mr. Browder might very well qualify as a movie star. I do not know whether he would or not, but some of us, because of our background, education, and appearance, are not qualified to do certain things and it is within those areas that I

Horace R. Griffin.

think it is material to show the affect, if any, of the injuries on this man.

The Court: Mr. Anderson, I am going to let you pursue it a little while longer.

Mr. Browder: I note the exception, sir.

By Mr. Anderson: (Continuing)

Q. Will you answer? Do you remember the question?

A. Yes, sir.

Q. All right.

A. The answer would be: We try to, we emphasize the course in barber work he has to have a very page 122 } good personality and his workmanship has to be very good, and also his appearance. We also teach hygiene and sanitation.

Q. Is Mr. Haislip a student in your school?

A. Yes, sir.

Q. When did he enroll?

A. In January, this year.

Q. Is that when you first became acquainted with him?

A. He came to our school several weeks in advance. It was on kind of a trial basis. And he returned in January.

Q. What has been your contact with him since then?

A. Well, he is in my constant instruction all day.

Q. You see him daily, then?

A. Yes, sir. I see him every day.

Q. Six days a week?

A. No, sir. All the students are on a five day schedule.

Q. Five days?

A. Not all of them, most of them are on a five day schedule.

Q. What during this period of time have you noticed about his physical condition?

A. Well, I have never noticed—What I have noticed about him is the way he talked. A lot of times he has a little lisp. He has scars on his face. That's all I have page 123 } noticed about him. And several times he has come to me and told me that his—

Mr. Browder: If Your Honor please, I object to what he told the witness.

The Court: Objection sustained.

Q. Have you had occasion to notice him having any difficulty with his back?

A. Well, he has come up to me several times and said his back was bothering him. I told him he should go see a doctor.

Horace R. Griffin.

Mr. Browder: If Your Honor please—

The Court: One minute, Mr. Anderson. Mr. Griffin, the Court sustained the objection as to what has been told to you.

Mr. Griffin: Oh. No, sir. I—Mr. Haislip has come up to me—Excuse me.

The Court: What the Court is saying is you cannot refer to anything he tells you about himself. You cannot refer to what he says to you at all. Limit your testimony to any observation you made without his having called his attention to you.

By Mr. Anderson: (Continuing)

Q. What is the average working day for a barber?

A. Well, the majority, a barbers' day, they work, the average working day is about ten hours a day.
page 124 } But most barbers work five days a week in this particular area. They do not stay busy all the time, of course—in the afternoons, mainly, and on Fridays, the week ends.

Q. What portion of that time do you have to stand on your feet?

A. Some barbers on the week ends stand on their feet for the—I mean Thursdays, Fridays and Saturdays—stay busy all day long. That's probably nine hours a day. Some longer.

Q. Now, you have mentioned what you have noticed about Haislip's appearance. What affect, in your opinion, will this have on him finding a job or being placed when he finishes school, and afterwards in the barbering trade?

Mr. Browder: If Your Honor please, I do not know how far I am supposed to sit here without objecting, or whether I should let him go a little longer. I do not see how this case, that a man can change over from one job to another and expect to recover any damages on a different job entirely unrelated. I think it is wholly inadmissible. I think everything he has said is improper and should be stricken out. I move that all his testimony be stricken out. I move that this question not be allowed to be answered.

Mr. Anderson: If Your Honor please, the evi-
page 125 } dence is that this boy tried, and certainly it will be that he attempted to secure employment at the type of job he had at the time of this accident; he was unable to do so; and he is attempting to secure employment now by

going to barbering school and preparing himself as a barber. Now I think it is important to show, as such, if he is handicapped by reason of the injuries which he received in the accident of August 10, 1958.

The Court: Read the question back, Mr. Reporter.

Note: The foregoing question is read by the reporter.

The Court: I sustain the objection.

Mr. Anderson: We except to Your Honor's ruling.

By Mr. Anderson: (Continuing)

Q. What kind of worker has Mr. Haislip been at the school?

A. Been an average student.

Q. Has he been regular in his attendance?

A. Well, no, he hasn't been regular in attendance.

Q. For what reason?

A. By regular—We have a very good, I mean I can't—Your Honor, I cannot give you the days he was absent
page 126 } unless I had the roll book in front of me. He has not been regular in attendance.

Q. Do you know whether he had been to doctors on these days?

A. Yes, sir. He has been to the doctors on those occasions. You see, Your Honor, when they go to the doctor they bring back a paper each time, unless I know that he has gone to the doctor, that he has been to the doctor.

Mr. Anderson: All right. I have no further questions. I would like to get one answer in the record, though, if Your Honor please.

CROSS EXAMINATION.

By Mr. Browder:

Q. When was it, Mr. Griffin, that you say he came up there and talked to you about joining the school before January?

A. I cannot give you that date. He was only on trial. When they are on a trial basis we do not have any record in our—

Q. He came to work in January. Was it two or three months before that; two or three days before that—

A. It was approximately a month afterwards, I believe.

Horace R. Griffin.

Q. A month after?

page 127 } A. About a month. See, Mr. Haislip came to school on a trial basis for approximately two weeks.

The Court: A month after what?

Q. You mean he came up on a trial basis about a month before January?

A. Yes, sir. That's right. That's right.

Q. So in December, then, he came up on a trial basis?

A. That's right.

Q. Did you all—

A. I know it was. I can't—So far as I know it wasn't in January, I don't believe.

Q. It might have been even November?

A. I don't think it was back that far. It was probably in December, '58.

Q. The condition of his face was worse then than it is today, was it not, inflamed and red?

A. I mean, to be frank with you, I never did notice his face that much.

Q. So you have paid little attention to his face; you took his money and told him you would make a barber out of him, is that not right?

A. We didn't take his money.

Q. You do not charge for it?

A. Sir?

page 128 } Q. You do not charge the student a fee to teach them to be a barber?

A. Yes, sir.

Q. Then they took his money, did they not?

A. Mr. Haislip is coming under the State Rehabilitation Program.

Q. You do receive money, though, do you not?

A. Yes, sir.

Q. Somebody is paying for him and you are supposed to make a barber out of him, are you not?

A. We hope so.

Q. You did not notice what his face looked like when you talked with him back then? Is that right?

A. No, sir. Not that much.

Mr. Browder: All right. That is all. Thank you.

Horace R. Griffin.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Do you have anything you want to explain about your last answer to your last question?

Mr. Browder: I do not think that an explanation is necessary.

Mr. Anderson: He has a right to explain it. You asked him the question. He acted as if he wanted to
page 129 } explain something.

Mr. Browder: A lot of witnesses do.

The Court: Mr. Browder stopped the examination and apparently was satisfied to leave it where it was. If you want to ask some further question you may do so.

Mr. Anderson: I have no further questions.

The Court: Do you still want anything further in the record on this?

Mr. Anderson: Yes, sir, I would like to.

The Court: All right, gentlemen. Will counsel, the court reporter and the witness step into Chambers a minute?

Gentlemen of the jury, we will be a minute or two. You may remain seated. We will be right back.

Note: Court and counsel retire to Chambers at this point, as follows:

In Chambers.

The Court: Counsel wants to get in the record
page 130 } an answer to some question.

Mr. Anderson: Mr. Reporter, would you read the question I asked before the jury on direct examination to which Mr. Browder objected?

Note: The reporter reads the following question: "Now, you have mentioned what you have noticed about Haislip's appearance. What affect, in your opinion, will this have on him finding a job or being placed when he finishes school, and afterwards in the barbering trade?"

Mr. Griffin: Well, the answer to that would be he may have a hard time in some shops getting a job for that reason, on

account of his appearance of his face. And, of course, we teach hygiene and sanitation, those kind of things.

When the man hires a man to do barbering, he wants a man to be able to do good work. If his appearance and his work is good, and his personality, he will get along all right.

Mr. Anderson: By his appearance, you are referring to the scars on his face?

Mr. Griffin: That could enter into it some. I'm not saying it will hold him back from getting a job. I don't know that. But it is a factor.

Mr. Anderson: It is a factor?

page 131 } Mr. Griffin: Yes.

Mr. Browder: Your Honor, so the record will be perfectly clear, I move again for the Court to strike out all of this witness's testimony upon the ground that it has no bearing on any issue in this case. It is entirely too remote for the jury to speculate on any damages this boy suffered. We are certainly not responsible if he wants to be a barber, even if he can be a barber. He cannot bring in everybody in the world that he may decide he wants to engage in an occupation similar to and say that he would not work in our business for some reason or other. I think it is highly prejudicial to the defendant's case. We are liable for the six weeks the boy was off from work, if we are liable at all, of course; that is all. There is no evidence here that he could not return to a similar type of work that he had been doing. His background shows that he has never done anything which would require his meeting the public. He has always either worked on a farm or in a factory or something of that type. Furthermore, he had scars to begin with. So all of this is highly speculative, too remote, and prejudicial.

Mr. Anderson: There are cases on it. We

page 132 } have some cases which show that it is admissible to show by someone in the various fields that a man by reason of his background and education can seek employment as to whether he is handicapped in those fields.

The Court: I believe I will rule out that answer to the question objected to, which you want to go to the jury. I rule that away from the jury.

With regard to the rest of it, I still have not heard the plaintiff's evidence. I believe at this time I will keep under reservation Mr. Browder's motion to ask the jury to disregard this witness's entire testimony.

Mr. Browder: All right, sir. I note the exception.

Note: Court and counsel now return to the courtroom and are before the jury, viz:

Jury in.

page 133 } CLARENCE O. DAVIS, JR.,
a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Sit down there, Clarence. Will you state your name and talk so these gentlemen over here can hear you. What is your name?

A. Clarence Oscar Davis, Jr.

Q. Is this the first time you have been in court?

A. Yes, sir.

Q. How old are you?

A. Nineteen.

Q. Do you work?

A. Yes, sir.

Q. Where do you work?

A. Larus & Brother Tobacco Company.

Q. Clarence, on the evening of August 10, 1958, will you tell us where you had been?

A. Yes, sir. We went uptown to a movie and then we later on—

Q. Where were you living at that time?

A. Staying down—

Q. Clarence, speak a little louder. Look up here to the last man on the jury. We have the windows up
page 134 } and the trucks make a lot of noise.

A. Staying down to my uncle's, down to Louis's father's house.

Q. At the same home that this boy was living?

A. Yes, sir. And we had came from the movie uptown and stopped down to a photo shop for to make a couple records. Made two or three records, then we walked down Main—

Q. You say to a photo shop; where is that?

A. It's on—

Q. Was it on Broad Street?

Clarence O. Davis, Jr.

A. Yes, sir.
Q. Then where did you go from there?
A. We walked down Main going home.
Q. You were going home?
A. Yes, sir.
Q. Did a car stop and pick you up?
A. Yes, sir.
Q. Approximately where were you when you were picked up?
A. It was at the corner of Louisiana and Main.
Q. Main and Louisiana?
A. Yes, sir.
Q. Who was with you, Clarence?
A. There was me and Louis and his two
page 135 } brothers.
Q. You are going to have to speak over to those men. Do not pay any attention to me. It was you, Louis, and his two brothers?
A. Yes, sir. Me and Louis and his two brothers.
Q. There were four of you, is that right?
A. Yes, sir.
Q. When this car stopped, where did you all take seats?
A. In the back.
Q. The four of you got in the back?
A. Yes, sir.
Q. Who was in the front?
A. It was this, it was Buddy Gill and this other fellow.
Q. Buddy Gill, you mean this boy over here?
A. Yes, sir.
Q. Did you know him before?
A. No, sir.
Q. You never saw him before?
A. Not as I recall.
Q. Who else was in the car?
A. Colored fellow driving.
Q. There was a colored fellow driving?
A. Yes, sir.
Q. Gill was on the front seat next to him, is that
page 136 } right?
A. Yes, sir.
Q. Where did you go after they picked you up?
A. We went around went on Orleans Street approximately two blocks, I guess, and—
Q. What happened?
A. We stopped the car, the fellow got out.

Clarence O. Davis, Jr.

Q. Who got out?
A. The colored fellow got out.
Q. The colored fellow got out; what did you do?
A. I got out, too. I was going up to the drug store.
Q. To the drug store?
A. Yes, sir.
Q. For what?
A. To get a set of guitar strings.
Q. Who got out with you?
A. His two brothers. Louis's two brothers.
Q. Louis stayed in the car?
A. Yes, sir.
Q. After you got in the car, was there any conversation that took place between you all and either the colored man who was driving or Gill?
A. No, sir.
Q. Did you smell any odor of alcohol?
page 137 } A. No, sir.
Q. You did not?
A. No, sir.
Q. That night, did you, or Haislip, the plaintiff, or his two brothers have anything to drink?
A. No, sir.
Q. Do you drink?
A. No, sir.
Q. No alcoholic intoxicants, that is.
A. No.
Q. Where do you live now?
A. Up on 510 North Allison Street.
Q. You are still working for Larus & Brother?
A. Yes, sir.

Mr. Anderson: I have no further questions. You answer this gentleman over here.

CROSS EXAMINATION.

By Mr. Browder:
Q. Clarence, where had you been to the movie?
A. Up to the Grand.
Q. I beg your pardon?
A. Up to the Grand theater.
Q. Grand Theater?
A. Yes, sir.

Clarence O. Davis, Jr.

Q. What kind of a photo shop was that that you
page 138 } went to?
A. It's a place where they have slot machines and have a place there for photos, and they have a little record machine there where you go in and record your voice.
Q. Record machine that records your voice?
A. Yes, sir. It's a little booth there.
Q. In a booth?
A. Yes, sir.
Q. That was open that Sunday night, was it?
A. Yes, sir.
Q. Whereabouts is it?
A. It's up near the Trialway Bus station.
Q. On Broad Street?
A. Yes, sir.
Q. How had you all gotten in town that night?
A. I don't recall.
Q. You do not recall how you got in town. How did you eventually get home?
A. We caught—There's another fellow picked us up and a girl.
Q. You caught another ride?
A. They stopped and picked us up.
Q. Was the drug store open when you got there at 10:30?
A. No, sir.
Q. You knew the drug store was not open, did
page 139 } you not?
A. No.
Q. Don't you live down in that section of town? Don't you do a good deal of your shopping there in going to and from Fulton?
A. No, sir. I hadn't been there very often. I just had come to Richmond.
Q. Well then, you were not at the drug store when he let you off, were you?
A. No, sir.
Q. You were several blocks from the drug store, were you not?
A. Yes, sir.
Q. Yet he was going right toward this drug store, was he not?
A. I guess he was.
Q. You could see it up ahead of you, could you not?
A. No, sir. You had to go up there and turn down a couple blocks, about one and a half blocks, I guess.

Clarence O. Davis, Jr.

Q. One and a half blocks further out of town?
A. I guess. Approximately.
Q. You knew where the drug store was, did you not?
A. Yes, sir.
Q. You had then some, at least five or six blocks further to go when you got out, did you not?
A. Yes, sir, I guess so. About three or four.
page 140 } Q. Three or four?
A. Yes, sir.
Q. Where did you get out?
A. I thought he was going on up the other way. He was going home.
Q. You thought what?
A. I thought he was going home, going on home, and I wanted to go by the drug store.
Q. The drug store is right on the way home, is it not? Wouldn't you have passed right on by the drug store if you went there—
A. No, sir.
Q. Isn't the drug store on Government Road?
A. It was on Williamsburg Road.
Q. Williamsburg Road.
A. Yes, sir.
Q. That is on the way home, is it not?
A. No, sir. You go up Orleans and you have to turn to your right on Williamsburg Road, go down about two blocks.
Q. To get to the drug store.
A. Yes, sir.
Q. Orleans runs into and—
A. Yes, sir.
Q. —crosses Williamsburg Road, does it not?
page 141 } A. On the way home you have to turn to your right.
Q. You had to get up to Williamsburg Road to get there, did you not?
A. Yes, sir.
Q. You certainly had at least two or three more blocks you could have ridden in the car if you had wanted to, did you not?
A. I guess.
Q. You were down there in the middle of a colored section, were you not?
A. Yes, sir.
Q. You all got out and intentionally walked several blocks when you didn't have to, is that right?

Clarence O. Davis, Jr.

A. I guess so. I don't recall. See, I didn't know much about that place. I just knew where the drug store was.

Q. Where, on what street did you say you were on when he picked you up?

A. On Main.

Q. On Main Street?

A. Yes, sir.

Q. Were you at Orleans Street?

A. It was about, about a block from Orleans.

Q. Which is Orleans Street?

A. It's the street that runs into, Main runs into

page 142 } about a block from Louisiana.

Q. At the end of Main Street is Orleans Street, is that right?

A. Yes, sir.

Q. Were you standing there waiting for a ride, or walking?

A. We was walking.

Q. Had you gotten as far as Sternheimer's place there? Do you know where that is, on the right, the Army-Navy—

A. No, sir, I don't.

Q. You do not know about that. Did anybody say anything to you before you got in the car?

A. No, sir.

Q. How did you happen to get in the car?

A. I think he, Louis knew him. And he stopped, so we just got in.

Q. Did you hear him say, "Would you all like a ride?" or did you hear him say anything?

A. He asked us, I think, he called us and he asked us were we going home. Louis said yes.

Q. Were all of you there together?

A. Yes, sir. We were all walking.

Q. You were all standing there together when

page 143 } the car stopped.

A. We was walking. Yes, sir.

Q. When he stopped you were all together, were you not?

A. Yes, sir.

Q. You say he was on the right side. He wasn't driving, he was on the side right there by you?

A. Yes, sir.

Q. You did not smell any whiskey on him then?

A. No, sir.

Q. You drove on in the car with him, you say, two or three blocks and you say you did not smell anything on him then?

Clarence O. Davis, Jr.

A. No, sir.
Q. I suppose he must have been talking to you or talking to somebody there.
A. No, sir, I don't recall.
Q. He just let you in and went right ahead and didn't say anything to anybody?
A. Yes, sir.
Q. You did not smell *whisky* on him then.
A. Didn't smell anything.
Q. He did not act funny or anything like that, is that right?
A. Yes, sir.

Mr. Browder: All right. That is all.

page 144 } RE-DIRECT EXAMINATION.

By Mr. Anderson:
Q. There is one point I want to clear up. This drug store that you referred to, when you go up Orleans Street you run into Williamsburg Avenue, is that right?
A. That is correct.
Q. Which way is the drug store?
A. To your left.
Q. The drug store is to the left?
A. Yes, sir.
Q. You say it is about how many blocks from Orleans, now? From Orleans, the intersection of Orleans and Williamsburg Avenue, how many blocks is the drug store?
A. Approximately two blocks.

Mr. Anderson: All right. That is all.

RE-CROSS EXAMINATION.

By Mr. Browder:
Q. I would like to ask you this question: Were you working at Larus & Brother at that time?
A. Yes, sir.
Q. You were coming into town the next day, were you?
A. Yes, sir. But I was working at night.
Q. I beg your pardon?
A. I was working at night.
page 145 } Q. You were working at night?
A. Yes, sir.
Q. You were coming in the next evening, is that right?

A. Yes, sir.
Q. Tell the gentlemen of the jury how far out you all live on the Osborne Turnpike? How far from where you got out of that car?
A. I guess it was about three or four miles. I guess.
Q. Several miles?
A. Yes, sir.
Q. You got out with no means of transportation and left a ride home, is that what you tell them?
A. Yes, sir.

Mr. Browder: All right. Thank you.

Witness stood aside.

page 146 } WILLIAM HAISLIP,
a witness introduced in behalf of the plaintiff, first having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Alex, you look at those gentlemen and talk to them. What is your name?
A. William Haislip.
Q. How old are you?
A. Sixteen.
Q. You are the brother of Eddie Haislip, here, the plaintiff?
A. Yes, sir.
Q. Alex, on the night of August 10, 1958, last year, you were living where?
A. On Osborne Turnpike.
Q. Has your family since moved?
A. Yes, sir.
Q. Where do you live now?
A. On Mill Road.
Q. On this night where had you been?
A. We had been to the show.
Q. From the show where did you go?
A. We went made some records.
Q. From there where did you go?
page 147 } A. We were walking on home.
Q. Did a car stop and pick you up on the way?
A. Yes, sir.
Q. Do you recall where this was?

William Haislip.

A. Yes, sir.
Q. Where was it?
A. It was on Louisiana and Mill Road.
Q. Louisiana and Mill Road?
A. Louisiana and—
Q. Just tell me, what street did you walk down?
A. Walked down Route 5.
Q. Well, when you left the record shop what street did you walk down?
A. I don't know the street we walked down after we left the record shop.
Q. Do you know this street in front of the court house?
A. Main Street.

Mr. Browder: Don't lead him, Harry.
Mr. Anderson: I asked him if he knew the name of the street.

Q. Do you know the name of it?
A. Main Street.
Q. Did you walk on that street that night?
A. Yes, sir.

page 148 } Mr. Browder: That is very effective leading, I think.

Q. Where did the car pick you up?
A. It was on Louisiana and Main, I guess.
Q. The same street that runs out here?
A. Yes, sir.
Q. There were how many of you?
A. There was four of us.
Q. Where did you go when you got in the car? How many were in the car?
A. There was six of us.
Q. Who was in the front?
A. It was Buddy Gill and a colored man.
Q. Did you know Gill?
A. Yes, sir.
Q. Where does he live in relation to where you live on Osborne Pike?
A. He lives on Church Road.
Q. Is that above where you live?
A. Past our house.

William Haislip.

Q. Beyond?
A. Past our house.
Q. Past your house?
A. Yes, sir.

page 149 } Q. When you got in the car was anything—Was anything said either before or after you got in the car?

A. No, sir.
Q. You do not recall Gill saying anything?
A. No, sir.
Q. You don't. How far did the car go?
A. About four blocks.
Q. Then what happened?
A. We—The colored man stopped and we got out. The colored man got out first, then we got out on the other side.
Q. Why did you all get out?
A. Because we wanted to go up get some guitar picks and get some strings.
Q. Where were you going to pick them up?
A. Pick them up by the drug store.
Q. Where was the drug store?
A. That was on in Fulton.
Q. Somewhere in Fulton?
A. Yes, sir.
Q. When you were—Did any of you all have anything alcoholic to drink that night?
A. No, sir.
Q. Do you drink?
A. No, sir.

page 150 } Q. When you got in the car, could you smell any alcohol in the car?

A. No, sir.
Q. You rode a few blocks and got out?
A. Yes, sir.

Mr. Anderson: All right. I have no further questions.

CROSS EXAMINATION.

By Mr. Browder:
Q. Alex, you know what alcohol smells like, do you not?
A. Yes, sir.
Q. If there had been a very strong odor of alcohol around you would have smelled it, wouldn't you?

Mr. Anderson: Objection, Your Honor. That is a conclusion.

Mr. Browder: He is on cross examination, too, I think.

The Court: Objection overruled.

By Mr. Browder: (Continuing)

Q. If there had been a very strong odor of alcohol you would have smelled it, wouldn't you?

A. I didn't smell any that night.

Q. You did not smell any.

A. No, sir.

page 151 } Q. Weren't you four boys right there when the car stopped and this boy stuck his head out the window and asked you if you all wanted a ride?

A. Yes, sir.

Q. How close were you to him?

A. I was in the back seat.

Q. I am talking about before you got in.

A. I don't know.

Q. You were close enough to hear him ask you if you wanted a ride, were you not?

A. Yes, sir.

Q. You did not smell any alcohol then?

A. No, sir.

Q. He didn't act peculiar, did he?

A. No, sir.

Q. He turned down Louisiana Street, did he?

A. No, sir.

Q. What street did he turn on?

A. He turned on Orleans Street.

Q. Orleans Street?

A. Yes, sir.

Q. He went how many blocks?

A. About four blocks.

Q. He was still how many blocks from the next street, I mean from Williamsburg Road?

page 152 } A. About a block and a half.

Q. You got out in the middle of the block, did you?

A. Yes, sir.

Q. You didn't even ask to ride up to Williamsburg Avenue?

A. No, sir.

Q. Had you lived out that way very long?

A. I had lived on Osborne Pike for four years.

William Haislip.

Q. Didn't you know the drug store didn't stay open after 10:30 out there at night on Sunday night?
A. We didn't know what time it stayed open.
Q. Was it open?
A. No, sir.
Q. Did you know how you were going to get home, when you gave up this ride you were talking about?
A. Yes, sir.
Q. How?
A. We were going to walk.
Q. Walk all the way home?
A. Yes, sir.
Q. That was four or five miles, was it not?
A. Yes, sir.
Q. And it was 10:30 at night?
A. Yes, sir.
Q. Did you have to work the next day?
page 153 } A. No, sir.
Q. The car pulled off, and did you see it as it went on up the street?
A. We saw it after, when it turned.
Q. You saw it, what?
A. We saw it, I think, after it turned.
Q. After he turned?
A. Yes, sir.
Q. You noticed him on up until after he turned, is that right?
A. Yes, sir.

Mr. Browder: All right. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Anderson:
Q. When you say you saw him until after he turned, what street do you refer to? What street did he turn on?
A. On the street that the drug store is on, but I don't know the name of it.
Q. You do not know the name of it?
A. No, sir.

Mr. Anderson: We have no further questions.

Witness stood aside.

page 154 } VIRGINIA AMADEO,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. You face these gentlemen over here (indicating the jury). You are Mrs. Amadeo?

A. That is right.

Q. You will have to speak a little louder. What relation are you to the plaintiff here?

A. His sister.

Q. Where were you living in August of 1958?

A. Wilmington, Deleware.

Q. You are married and living in Wilmington, Deleware?

A. That's right.

Q. Previous to August 10, 1958, on what occasions did you see the plaintiff?

A. Well, he spent some time with me in Wilmington, Deleware.

Mr. Browder: I haven't heard a word you said.

Q. This is the first time you have been in court, is it not?

A. Yes, it is.

page 155 } The Court: Try to talk to the gentlemen on the back row. I think if you will direct your attention to them they will be able to hear you.

A. He spent quite some time with me in Wilmington, Deleware prior to the accident.

Q. When was that?

Mr. Browder: Excuse me. Did she say quite some time ago?

Mr. Anderson: He spent quite some—Suppose we let the reporter read back her answer.

Note: The foregoing answer is read by the reporter.

Q. When was that? Spring—

A. It was—

Q. —winter, or when?

A. Winter of '57, I believe it was.

Q. The winter of what?

Virginia Amadeo.

A. The winter of '57.

Q. Now I refer to '58, did you see him any time during the year 1958 previous to, before August 10?

A. Yes, I did see him before.

Q. When was that?

A. Well, I saw him in the summer when I was down here visiting, and it may have been in the early part of '58 that he was up there visiting me, also, in the winter.

page 156 } Q. You came down here in the summer before August of 1958?

A. Yes, I did.

Q. When did you leave home?

A. It was April, two years ago.

Q. April two years ago. Up to that time you were living at home with him?

A. That's right.

Q. On what occasions have you seen him since August 10, 1958?

A. Well, I was down visiting for Christmas, I saw him then. And then I, up until today I had not seen him before.

Q. You are down on another visit today?

A. Yes.

Q. What, if any, difference did you notice about his appearance, comparing it with after August 1958 and before August, 1958?

A. Well, the first thing I noticed were the scars on his face, more so than—

Q. Did you notice anything else? Did you notice—

A. Well, he seemed to be quite nervous and his speech seemed to be different from what it was before when he was staying with me. Several times I have had to ask him over what he was saying, because I couldn't quite

page 157 } understand him.

Q. You had not noticed that before?

A. No, I did not notice that when he was staying with me.

Mr. Anderson: All right. I have no further questions.

CROSS EXAMINATION.

By Mr. Browder:

Q. What kind of work did he do when he stayed up there with you for that length of time?

A. At that time he was not working.

Q. How long a period of time was it?

A. Well, the whole time he was staying with me I guess it was about three months or longer, and he did not work except for one occasion he did help my uncle to build, do some building around the house.

Q. Your brother has a long history of nervousness, from the time he was right much younger, has he not? Didn't he have to quit school because he was nervous?

A. Yes, sir. He was nervous a little.

Mr. Browder: All right. Thank you, ma'am.

Witness stood aside.

page 158 } VIRGINIA HAISLIP,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. You are Mrs. Virginia Haislip, is that right?

A. Yes.

Q. Where do you live now?

A. Live on Mills Road.

Q. What relation are you to the plaintiff?

A. He is my son.

Q. How many children live with you now?

A. I have four.

Q. How many boys, how many girls?

A. I have four boys living with me right now.

Q. And one girl?

A. And one girl.

Q. Mrs. Haislip, the night this accident took place, when did you—that is, on August 10, 1958—when did you first hear about it?

A. About 2:00 o'clock Monday morning. Monday morning. The hospital called me about 2:00 o'clock Monday morning.

Q. Did you go to the hospital?

page 159 } A. I went straight to the hospital.

Q. Did Eddie recognize you?

A. No, not exactly. He recognized me about half way, you know what I mean. Partly knowing me, partly didn't.

Q. Was he out of the emergency room then and up in the ward of the hospital; just where was he, do you remember?

Edward L. Haislip.

A. He was still in the emergency room. They hadn't taken him to no ward.
Q. Had his face been sewed?
A. His face had been sewed.
Q. He had been scrubbed and cleaned up?
A. That's right.

Mr. Anderson: All right. I have no further questions.
Mr. Browder: No questions, Mrs. Haislip.

Witness stood aside.

page 160 } EDWARD L. HAISLIP,

the plaintiff, first being duly sworn, testified in his own behalf as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Eddie, speak to these gentlemen over there. Will you state your name, please?
A. Eddie Haislip.
Q. How old are you?
A. Nineteen years old.
Q. Where do you live now?
A. Well, I'm living with my mother over the week end. I'm staying uptown 721 West Broad—Grace. But then I come home on the week ends. I'm staying with my mother on Mill Road.
Q. On August 10, 1958, where were you living?
A. We were living on Osborne Turnpike.
Q. About how far is that from where you were living in the city?
A. From the city it's approximately, from the city limits approximately three miles.
Q. Now, you left home that afternoon with whom?
A. I left home that evening with Clarence, my two brothers, and I.
Q. And you went to a movie in Richmond, I
page 161 } understand?
A. Correct. Yes, sir.
Q. After the movie you went to this—
A. Photo place.
Q. —photo place?

Edward L. Haislip.

A. Correct.

Q. All right. Then after that you were picked up on the road, a car stopped.

A. Yes, sir.

Q. All right. Now, starting from there, do you know approximately where you were when you were picked up?

A. Yes, sir.

Q. Where was that?

A. Well, Louisiana Street runs into Main Street. We were walking down Main Street, just beyond, little ways beyond Louisiana. About a block from Orleans. And the tree sits there. Got the limbs cut off of it. We were walking down there and the car stopped. Where he picked us up at.

Q. Where did the—Who was in the car?

A. It was Buddy Gill and some other colored fellow. I did not know the colored fellow.

Q. Who was driving?

A. The colored fellow was driving.

Q. Was anything said when you got in the car or before you got in the car?

A. No, sir.

page 162 } Q. By Gill?

A. No, sir. The only thing that was said was, Buddy Gill said that was we going home.

Q. He said he was going home?

A. That's right.

Q. Where does he live in relation to where you live?

A. Well, Buddy Gill lives about approximately a half a mile on Church Road from where I live at.

Q. That is beyond where you live?

A. Correct.

Q. After you got in the car, how far did the car, how many blocks did the car go, approximately?

A. Approximately—When we first stepped in the car we drove approximately, about four, four and a half, five blocks.

Q. Then the car stopped, and who got out of the car?

A. Colored fellow got out of the car. My other two brothers and my cousin, Clarence, they went out. I asked them what—I asked them where was they going. They said that they were going to Fulton to get some guitar strings that night. That's the reason they got out of the car.

Q. Why didn't you go with them?

A. Because I had to go home and get up the next day to go to work.

Edward L. Haislip.

Q. When they got out of the car, what seat did
page 163 } you take in the car then?
A. Well, Buddy was sitting in the front seat. After the colored fellow got out, Buddy slipped over to the driver's seat, said, "Let me in the driver's seat." I got out of the back and got up in the front.
Q. Where did you go after that?
A. Well, after we got in the car and took off, we started on home.
Q. Well, did you go up Orleans Street?
A. Kept on up Orleans Street on into Williamsburg Road, turned in Williamsburg Road. I think we made a right-hand turn there on Williamsburg Road.
Q. What about the speed of the car?
A. Well, he wasn't going fast when we first took off, but after we got on Williamsburg Road he turned down in there at Williamsburg Road, I would say he was going pretty close to 35 or 40 miles an hour when he turned on in Williamsburg Road. After he turned in on Williamsburg Road before he got to Hatcher he was started going pretty rapidly.
Q. How fast do you estimate he was going?
A. I estimate he was going anywhere from 60 to 65 miles an hour.
Q. What did you do when the speed of the car was accelerated?
A. I told Buddy Gill to slow down or to let me
page 164 } out. Told him I wanted out.
Q. Did you notice anything about him?
A. Yes, sir.
Q. What did you notice?
A. When he started stepping on the accelerator I seen his head going back and forth like that (indicating with head).

Mr. Browder: Going back and forth like what? I did not see.

A. Like that. (Indicating with head) Then he raised his head up.
Q. Just when you got to Hatcher Street what did he do?
A. When he turned in at Hatcher Street I seen him, seen him go out the door.
Q. Did what?
A. When he turned in there at Hatcher Street. I told him, that was when we started on Williamsburg, going up Wil-

Edward L. Haislip.

liamsburg Road pretty fast. We turned in there at Hatcher Street. He reached over to grab the door. I reckon he was going to get out. I don't know. Anyway, the door come open. That's all I remember.

Q. Did you reach over to grab him?

A. I reached over, but that's all I remember.

Q. You do not remember hitting the pole?

page 165 } A. No, sir.

Q. You do not remember your head going through the windshield?

A. No, sir.

Q. What is the next thing that you do remember?

A. The next thing I remember was mama, I think. The only thing I can remember was mama.

Q. You mean at the hospital?

A. At the hospital.

Q. Had you had anything to drink that night?

A. No, sir. I do not drink.

Q. Do you drink?

A. No, sir.

Q. Do you drive with people that you know—

A. No, sir. I don't even drive with my own daddy when he is drinking.

Q. Did you smell anything, any odor of alcohol on Gill?

A. Well, not until we got going. Then I didn't smell very much on him.

Q. Did you get very close to him at any time?

A. No, sir.

Q. How far away from him were you?

A. Well, you know, approximately—You know approximately how far it is from one door to the driver's seat.

Q. When you asked him to slow down or let

page 166 } you out, what did he do?

A. Well, when I told him that he just looked as if to mash down on the accelerator that much more.

Q. He didn't do it, then?

A. Sir?

Q. He didn't slow down and let you out?

A. No, sir.

Q. When you got out of the hospital, I understand you were out of work for six weeks?

A. (Nodding head)

Q. You went back to Larus & Brother to get your job?

A. That is correct.

Edward L. Haislip.

Q. You were told that the job had, could not be held for you, someone else had it?
A. Yes, sir.

Mr. Browder: If Your Honor please, to be sure that it is understood, I am saving my exception to this kind of testimony.
The Court: All right.

Q. Did you attempt to secure other employment?
A. You mean try to find other jobs?
Q. Yes.
A. Yes, sir.
page 167 } Q. Did you find any work at all during that period?
A. No, sir.
Q. Didn't you go up in the country and pick apples?
A. I picked a little apples. I went up to Crozet and picked apples.
Q. Is that the only work you found?
A. That's the only work I found. Yes, sir.

Mr. Anderson: I have in my hand a bill for ambulance service for $10.00, August 10, 1958, addressed to you, and also a bill from Dr. Claiborne Irby for $15.00. We ask that these be admitted as part of the plaintiff's evidence.

Note: The above identified bills are marked and filed Plaintiff's Exhibit Nos. 11 and 12, respectively.

Mr. Anderson: If Your Honor please, I do not have a bill from the Medical College. I do have a document here which states the amount that is due.
Mr. Browder: We concede that is correct.
Mr. Anderson: Mr. Browder says he will concede that is correct since he has some objection to the document I have. I would like for the record to show that the Medical College bill is $129.50.
The Court: Gentlemen of the jury, conces-
page 168 } sions or stipulations between counsel as to a fact is admitted as evidence without the necessity of bringing somebody from the hospital or whatever it might be to make a formal proof of the bill. It saves time.
Mr. Anderson: Would you answer Mr. Browder, please.

Edward L. Haislip.

CROSS EXAMINATION.

By Mr. Browder:

Q. Mr. Haislip, there was a young man who testified first among those of you whom you say were in the car, I believe his name was Clarence Davis, Jr., does he live down there with you?

A. Yes, sir.

Q. Is he any kin to you?

A. Yes, sir.

Q. So you had your cousin and two brothers in the car, you say, with you that night?

A. That is correct.

Q. Where were you walking on Main Street when Gill stopped and asked you if you wanted a ride home? Which side of Main Street were you on? On the river side or on the left side going east?

A. We were on the river side.

page 169 } Q. On the river side?

A. That is correct.

Q. Were you walking on towards Orleans Street when he stopped, or had you stopped waiting for a ride?

A. No, sir. We had been kept on. We had done kept on walking towards Orleans Street.

Q. You were walking towards Orleans Street.

A. That is correct.

Q. Were you on the east side of the intersection or the west side of the intersection when he stopped to pick you up?

A. You mean whether we were on this side of Orleans or the other side?

Q. Yes.

A. We were on the, this side of Orleans. Hadn't got to Louisiana. Hadn't got to Louisiana.

Q. Had you crossed Louisiana? Had you crossed the street? Louisiana stops there at Main, of course.

A. That is correct.

Q. Had you gotten on the east side? Had you walked across what would have been the interesection?

A. We, I don't know if it was the east or nothing like that. We had done got a little ways on the other side of Louisiana Street.

Q. You had passed Louisiana Street, then.

page 170 } A. That is correct.

Q. Do you know where Sternheimer Brothers

building is, over on the right, an old brick building with Army-Navy Stores written on it?

A. (No response)

Q. All right. It isn't material. Orleans Street is the very end of Main Street, is it not?

A. That is correct.

Q. When you get to the end of Orleans Street you can turn to the right—you cannot keep going straight—or left onto Williamsburg Avenue, or stop, is that correct?

A. That is correct.

Q. Louisiana Street is the street just this side of that, is that right?

A. That is correct.

Q. Was it your intention of going down to Orleans Street and turn left, if this man had not stopped and picked you up, or were you going to turn and go down Louisiana Street?

A. We were going down Orleans Street.

Q. I beg your pardon?

A. We were going to go down Orleans Street.

Q. You were not going to turn on Louisiana Street?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

page 171 } Q. Had anybody mentioned anything about these guitar strings before you got to Louisiana Street?

A. Yes, sir.

Q. They had?

A. (Nodding head)

Q. Did you know where the drug store was?

A. Yes, sir.

Q. Tell the gentlemen of the jury where you knew the drug store was. Where is it?

A. The drug store is on Williamsburg Road. Corner of Williamsburg Road.

Q. And what street?

A. On Williamsburg Road.

Q. And what street. What other street?

A. I really don't know the name of that street, sir.

Q. It is Williamsburg Road and Louisiana Street, right on the corner, is it not?

A. No, sir. I don't think so.

Q. I beg your pardon?

A. (Shaking head)

Edward L. Haislip.

Q. Isn't there a drug store on the corner of Williamsburg and Louisiana?

A. Well, I really don't know. The one that we—

Mr. Anderson: If Your Honor please, can he not explain how he gets there, rather than—

page 172 } Mr. Browder: I have a right to cross examine him.

By Mr. Browder: (Continuing)

Q. There is no drug store on Williamsburg Avenue and Orleans Street, or to the right when you get on Williamsburg Avenue, is there?

A. Well, after you get at the end of Orleans Street you can't go across.

Q. You have to turn right or left.

A. Got to turn right or left. That's right.

Q. On the right there is a service station, is there not?

A. On the right there's a service station. Correct.

Q. From there on there isn't anything except another service station or two; there isn't a drug store up that way, is there?

A. To the right?

Q. Yes.

A. No, sir.

Q. So isn't the drug store at the corner of Louisiana Street?

A. Let me think.

Q. And Williamsburg Avenue?

A. One block. Yes, sir. I think you're correct.

Q. All right, then. What you say, you were all

page 173 } getting ready to walk a block further than you were supposed to, is that right?

A. I don't know about all. I wasn't. I had to go home.

Q. You had to go home.

A. That is correct.

Q. Didn't anybody else know where the drug store was?

A. I do not know, sir.

Q. You do not know.

A. No, sir.

Q. You knew, however, they were going to stop at the drug store; you did not tell them they were going past the drug store, is that right?

A. They said they were going to get out and go to the drug store to get some guitar strings. I don't know what—

Edward L. Haislip.

Q. You said they said that before this man picked you up.
A. That is correct.
Q. You knew they were going past it, did you not? You knew they were going a block past it and would have to double back to get to the drug store, isn't that right?
A. Past Louisiana Street. Well, he got out and—The colored fellow got out, so they got out and said
page 174 } they were going to get some guitar strings.
Q. I am not talking about when they got out, I am asking you if before you got picked up if you did not know that you were carrying those boys three whole blocks out of the way. You knew where the drug store was and you say you do not know whether they did or not.
A. That is correct.
Q. Who is this colored man you keep talking about? Who is he?
A. I do not know, sir.
Q. Had you ever seen him before?
A. No, sir.
Q. Had you ever seen this boy out with any colored man before?
A. No, sir.
Q. I beg your pardon?
A. No, sir.
Q. Did the colored man say what he was doing with him, or anything?
A. No, sir.
Q. Do you know where the colored man lives?
A. No, sir.
Q. Did you see him get out and go into a house?
A. I seen him get out, but I did not see him go into a house.
page 175 } Q. Did he say anything when he got out?
A. No, sir. Just said goodbye.
Q. Just said goodbye.
A. Yes, sir.
Q. When these three people got out, how far were they from Williamsburg Avenue when they got out?
A. Well, they was approximately between two and a half, maybe three blocks.
Q. Two and a half, three blocks.
A. That's right.
Q. You rode three or four blocks with the colored man driving, is that what you say?
A. That is correct.

Edward L. Haislip.

Q. The colored man drove all right, you say, did he?
A. That is correct.
Q. You say this boy drove all right when he started off. How fast did you say he was going when he turned into Williamsburg Avenue?
A. Williamsburg Road? I say he was going 30 or 35 miles an hour, approximately, then.
Q. When he turned into—
A. Williamsburg Road.
Q. When he turned off Orleans Street into Williamsburg Road?
A. Into Williamsburg Road.
page 176 } Q. Did you ever drive a car in your life?
A. No, sir.
Q. If you had, you know you couldn't make that turn at 35 miles an hour, could you?

Mr. Anderson: Objection. That is Mr. Browder testifying. That is not in the form of a question. He is making a statement as a witness rather than as a cross examiner.

Q. Were you looking at the speedometer?
A. Yes, sir.
Q. When?
A. Before we turned.
Q. Before you turned?
A. That is correct.
Q. Why is it just a minute ago when you testified you said 35 or 40 miles an hour now you say 30 or 35? Can you explain that if you were looking at the speedometer?
A. Yes, sir, I can.
Q. Why?
A. I say he was going 30, 35, maybe 40 miles an hour. All right. When, just before we turned in there he was going 40 miles an hour. He slowed down to make the turn, but he was going approximately 30 to 35 miles an hour when I looked at the speedometer just before we turned.
Q. He had to make a right angle turn there,
page 177 } did he not? He turned abruptly, did he not? He had to slow to make a complete right angle turn, did he not? There isn't any gradual curve there, is it there?
A. I do not know. All I know he made a right-hand turn there.
Q. Did he skid any when he did it?
A. Yes, sir.

Edward L. Haislip.

Q. He skidded then, did he?
A. Yes, sir.
Q. Did he skid around in the street?
A. No, he squealed.
Q. He squealed?
A. Yes, sir. That is correct.
Q. He didn't fall out the door that time, did he?
A. No, sir.
Q. You did not ask to get out at that time, or ask him to slow down at that time, did you?
A. Yes, sir.
Q. I beg your pardon?
A. Yes, sir. That's when he stepped on the accelerator. When I told him to slow down or let me out, he stepped on the accelerator, just like he stepped on the accelerator that much more.
Q. Wasn't that just an instant before the impact, before you grabbed for him, sir?
page 178 } A. (No response)
Q. Wasn't that just an instant before he grabbed for the door? When the door came open, wasn't that when you said slow down or let me out?
A. You mean when he opened the door?
Q. You said, didn't you say the door came open?
A. That's when he turned into Hatcher Street. I said that before he even got turned into Hatcher Street.
Q. Where was he when you said slow down or let me out?
A. After he made the turn there into Williamsburg Road off Orleans.
Q. Was it right there at that point, within a hundred feet of it?
A. Well, I didn't measure it, or nothing like that. But, when he turned off there and when he got straightened out, when he stepped on the, started going a little faster, I told him to let me out or slow down. He stepped on the accelerator that much more.
Q. He was doing 40, slowed down to 30 or 35, made the turn, and you say he squealed the brakes when he did it, right?
A. Squealed the tires. That is correct.
Q. You say he then began picking up speed some more and then is when you asked him to slow down or let you out.
page 179 } A. That is correct. But I—
Q. I beg your pardon?

Edward L. Haislip.

A. When he squealed at this curve there is when I seen that he was kind of drinking, so I told him to let me out.

Q. Right at that curve?

A. After he made his curve.

Q. I want to know how far away he had gone. Had he gone as far as this room? Had he just come out of the curve—

Mr. Anderson: Objection. He said a little while ago he didn't know how far.

Mr. Browder: That is all right if he wants to say he doesn't know.

Mr. Anderson: He has already said it once.

Q. You do not know how far you were from the intersection of Orleans and Williamsburg, or how far you were from Hatcher Street, when you said slow down, let me out, do you?

A. Well, he weren't too far from Hatcher Street.

Q. Were you a long, long way from—

A. (Shaking head)

Q. You were not too far from Hatcher Street. All right. And then wasn't it almost immediately after that that you saw him going out the door, you saw the door

page 180 } come open and you reached for him?

A. When he turned into Hatcher Street.

Q. When he turned into Hatcher Street—

A. (Nodding head)

Q. —that is when the door came open—

A. That is correct.

Q. —and you reached over. Did you grab him?

A. I really do not know. All I knew is—All I remember is reaching over. That's all I remember.

Q. Were you looking at the speedometer when he got to Hatcher Street?

A. Before he got to Hatcher Street.

Q. Before he got to Hatcher Street?

A. Yes. Before he got to Hatcher.

Q. How fast was he going then?

A. I say he was going practically 60 or 65 miles an hour.

Q. 60 or 65 miles an hour. You saw that on his speedometer, is that correct?

A. That is correct.

Q. You say he turned into this street here at 60 to 65 miles an hour, is that right? Is that right, right here?

Edward L. Haislip.

Mr. Anderson: Just a moment. Let me object to this. The witness has not said that at all.

page 181 } Mr. Browder: What did he say?

Mr. Anderson: I think you have to quote him correctly. I do not think you quoted him correctly.

Mr. Browder: I thought he said before he got to Hatcher Street he saw the speedometer and he was doing 60 to 65. You pointed right to the intersection there, did you not? I said he turned into this intersection. What is the truth? He hadn't gotten to it? I do not know what you mean.

Mr. Anderson: I think it is up to the witness to testify.

By Mr. Browder: (Continuing)

Q. You tell us where you were with relation to this intersection when you saw the speedometer at 60 to 65 miles an hour?

A. You mean before he got to Hatcher?

Q. I want to know when it was you saw the speedometer at 60 to 65 miles an hour. This is Williamsburg Road. Here is where you came out, somewhere up here, I do not know which street it is you came out. Here you were, coming down here, and here is Hatcher Street. Where was it along in here that you noticed the speedometer was 60 to 65 miles an hour?

A. I do not know, because I cannot read that map.

Q. You cannot read the map. You do not see

page 182 } this road here, Williamsburg Road? This is Hatcher Street. You do not see the intersection right in here?

Mr. Anderson: If Your Honor please, I think that is a complete answer. The boy cannot read the map.

Mr. Browder: All right, if he cannot, that is all right.

By Mr. Browder: (Continuing)

Q. You cannot read a map? You cannot understand that this is an intersection here? You do not understand that? If you don't, it is all right. I am not trying to force you to say it, if you can't. I would like to know where you were when you saw the speedometer, when it was 60 to 65 miles an hour.

A. I can't say.

Q. You cannot. All right. Look at some of the pictures and see if you can tell us on some of them? Do you recognize this picture, Plaintiff's Exhibit No. 5, can you see what that is?

Edward L. Haislip.

A. Yes, sir.

Q. What is that? Where is that located?

A. This is Williamsburg Road going to Fulton here. This is Hatcher Street here.

Q. Which is Hatcher Street?

A. (Pointing on photograph)

page 183 } Mr. Browder: Can you gentlemen of the jury see all right?

Q. How far had you gotten when you noticed the speedometer was 60 to 65 miles per hour?

Mr. Anderson: If Your Honor please, I have to object to this. Mr. Browder is attempting to get this witness to state that he was going 60 to 65 miles an hour around this curve. That has not been stated. All this picture shows is a small section of Williamsburg Road at Hatcher Street. I think the question is improper and unfair.

Mr. Browder: Do I have a stipulation then that there is no evidence as to how fast he was going when he made the turn into Hatcher Street? I understood that it was 60 to 65.

Mr. Anderson: You ask the witness, Mr. Browder.

The Court: Gentlemen, let's get this straight. I overrule the last objection. The defendant has this man on cross examination. He has a wide lattitude in his cross examination, much more so than in direct examination. Objection overruled. Continue.

By Mr. Browder: (Continuing)

Q. Now, again, I want to say to you young man if you cannot answer these questions don't answer them.

page 184 } I want to know if you can look at this picture here and tell us where you were when you noticed the speedometer of that car doing 60 to 65?

A. No, sir. I don't know.

Q. Back here somewhere, is it?

A. That is correct.

Q. Right. And you do not know how fast he was going, then, as he got into, started to make the curve, is that correct?

A. Into Hatcher Street?

Q. Yes.

A. Well, just like I say. He was going about 60 to 65 miles an hour. All right. I know that when he turned in there he was going practically that fast, because he didn't let his feet up off the accelerator.

Edward L. Haislip.

Q. Then I am correct in saying he was doing 60 to 65 miles an hour as he came into this curve, is that correct, that you see in this picture?

The Court: Plaintiff's Exhibit No. 5?
Mr. Browder: Exhibit No. 5.

Q. Is that your testimony?
A. You mean when he turned in there he was doing 60 miles an hour?
Q. Yes.
A. Yes, sir.
page 185 } Q. Is it true, as the Officer testified, that the telephone pole he hit was over here, is that correct?

Mr. Anderson: Objection, Your Honor. The witness has repeatedly said he does not remember what happened after he started the turn.
Mr. Browder: All right.

Q. It did not go over into here, did it?
A. I do not know.
Q. You do not know what happened to it? Where were you when you grabbed for the, when you saw the door come open?
A. When I seen the door come open?
Q. Yes.
A. When he turned the curve.
Q. As he started to turn the curve the door came open?
A. (Nodding head) He was making the curve.
Q. How much of the curve had he made?
A. I do not know.
Q. Two feet, ten feet, or twenty feet?
A. I do not know, sir.
Q. You do not even know whether the door coming open may not have caused him to pull the wheel, so far as you were concerned, do you?
A. Well—
page 186 } Q. I say, you do not know that, do you?
A. Well, I don't know nothing, except catching him. That's all I know. I don't remember nothing. Except reaching over. That's as far as I remember.
Q. You do not know whether you had actually even gotten as much as one foot in the curve at that time, do you?

Edward L. Haislip.

Mr. Anderson: He has already said that he doesn't. I object to that.

Mr. Browder: If Your Honor please, I do think I have a right to defend my client here today and cross examine the plaintiff. Mr. Anderson has interrupted me time, after time, after time. I think I have a right to try to bring out the facts in the case.

The Court: Objection overruled.

Mr. Anderson: Exception noted.

By Mr. Browder: (Continuing)

Q. Can you answer that question? You do not even know whether you had gotten even, whether he had even turned in the curve when the door came open, do you?

A. I know he was making the curve, turn.

Q. When you noticed him about to fall out of the door—

A. When he was making the turn. That's as far as I remember.

page 187 } Q. That happened as he started into making that curve, you noticed that he was falling out and that the door was open, is that correct?

A. I noticed him going out.

Q. Did you get ahold of him?

A. I do not remember.

Q. How far out of the car did he get?

A. I do not remember.

Q. Do you know whether the door came shut again?

A. I do not remember.

Q. Do you remember what kept him from going out to the road if he was making the turn at 60 to 65 miles an hour and the door was open?

A. No, sir.

Q. You know that you have to prove gross negligence in order to recover in this case, though, do you not?

Mr. Anderson: Objection, Your Honor. That is clearly improper. What he is doing is asking this witness a legal conclusion and that is improper. Mr. Browder knows it.

Mr. Browder: I do not think it is improper at all, if he knows it.

The Court: I sustain the objection to that question.

Mr. Browder: All right, sir. I note the exception.

page 188 } Q. When the car made the turn at Orleans Street onto Williamsburg Avenue, at what you

say was a speed of 30 or 35 miles an hour, you say that the tires cried, is that the way you described it?

A. That is correct.

Q. You were then within two or three blocks of your friends walking down the street, were you not?

A. You mean after we let them out? You mean after we let them out?

Q. I didn't hear what you said.

A. After we let them out?

Q. Yes.

A. Well, we was practically two blocks from where we let them out.

Q. Two blocks?

A. Two or three blocks.

Q. You let them out in the middle of a block, did you not?

A. That is correct.

Q. There is no reason on earth why they couldn't have heard the squealing of those tires from where you let them out, was there, if it happened?

A. I do not know.

Q. There wasn't a whole lot of noise out there on a Sunday night at 10:30, was there?

page 189 } A. I do not know. Except the car wheels—

Q. It was a nice clear night, was it not?

A. Yes, sir.

Q. Did Gill direct his invitation to ride to you or someone else in the party when you all got in?

A. I didn't understand you.

Q. I say, when Gill stopped and asked you if you wanted a ride, did he speak to you, or did he speak to some of the others?

A. He told me, he said, "Where are you going?" I said, "Home." He said he was going home.

Q. Were you the one that talked to him?

A. That is correct.

Q. You did not smell anything on him at that time?

A. No, sir.

Q. You got in the car and you did not smell anything on him until you got out?

A. I didn't understand you.

Q. You did not smell anything on him until the colored man got out, you say?

A. Not until after we had gotten going again.

Q. After the colored man had gotten out.

A. We had gotten going.

Edward L. Haislip.

Q. And even what you smelled was mild, it didn't smell very strong?

page 190 } A. No, sir.

Q. What type of work had you ever done before you went over to Larus & Brother?

A. Before I went to Larus Brother, before the wreck?

Q. Before you worked for Larus & Brother. You went to work for Larus & Brother the latter part of July, who had you worked for before then? What kind of work had you ever done before?

A. Before I was injured in this wreck?

Q. Yes.

A. I was a timberman.

Q. Timberman?

A. Correct.

Q. What kind of work is that, cutting down trees?

A. Pulp wood, stave wood, pulp stave wood.

Q. Had you worked regularly before then?

A. Before cutting wood?

Q. Before you went to work for Larus & Brother, had you ever worked regularly, had a job for six months at a time?

A. No, sir.

Q. You had done some general farm work, too, had you not?

A. That is correct.

page 191 } Q. You visited your sister and didn't work at all for three or four months?

A. That is correct.

Q. You quit school back in the eighth grade, I believe, did you not?

A. That is correct.

Mr. Browder: All right. That is all. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Let me get one thing straight: Eddie, when you were on Williamsburg Road, I am interested in the direction that you were going on Williamsburg Road. Would that direction be away from the river or toward the river?

A. You mean when we turned?

Q. Yes.

A. Well, the river, the river is this way. So we must have

been going toward the river, or up the hill. You would be going away from the river.

Q. You were going away from the river?

A. (Nodding head)

Q. You do not know whether that would be north, south, east or west, do you?

A. No, sir.

page 192 } Q. Do you recall the first time that you saw me and Mr. Satterfield?

A. First time?

Q. Yes.

A. No, sir. I don't believe I do.

Q. You do not remember your mother having us come up to the hospital to see you?

A. I remember mama. I remember you, but I don't remember Mr. Satterfield.

Q. You do not remember Mr. Satterfield?

A. I remember you. That's all.

Mr. Anderson: I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Browder:

Q. I do want to ask this one question: As you made the turn into Hatcher Street, the turn into Hatcher Street was a right turn for the way you were going, was it not? It wasn't a left turn, was it?

A. You mean into Hatcher?

Q. Yes.

A. That is correct.

Q. Hatcher Street was to the right of you as you were going into the curve.

page 193 } A. Hatcher Street was a right turn. That is correct.

Mr. Browder. All right. Thank you.

Mr. Anderson: I have no further questions.

Witness stood aside.

The Court: Do you have another witness, Mr. Anderson?

Mr. Anderson: No, sir, I do not.

The Court: The plaintiff rests his case?

Mr. Anderson: I want to check to see whether we got the

documentary evidence in. Yes, sir. There is only one item, I believe, Your Honor, that is just for the purpose of directions. If Mr. Browder has no objection, this is a map that was prepared by the Bureau of Surveys and Design for the City of Richmond.

Mr. Browder: Is that the one which you have in evidence?

Mr. Anderson: This is another one which shows a broader area.

Mr. Browder: All right. Where is it? I have page 194 } no objection.

Mr. Anderson: We offer this as Plaintiff's Exhibit No. 13.

Note: The above plat is now marked and filed as Plaintiff's Exhibit No. 13.

Mr. Anderson: That is the plaintiff's case. The Plaintiff rests.

The Court: Would you gentlemen like to have a recess at this time?

Mr. Browder: I would like to take up a matter with Your Honor.

The Court: The plaintiff has rested his case?

Mr. Anderson: Yes, sir.

The Court: Gentlemen of the jury, we will take a recess for approximately six or seven minutes. You may all step out of the box. The same admonition applies.

page 195 } Note: At this point Court and counsel retire to Chambers, as follows:

In Chambers.

Mr. Browder: May it please Your Honor, I move the Court to strike the evidence in this case upon the ground that there is no proof of any gross negligence efficiently contributing to the accident here in question.

In that connection I would like to say that the plaintiff's testimony is completely incredible, and the Court many times has said that you do not have to believe incredible testimony. This boy does not drive an automobile. He says that at sometime as they were starting into the curve there he noticed that the door was open and this boy was hanging half way out the door, and he reached over to grab him to keep him from falling.

In the case of *Kent* v. *Miller* I believe is the old case where the lady fell out of the door as a result of going around the curve, and the Court of Appeals said that that was not negligence; that there was no evidence that the door was defective

page 196 } or anything of that kind. It came out that there was no evidence of negligence in any part of that case.

If we are going to look at this thing from the standpoint of somebody making a turn at a high rate of speed, you have to take his word or disregard it, one or the other. When he says he attempted to take the curve at 60 or 65 miles an hour you have to say it means nothing, because it does mean nothing.

He admits that when they turned the previous curve at 30 to 35 the tires were screeching. The police officer testified in this case that there were absolutely no tire marks anywhere around. If he were going 60 to 65 miles an hour around that curve I am sure there would have been tire marks of some description. I think His Honor has looked at those photographs and has looked at that plat, and I am sure you are bound to come to the conclusion that it is incredible; that the car, if it were going to make any maneuver at all in trying to make a curve at such a speed, would have run off on the left side of the road and it would not have run off on the right side as it did. The fact that the accident occurred is, of course, without any proof of negligence.

page 197 } The very first case involved somebody running off the right side of the road. The Court of Appeals said that it was not only not gross negligence but it was not even simple negligence. To run off the road in and of itself, the Court said, is an everyday occurrence, as a matter of fact.

The case of *Carroll* v. *Miller* from down in Norfolk: The party made a turn at 35 miles an hour in a 25 mile zone. We had no speed zone here at all. The Court said in this case the defendant turning and hitting a tree—which is similar to what happened here—was not negligence at all. It said that the only thing that was negligence was that the Statute made it negligence to drive in excess of 25 miles an hour, and that in and of itself was no evidence of gross negligence. So here, eliminating the incredible testimony of the plaintiff that he was doing 60 to 65 miles an hour, there is absolutely nothing left except that the accident occurred and they hit a pole on the right-hand side, which the Court has said so many times is not negligence.

I mention those two cases. I could mention *Sutton Reed* v. *Bland; Terrell* v. *Terrell.* I could mention a number of others. I believe the *Diggs* v. *Alspaugh* case involved that. Any number of cases have gone to the Court of Appeals

page 198 } and the Court has said it was not negligence or was not gross negligence, as the case may be.

Some of them had the actual issue of simple negligence before them. In the *Sutton Reed* v. *Bland,* the defendant ran off the right-hand side of the road. This accident happened in North Carolina. The plaintiff failed to recover in that case.

So I respectfully submit to Your Honor that there is no evidence upon which the jury could find a verdict against the defendant in this case. I move the Court to strike the evidence.

Mr. Anderson: I have a number of cases. The one Virginia case in which most of the negligence cases, gross negligence cases on one side or the other are connected is the *Alspaugh* v. *Diggs* case. In that case the operator of the automobile bent slightly forward for the purpose of getting the cigarette lighter on the dashboard of the car; he was going at a normal rate of speed. You will notice in that particular case the Court said it is contended that immediately before the impact the defendant was sober, he had been driving in a careful manner at a reasonable rate of speed, and that he ran gradually upon this left curve and he had no page 199 } opportunity to avoid the impact after the danger became apparent. In this case the Court held that his act was not such a deliberate act of inattention as to constitute negligence.

Well, in this case we have intoxication; we have speed; and we have a man going around a curve—I do not think those pictures correctly portray it. The curve is not a sharp curve, it is a fairly gradual thing—running not across the road but running into the telephone pole over on his right.

The test isn't actually whether the Court feels that this is a case of gross negligence or not; the test is whether reasonable men could differ as to the cumulative effect of all of these acts, or one of them. If reasonable men could differ, then it is a question for the jury.

At this stage, all of the facts and reasonable inferences which can be drawn from the evidence are in favor of the plaintiff. I am not waiving my point as to ordinary negligence, but I see no reason to bring it up at this time.

The Court: Gentlemen, I am going to overrule the motion at this time.

Mr. Browder: I note the exception, sir.

page 200 } Note: Court and counsel now return to the courtroom and are before the jury, viz:

Jury in.

A. M. WASH,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRCT EXAMINATION.

By Mr. Browder:

Q. You are Dr. A. M. Wash?

A. Yes, sir.

Q. A dental surgeon with your offices here in the Medical Arts Building, are you not, sir?

A. Yes, sir.

Q. Dr. Wash, I wonder if you would give us a little of your professional educational background, please, sir?

A. I graduated from the Medical College of Virginia in 1919. Taught full time. Member of the faculty nine years. Went into private practice combined with teaching.

Mr. Anderson: We concede the doctor's qualifications.

A. Now Professor of Oral Surgery at the Medical College of Virginia and Chief of the Oral Surgery Services in the hospital.

Q. Dr. Bear is one of the teaching assistants. page 201 } then, is he?

A. Yes, sir. Teaching associates.

Q. Did you teach him in school?

A. No.

Q. He did not go to your school?

A. He went to another school.

Q. Dr. Wash, did you examine this young man seated by your right there, Edward Louis Haislip, at my request last month?

A. Yes, sir.

Q. Tell the gentlemen of the jury what you found of an orthodontic nature, that is with regard to his teeth. You need not bother about anything else, unless you want to—his teeth, jaw, and so forth.

A. I made a clinical examination which is done by means of your hands and eyes, plus x ray examination of the areas that were affected by the injuries as reported to me.

Q. Did you have the benefit of Dr. Bear's findings so you would know what to look for?

A. I had Dr. Bear's report and I based my examination on the list of injuries that he submitted in his report on September 15th.

A. M. Wash.

Q. All right, sir. Suppose you just tell the gentlemen of the jury, if you please, what you found, Dr. Wash, and what your opinion was.

page 202 } A. I found that this patient had good occlusion of his teeth. Excellent on one side. fair on the other.

Q. That means he could chew well?

A. He could chew. All the movements of the mandible were normal, both in direction and extension.

Q. Demonstrate that for us if you can.

A. In other words, he could move his jaw from side to side. He could work his jaw up and down. Open his mouth the average distance.

Q. Could he move it forward like most of us can?

A. Yes, he could move it forward. And in addition to that, I x-rayed the areas where fracture had been reported, found that the fractures had healed. That the fractured parts were in good condition.

Q. Had they healed satisfactorily, or not?

A. They had healed satisfactorily.

Q. All right, sir.

A. In fact, you could barely see the line of fracture on the x-rays taken.

Q. Doctor, tell us, did you find anything wrong with any of his teeth?

A. He had—What teeth he has were in fair condition. His mouth showed lack of care. I base that statement on two things: From the history I got he received an accident, injuries in an accident years ago and lost three or

page 203 } four front teeth and they had never been replaced. And there were retained roots of an upper left second molar. The crown had been destroyed by cavities which had been going on for a period of years.

Q. But the root was still there?

A. The root was still there.

Q. In this particular accident, did you find any damage to his teeth?

A. One lower tooth had received a blow. The lower left lateral incisor, or central, I don't recall which lower left tooth. I think I put it in my report.

Q. I am sure you did.

A. Stating which one it was. As a result of the blow the pulp had died and become infected and there was abscess at the apex of this tooth. There was a little chip broken off of the

lower right cuspid tooth, very small chip. The pulp was not anywhere near exposed. The tooth was still vital and still a serviceable tooth.

Q. Dr. Bear has mentioned one other tooth that had become devitalized since he saw him in February. You only found the one when you saw him in March,

A. I found only that one.

Q. All right.

A. I could have missed it. It is easy to do.

Q. Did you test to see whether there was any of
page 204 } what you doctors call crepitation present?

A. Yes, I did.

Q. Was there?

A. At the time I examined him I could not determine or could not detect any crepitation in either of the temporal mandible or the joints.

Q. Is crepitation always due to an accident?

A. No.

Q. Explain that if you will then.

A. It's a common human ailment. We find it in many people who have never had an accident.

Q. Is it any more likely you will develop that from one fracture of the mandible than of another? I mean by that, I understood you to say this man had a fracture several years ago. Is there any way you could tell which fracture it might come from?

A. No way I could tell. No.

Q. What if any complaints was the man making of discomfort and pain?

A. I asked the patient how he was getting along chewing? He said he was getting along pretty well chewing. He did not make, did not complain of any discomforts or pain.

Q. This tooth that you say is devitalized, or the one that you found when he was there, is that something that should
necessarily be replaced, or not?

page 205 } A. The tooth itself should be removed.

Q. I mean should it be replaced by an artificial denture?

A. The lower front teeth are so crowded that at his age I am quite sure that the gap will close up.

Q. Could you demonstrate that to the gentlemen of the jury? Could you show them what you mean by his teeth being crowded and which tooth it was he was going to lose?

A. Do you want the patient to come up here?

A. M. Wash.

Note: The plaintiff walks around and stands before the jury.

A. (Continuing) This is what I mean. If that tooth right there is taken out, he already has about half the space which is needed for that tooth.

Q. Is this the tooth here, Doctor, you are speaking of?

A. One of those two teeth. Let me look at the x-rays. The lateral. This one here.

Q. That one there?

A. Yes, sir.

Note: The plaintiff resumes his chair.

Q. You say he does not—

A. See, the space is already too small for that tooth, in view of the fact that the rest of the teeth are a little crowded here in front. Crowded.

page 206 } Q. Is that the reason for those teeth growing sort of crooked there?

A. Yes.

Q. You think he could get along without one tooth without replacing it?

A. It would be difficult to replace it. I think he could get along fine with out.

Q. Dr. Wash, tell us whether in your opinion it is probable that this young man will have any future difficulty with his teeth or with his jaw?

A. Let's see, the date of the accident was August, wasn't it.

Q. Yes. August 10th.

A. August. I don't think it's likely that he will.

Mr. Browder: All right, sir. Will you try to answer Mr. Anderson's questions, please?

CROSS EXAMINATION.

By Mr. Anderson:

Q. Dr. Wash, referring to the teeth, it is true, is it not, that when teeth have received a severe blow and in this case the blow was severe enough to fracture the front of the jaw bone, that the prognosis or the future of the teeth in that area

necessarily has to be very guarded, is that not
page 207 } true?

A. Very guarded for awhile.

Q. Is it not also true that a tooth that has been I believe which you doctors call traumatized that it may not become non-vital for months or even years after?

A. That's true.

Q. So that even between visits, that is between February of this year and April, if another tooth was found to have become non-vital that is consistent with the prognosis, is it not?

A. That's true.

Q. It is not at all unlikely that maybe two or three months from now or even a few years from now there will be another tooth or two that will become non-vital?

A. Yes, I think you would have to say that.

Q. So the prognosis as to teeth has to be very, very guarded?

A. Very guarded. Yes, sir.

Q. It is true that he would be much better off even if those lower front teeth are crowded if something could be done, if they could be treated in some kind of way for him to keep them rather than for him to lose them?

A. You are talking about all four of those front teeth or only one?

Q. I am talking about the two, the two that have been found to be non-vital.

page 208 } A. The two? Was there one of the lower front ones already that is non-vital?

Q. Yes, sir.

A. Dr. Bear found that out?

Q. Yes, sir. There were two of the lower left front teeth. One was the, what we call the eye tooth.

A. Cuspid tooth. That is the one over here to the right, on the right. That was chipped a little.

Q. Well, these two right here, what do you call these two next to the eye tooth?

A. The left to the center line of your mouth is the central incisor and the next one the lateral incisor.

Q. Wouldn't it be better for him to keep the lateral and central incisor rather than to lose them even though his lower teeth are crowded?

A. One of these in my opinion is past treatment.

A. M. Wash.

Q. You cannot do anything about it?
A. Can't do anything about it.
Q. You have to pull that.
A. Yes.
Q. It would be better to keep the other one if you could?
A. If you could, yes.
Q. You consider do you not in this particular case the loss of certain of these teeth and also the probable
page 209 } future loss of even more of them far more serious and permanent than the fractures that he sustained to the jaw, is that true? Let me ask you: As a general proposition would you say that the loss of teeth is far more serious and permanent than fractures to the jaw; just as a general proposition?
A. It certainly is more permanent.
Q. It is certainly more permanent.
A. They can't be replaced by anything but artificial means.
Q. Don't you have a process called root canal where you take—
A. Root canal.
Q. You can save a tooth that way, can you not?
A. It can be saved that way. It's still a dead tooth, though.
Q. It serves the purpose.
A. It serves the purpose. There are certain teeth that—In answer to your question: There are certain, it is possible in many cases for the loss of a lot of good teeth, say the upper front teeth of a good looking woman or young man who is proud of his teeth to be more serious matter than the fracture of the mandible in two or three places.
Q. How about just us average fellows that don't look so good, don't you consider that as serious and—
page 210 } A. I do, yes.
Q. Doctor, as I understand it this lower jaw here, or the jaw, rather, is known as the mandible and this thing right here the condyle?
A. Condyle, yes.
Q. That rests and the whole lower jaw function to a large measure depends upon a little washer type thing between the, right in here—
A. Yes.
Q. —in this joint know as the meniscus?
A. Meniscus.
Q. That is nothing more—
A. King of a cushion or pad. Yes.
Q. Isn't it true that if by trauma or a blow that meniscus

becomes perforated that added to the use, I understand that the jaw joint is the most used joint in the body, that added to the use that we give to it that the function of the joint will become seriously impaired?

Mr. Browder: If Your Honor please, I do not want to object to any proper cross examination, but is there any evidence of that? I did not hear it.

Mr. Anderson: I think so.

Mr. Browder: Of the perforation of the—

Mr. Anderson: Yes. I think so. Somebody

page 211 } testified to it.

Mr. Browder: I didn't hear it. Excuse me.

Q. I am asking you, Doctor, isn't it true that this meniscus or this piece of cartilage can become perforated by reason of trauma? I am not asking you if in your opinion in this case it was; I am asking you if it can be.

A. Yes. It's possible. Yes.

Q. Is it not true that a great deal of pressure is put on that piece of cartilage just by normal use?

A. Not a great deal. It's just a fair amount of pressure.

Q. If this little cartilage should become perforated in an injury, wouldn't your prognosis be that the function of the joint would become seriously impaired because of the use would add to the destructive process which had occurred by reason of the blow?

Mr. Browder: If Your Honor please, I think if that had happened in this case it would have happened a long time ago before now.

A. The answer to the question: It would affect it seriously, affect the function of the joint; if it happened it would.

Q. That would give rise, would it not, to various forms of neuralgia such as headaches, pain behind the ear and mouth and the tongue?

Mr. Browder: Just a minute, Dr. Wash. Again I do not want to interrupt any proper cross examination,

page 212 } but we are getting into an awful lot of "if's" here. This case is not dependent upon "if's," it is dependent upon the evidence. I do not know of anybody who has testified that this is something that has happened or is likely to happen. We are getting into a technical medical

problem that has no bearing on this case. I think it would be prejudicial to pursue it any further.

Mr. Anderson: I think I have a right to cross examine, if Your Honor please, based on the area concerned with in the injury, the area that was injured.

The Court: What evidence is there that the type of question that you are going into has taken place?

Mr. Anderson: There has been testimony to that this morning, Your Honor.

Mr. Browder: By whom? I do not recall anybody saying there would be any damage to the meniscus.

The Court: Are you talking about Dr. Bear?

Mr. Anderson: Yes, sir.

page 213 } By Mr. Anderson: (Continuing)

Q. Let me ask you this question, Doctor. This crepitation, that is just sort of a clicking sound, is it not, that comes from the joint?

A. Yes, sir.

Q. Is the normal cause of that due to injury to this little piece of cartilage, or is it the clicking of the bones against each other in the joint?

A. This joint is controlled by nine pairs of muscles plus ligaments. And if any of those nine pairs of muscles get a little out of step it may manifest itself in an abnormal movement of the mandible.

Q. What I am asking you is what causes that sound, clicking, or crepitation?

A. What causes the clicking?

Q. Bone coming against bone in the joint?

A. No. It's due to the fact that in the movement of the mandible forward it slides to what we call in eminence in front of that area that you pointed out just now.

Q. It comes a little out of socket?

A. Out of the socket. That's a normal movement for it. When it goes back in the socket in many cases it clicks, on many people.

Q. I see, sir. You wouldn't classify this injury as a minor injury, would you? This injury to the—

page 214 } A. That depends entirely on what you're comparing it with. I could say, some other cases compared with this, this would be minor.

Q. I mean in the general run of injuries that you oral surgeons attend, this would not come in the category of a minor injury, would it?

A. M. Wash.

A. No, I don't think you could call it a minor injury in that field. I am not comparing it with injuries in other parts of the body.

Q. No. Just in the field of oral surgery.

Q. No. I wouldn't call it a minor injury.

Q. Is it not true that a minor injury to the mandibular joint with or without fracture may cause stretching and tearing of the joint ligaments attached to the meniscus with or without hemorrhage or rupture of the fibers of the external pterygoid muscle which give attachment to the meniscus?

Mr. Browder: Just a minute. If Your Honor pleases, every question Mr. Anderson has asked is of a speculative nature, if this can't happen. Anything can happen. The questions should be related to something that is in the evidence here: did he find this, or what does he think about something somebody else said on that subject; not what can happen.

Mr. Anderson: I think I have laid the proper
page 215 } foundation. I have the right to cross examine.

Mr. Browder: Mr. Anderson could read a whole medical text book here, because almost anything can happen in almost any injury. To just ask the doctor a lot of questions about "Can this happen?" I think the question is improper. The question is "Do you think it is likely that such and such a thing will happen," that has always been my understanding of the rule of law.

Mr. Anderson: There are certain known facts, if Your Honor please. First of all we have an injury to the condyle here which is known as a condylar fracture, and that is what I am asking the doctor about.

Mr. Browder: I do not have any objections of him asking about it if he thinks that somebody else has said something about it. My objection goes to the realm of speculation: can't this happen? Can't that happen? Does it happen some time?

Mr. Anderson: I think I have a right to do that on cross examination.

Mr. Browder: I do not think you do. I object to it.

The Court: Gentlemen, the court understands
page 216 } the way normally that doctors testify relates to
what is a reasonable medical certainty, what is reasonably probable of some situation. That is the way you normally describe whether an injury or condition exists or doesn't exist.

A. M. Wash.

Mr. Anderson: I do not think that applies on cross examination, though, Your Honor.

Mr. Browder: I do not know that it is relaxed in that.

The Court: What is the purpose of this? Do you just want to indicate that the possibility could occur?

Mr. Anderson: No, I think—Well, let me rephrase the question.

By Mr. Anderson: (Continuing)

Q. Are you of the opinion, Doctor, that in an injury such as this fracture to both condyles and a fracture to the front of the jaw, that it at the time caused stretching of the joint ligaments, damage to the meniscus with or without hemorrhage, rupture of the fibers of the pterygoid muscle which gives attachment to the meniscus?

A. Could all of that happen? Is that the question?

Q. Yes, sir. I am asking you isn't it probable that it did happen in this case?

page 217 A. With the small amount of displacement of the condyle, of the mandible as reported in this case and as shown by the x-rays, I do not think it could have happened.

Q. Let me ask you this: Do you think that it is probable in this case based on the injuries which this boy received that he had substantial soft tissue damage in and about the mouth and the jaw bone?

A. He had probably some injury but not much.

Q. Well, he had, you would expect to find hemorrhage, would you not?

A. Oh, yes.

Q. You would expect to find swelling, would you not?

A. Yes.

Q. You would expect to find pain on movement, would you not?

A. Yes.

Q. You would certainly expect to find tenderness, isn't that true?

A. Yes, at the time immediately following the injury, that's what you are talking about?

Q. Yes, sir.

A. Or the patient's condition now?

Q. I am speaking of at the time of the injury.

A. At the time of the injury.

Q. Those are the things that you—

A. Those are the things that go along with
page 218 } fractures, yes.

Q. —normally expect to find?

A. Yes.

Q. You say in your opinion there has been no damage to this meniscus because if there had been the functioning of the joint would be so impaired now that you would be able to tell it?

A. I think so, yes.

Q. But you do—

A. I think the danger from that is past, in this case.

Q. But you do say, do you not, that he does have some degree of displacement, from minimal to moderate displacement both on the right and on the left?

A. His occlusion on the right side is just about perfect. And on the left side I would class it as good.

Q. Good?

A. Yes. His occlusion could not be restored because he has lost teeth and his teeth have drifted. And you can never give him perfect occlusion.

Q. The fracture of the condyle took place near the capsule, did it not?

A. The fracture line—

Q. Wasn't that fairly near?

A. My understanding was that it was not close
page 219 } up to the capsule but was pretty well down from
it.

Q. Is there any danger in this case, do you think, of traumatic arthritis of the jaw joint?

Mr. Browder: If Your Honor please, again I object to the form of the question.

The Court: Objection sustained.

Mr. Anderson: Exception.

By Mr. Anderson: (Continuing)

Q. Let me ask you this, Doctor: What is traumatic arthritis?

Mr. Browder: If Your Honor please, unless some testimony has been introduced to the effect that it is probable, I do not think that is proper. I have heard not one single word about it. I object to any more testimony—

Mr. Anderson: There was testimony this morning.

Mr. Browder: There was testimony this morning when

you kept asking the doctor what traumatic arthrities was. He never once said it was possible or probable.

Mr. Anderson: I disagree with that. I vouch the record for it.

Mr. Browder: I vouch the record he never said it was a likely occurrence in this case.

page 220 } Mr. Anderson: I am sorry to disagree with you on that.

Mr. Browder: His Honor will have to pass on it. I object to it, Your Honor.

Mr. Anderson: I am asking the doctor for a legal definition of a term that is part of an injury to a joint and which has been testified to this morning.

Mr. Browder: I object, if Your Honor please. I would certainly like a ruling as to whether he can question the doctor about something that there has been no testimony at all as a likelihood in this case.

The Court: Gentlemen, he is asking now for, you say, a legal—I assume you mean medical—definition of traumatic arthritis. I will permit him to ask that question.

Mr. Browder: I note the exception.

The Court: Gentlemen of the jury, under the rules of evidence there are certain things you can ask. The probative value of it, whether it is an important or unimportant feature of the evidence in this case is up to you, based on the instructions of the Court.

Mr. Browder: I note the exception, sir.

By Mr. Anderson: (Continuing)

page 221 } Q. All right, sir, would you answer the question, Doctor?

A. State the question again?

Q. What is traumatic arthritis of the jaw joint?

A. Traumatic arthritis in the temporal mandibular joint is so rare that I cannot qualify as an expert on arthritis of joints.

Q. It differs—

A. I have never seen it.

Q. Traumatic arthritis differs from just plain arthritis, does it not?

A. I haven't the slightest idea how many different kinds of arthritis there are.

Q. I see. Your answer then is that you can give no—

A. I cannot give any answer to that.

A. M. Wash.

Q. Are you familiar with the treatment that this boy had, how he was treated?

A. No. Only what I already have in Dr. Bear's report. That's all I know.

Q. Would that be considered conservative treatment?

A. Yes, it would.

Q. Isn't it true that if a person is treated conservatively that painful joints will occur?

page 222 } Mr. Anderson: I am not asking is this a reasonable medical certainty, Your Honor, I am asking that if it isn't a medical fact that after conservative treatment of the fractures to the jaw that painful joints will occur.

Mr. Browder: Wait a minute. You mean likely to occur? That is my objection to it. I again object, unless you bring out either with reasonable certainty or as a medical probability.

The Court: I sustain the objection. I think it ought to be related to what is within reasonable medical certainty or within reasonable probability, not possibility.

Mr. Anderson: I except, Your Honor.

By Mr. Anderson: (Continuing)

Q. What is the normal length of time, Doctor, for the joint to be immobilized, for it to be wired or fixed?

A. It depends on so many factors that it varies with different cases.

Q. Can you give us an average?

A. For fractures of the mandible about five weeks.

Q. Five weeks?

A. From four to six, we can put it that way. Occasionally there is a real young healthy patient who hasn't much displacement, three weeks might be allowed. You may go as high as seven.

page 223 } Q. Sir?

A. It may go as high as seven, in some older patients.

Q. Does the fact that it was immobilized for a period of six weeks indicate anything to you as to the severity of it?

A. No. It sounds like just an average case.

Q. An average case?

Mr. Browder: I would like to call the Court's attention

to the fact that there is no evidence of six weeks. There has been evidence that this thing happened on August 10th and the wires and so forth were taken off September 17th. If that is six weeks I do not know how you get it.

Mr. Anderson: How many weeks is it? Five weeks maybe and a couple of days. Seven days plus a month. Isn't that six weeks?

Q. I haven't counted, Doctor, I understand it is five weeks and six days. Would the fact that five weeks and six days indicate to you the severity of the injury?

A. No. That would indicate to me just about an average case.

Q. I see. Doctor, one other question. Isn't it reasonable that a competent oral surgeon who has treated this boy since the accident and has watched his progress page 224 } since August 10, 1958 to date would be in a better position than you who have seen him I believe one time to evaluate the injuries?

Mr. Browder: If Your Honor pleases, let's get the exact dates the doctor saw him so we will have a complete picture here. He says he treated him constantly since then. I think the evidence was that he saw him back in November, then saw him again back in February, then saw him again two or three days ago. That is my recollection of the evidence.

Mr. Anderson: I think the doctor has treated this boy constantly while he was in the hospital and followed him up. He has treated him any number of times. I don't know how many times it is. He has been the treating physician from the date of the injury to date.

Mr. Browder: I think if you are going to ask Dr. Wash his opinion on it, you ought to give him the full facts; tell him when he saw him.

Mr. Anderson: I ask the Court to rule on it.

Mr. Browder: I certainly object to it.

The Court: The objection to the question, as the Court understands it, you stated Dr. Wash saw the page 225 } plaintiff only once.

Mr. Anderson: That is true.

The Court: Or at least you intimated that. Do you know whether or not he had seen him more frequently than that?

By Mr. Anderson: (Continuing)

Q. How many times have you seen this boy?

A. One time.

The Court: Now you may ask the question. Doctor, if you want the previous question read back to you the reporter will do so, or unless counsel will restate it?

A. Yes, sir.

Mr. Browder: I note the exception, sir.

Q. The question is this, Doctor: Isn't it reasonable that a competent oral surgeon who has been the treating dentist of this boy from the date of his injury to *to* date and has seen him a number of times—I don't know how many, but a number of times—wouldn't he be in a better position to evaluate his injuries than someone else, some other competent oral surgeon who has seen him only once; is that reasonable or not?

A. Well, the two of us saw him for two different reasons. One was to treat the case. My purpose in seeing him was to evaluate the results and determine the condition page 226 } of this patient now.

Q. But it has obviously changed, has it not?

A. He can, the last man who saw him can tell better his condition now than all the other doctors who have seen him in the past. The doctor who treated him during the period of treatment knows more about that period than I do.

Mr. Anderson: All right. I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Browder:

Q. Dr. Wash, you spoke of perfect occlusion on the right and good occlusion on the left and said that you could not get perfect occlusion on the left because of the lack of teeth?

A. His teeth had drifted out of position. Yes.

Q. That was due to what?

A. I don't know. He may have had years ago—

Q. I mean what, did the fact he lost some teeth have anything to do with it?

A. Yes. It had a lot to do with it.

Q. He hasn't lost any teeth in this accident yet, has he?

A. So far as I know he hasn't.

Q. He had lost some previously?

A. M. Wash.

A. He had lost some previously by another
page 227 } accident, and by untreated dental decay.

Q. So the lack of those teeth has caused the others to drift and that has prevented him from having perfect occlusion on the other side?

A. It always does. That is the reason, I suppose, that it did in this case.

Q. You have been asked a lot of questions about traumatic arthritis, tell the gentlemen of the jury whether in your opinion it is probable that this man is going to have any such condition in the future?

Mr. Anderson: I object to that, Your Honor. The doctor said he couldn't give us a definition of it and wasn't qualified to state it, he didn't feel. I certainly object to Mr. Browder asking him the question along those lines.

Q. Doctor, for that reason, if you do feel that you are not qualified to talk about it, what is the reason that you don't know?

A. Well, I thought he was coming out with a lot of technical questions about arthritis in general.

Q. All right.

A. All I can say he has no evidence of arthritis now and he complains of none of the symptoms.

Mr. Browder: All right, Dr. Wash. Thank you very much, sir.

page 228 } RE-CROSS EXAMINATION.

By Mr. Anderson:

Q. One other question, Doctor. You say he hasn't lost any teeth as a result of the last accident.

A. I mean the teeth are not gone. They are still there.

Q. You mean they haven't been extracted?

A. They haven't been taken out.

Q. At least one is as good as gone.

A. At least one is as good as gone.

Mr. Anderson: Thank you, Dr. Wash.

Witness stood aside.

MARION R. BUTLER,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Browder:

Q. Mr. Butler, what is your first name, your initial, and where do you live?

A. Marion R. Butler, 1715 North 20th Street.

page 229 } Q. That uniform you have on is of the Richmond City Fire Department, is it not?

A. Bureau of Fire. Yes.

Q. Did you and your wife come upon the scene of an accident on August 10th, a Sunday night, at Hatcher Street and Williamsburg Avenue?

A. Yes, sir.

Q. In which direction were you going when you came upon it?

A. I was headed south on Hatcher from Varina section.

Q. You were going from Varina toward which street?

A. Williamsburg Avenue.

Q. You were going toward Williamsburg Avenue?

A. Yes, sir.

Q. There has been a lot of dispute as to the directions here. At any rate you were going from Varina towards Williamsburg Avenue.

A. Yes, sir.

Q. As you approached the scene of the accident what did you see?

A. When I turned off the curve into Hatcher Street the car was up against the pole, facing—If that pole was right there, it was on an angle off from the street.

Q. What part of the car was up against the pole?

A. I say the right front mostly was on the

page 230 } pole.

Q. Did you see either of the parties in the car? This young man or this one?

A. No, sir. At the time when I got there this young man here (indicating plaintiff) run across the street, waving. And I in return I stopped, being a fireman I had taken a first aid course and I thought I would be able to help in any way.

Q. You say he was bleeding?

A. Bleeding about the face. In the meantime when I

Marion R. Butler.

stopped another car comes in behind me. He gets out and gets into this other car. And in return I had stopped. I went to the car, told him that I was a fireman, that I figured I could render first aid up to the firehouse and if in case it was so bad I could get—the ambulance is attached right to it—ambulance service to get him on to the hospital. So in return, Mr. Gill, he asked my wife would she take him—he was concerned over this boy—that would she take him up to the firehouse to see how bad he was, and—

Q. Mr. Haislip did not go in your car?

A. No, sir. He went in this other car. Now who the car belonged to and what the car looked like I couldn't tell you.

Q. You took this young man here—

A. Gill in my car up to the, up to the fire station. And then in return, he returned back with my wife

page 231 } to the scene of the accident, after he got up and found out I told him that we had, that everything was going to be all right with him.

Q. He came in the fire station to inquire about his friend?

A. Inquire about this boy here.

Q. During the time that you were with this young man, did he give you the impression he was intoxicated, or drinking, or anything?

A. No, sir. The only thing I could tell he had a thing on his nose. And as far as his appearing having been drinking, intoxicated, no, sir, I couldn't say.

Q. Did you smell anything on him?

A. No, sir, I could not.

Q. Did he act and talk like a drunk person?

A. He acted as much like a gentleman as anyone. I also seen that he got back, because my wife, as I said, took him back to the scene.

Q. How far was it to the scene from this fire station?

A. Possibly a block and a half, I imagine.

Q. The fire station is on which street?

A. Williamsburg Avenue.

Q. You arranged to get this young man an ambulance to get him to the hospital?

page 232 } A. We in return, he returned back to the scene with my wife. I took and tried to coagulate the blood. In return I ordered the other boy at the firehouse on duty to respond for the ambulance.

Q. Did you by any chance know who the other gentleman was who took this young man up to the fire station?

A. No, sir. I couldn't tell you.

Marion R. Butler.

Mr. Browder: All right. Answer Mr. Anderson's questions, will you, please?

CROSS EXAMINATION.

By Mr. Anderson:

Q. You say this boy here ran across the road waving his arms?

A. Waving at me. Yes, sir. Waving at me. And I stopped and thought I was going to hit him the way he come across the street. And I stopped and in return this other car pulled up behind me and he got in the car.

Q. He did not say anything to you?

A. No, sir. He went right to the other car. But seeing that the blood, and having the first aid course, I was concerned. And I asked the man in the car, the other car—I couldn't tell you who he was right now to save my life—and asked him would he take him to the firehouse, being a first aid man, and we could get an ambulance if he was
page 233 } in that bad shape, we could get the ambulance from the engine house if we needed it. And he went up in the other car.

Q. Did you follow the car on up?

A. Yes, sir. I got—In return this man in the meantime went to my wife and asked if she would take him up to the firehouse, she was sitting in the front seat of the car, and my wife said yes, we will be glad to take him.

Q. Where did he come from?

A. From the accident. From the other side where the car was parked. Now I couldn't—

Q. He came from the other side where the wreck was?

A. Yes.

Q. You say you had been traveling south on Hatcher Street—

A. Like I say, I was heading on Hatcher Street towards Williamsburg Avenue.

Q. Then this man got in the back of your car, did he?

A. Yes, sir. Took him to the engine house.

Q. You let him out up there?

A. He got out at the engine house. At that time I run back there to the engine house. He come on back. I told him that's all right, that he go ahead. We had everything under control.

Q. Did you have your first aid kit out?

page 234 } A. No, sir. Only thing I did was get a towel and put direct pressure over his eye.

Marion R. Butler.

Q. This boy's? (Indicating plaintiff)

A. Yes, sir. And right here. (Indicating chin) This one wasn't bleeding too bad, but his eye was bleeding right bad.

Q. Your primary concern was giving him first aid, is that right?

A. Yes, sir.

Q. You did not make an effort, did you, to determine whether this man had alcohol on his breath?

A. No, sir. That's not my job. Only thing I was primarily concerned was this boy here, the bleeding of it. And I also at the time asked him had he had anything to drink and he said no. He wanted to get up to look at his injuries and naturally in first aid you always—

Q. Of course you didn't ask Mr. Gill whether he had had anything?

A. I wasn't that close to him. At the time when he got into the car all I was interested in was to get to this boy, after seeing the injury.

Q. You never got very close to him?

A. No, sir.

Q. Did he get in the car with you? Did Gill get in the car with you?

page 235 } A. Yes. He was in the back seat.

Q. In the back seat?

A. Yes, sir.

Mr. Anderson: All right. I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Browder:

Q. I believe you said, Mr. Butler, that you noticed he had a cut place on his nose?

A. Mr. Gill did have a scar on his nose. I had looked at it that much of it to see that he wasn't bleeding anywhere, you know.

Q. You talked to him and told him to go on back, that everything was all right?

A. To go on back with my—He was concerned about getting back and I said, "Well, my wife would take you."

Q. If he had been drunk do you think you would have noticed it?

Mr. Anderson: Objection, Your Honor. That is a conclusion.

The Court: Objection sustained.

Q. There was no evidence at all of any drinking so far as you could tell from talking with him?
A. No, sir.

page 236 } Mr. Anderson: Objection. He said he did not get close enough to tell.

A. Mr. Anderson, I did say at first so far as I know there was no evidence of intoxication.

By Mr. Anderson:
Q. So far as you knew.
A. Yes, sir. It didn't show anything else to me.
Q. You didn't get very close to him, though, did you?
A. He was in my car.

By Mr. Browder: (Continuing)
Q. How close were you standing to him when you noticed his nose was bleeding?
A. As close as that man right there was to me. (Indicating reporter)

Mr. Anderson: Let the record show that is about six or seven feet.
Mr. Browder: It is something like that.

Q. Did he walk in alone?
A. He was on his own. Yes, sir. Everything was on his own.

Mr. Browder: Thank you, Mr. Butler.

Witness stood aside.

page 237 } MILDRED T. BUTLER,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Browder:
Q. You are the wife of the gentleman who just left here, are you not?

Mildred T. Butler.

A. Yes, sir.
Q. For the record what is your first name?
A. Mildred.
Q. Mildred?
A. Yes, sir.
Q. Were you with your husband on the night of August 10th, the Sunday night when you came up on a wreck at Hatcher and Williamsburg Avenue?
A. Yes, sir.
Q. Tell the gentlemen of the jury what you noticed as you came up there?
A. Well, it was a guy out in the middle of the road waving his hand, like that. So we stopped. And it was another car in back of us and he run around and got in the car back there. My husband walked over, told him to take him up to the firehouse on Williamsburg Road. So the guy—Mr. Gill, he run over to our car and asked us where were they taking the boy and we told him, so he asked us he said,
page 238 } "I'm very concerned about the boy. Would you take me up there?" We told him yes. So we carried him up there. Then he come back out. He asked me would I bring him back to the car. I told him yes.
Q. Did you bring him back down to the scene of the accident?
A. Yes, I did.
Q. Did you smell any alcohol on him, or notice?
A. No, siree.
Q. You did not?
A. (Shaking head).
Q. Did he appear to be intoxicated to you?
A. No, sir.
Q. You do some form of police work, do you not?
A. Yes, sir.
Q. What is your job?
A. Bon Air.
Q. Bon Air? What type of work do you do out there?
A. Supervisor. Night supervisor.
Q. For the police department?
A. It's for the girls, Bon Air School for Girls.
Q. I thought you were with the police department. I don't know where I got that. You work at night or something, do you not?
A. Yes, sir. All night long.
page 239 } Q. Did you go into the firehouse yourself when you got up there?

A. No, sir.
Q. You did not go in?
A. (Shaking head).

Mr. Browder: Thank you. Will you answer this gentleman's questions?

CROSS EXAMINATION.

By Mr. Anderson:
Q. Mrs. Butler, you were not looking for alcohol, were you, or intoxication?
A. No. I *wan't* looking for it, but he, Mr. Gill talked to me and he was sitting in the car with me when I brought him back down there, and I couldn't smell a thing on his breath.
Q. He was sitting in the car seat next to you?
A. Yes, sir.
Q. Was he bleeding at all? He just had a little mark here on his nose, I understand.
A. He had a place here on his nose, I think.
Q. But your primary concern was to get this boy up there to the firehouse?
A. He ran around to the other car.
Q. But your husband wanted to get up to the
page 240 } firehouse to give him first aid.
A. Yes, sir.
Q. And you let Mr. Gill out at the scene of the accident then you went on back to the firehouse, did you?
A. No. My husband came on down.
Q. He walked on down?
A. I imagine he walked, or somebody brought him back.
Q. Then you all got in the car and went on home?
A. Yes, sir.
Q. You were not there when the police got there?
A. Oh, yes.
Q. You were there when the police got there?
A. Yes, sir.
Q. Were you there when the police were talking to Mr. Gill?
A. I didn't stand around and listen to the police.
Q. You did not?
A. (Shaking head).
Q. You did not have anything to say to the police?
A. No, sir.
Q. When they came up?

A. No, sir.

Q. There were two officers, I believe, were there
page 241 } not?

A. I think there was.

RE-DIRECT EXAMINATION.

By Mr. Browder:

Q. Mrs. Butler, I would like to ask you: Did either you or your husband know either one of these boys before this accident?

A. No, sir.

Q. You had never seen this boy before?

A. No, sir.

Mr. Browder: All right. Thank you.

Witness stood aside.

page 242 } ELMORE P. GILL,

the defendant, first being duly sworn, testified in his own behalf as follows:

DIRECT EXAMINATION.

By Mr. Browder:

Q. Will you state your name, please?

A. Elmore Gill. Twenty-four.

Q. You are twenty-four years old?

A. Yes, sir.

Q. Are you married?

A. Yes, sir. Got two children.

Q. Where do you live?

A. Varina on Church Road.

Q. That is down in the eastern end of the county. Will you tell the gentlemen of the jury whether or not on the evening of August 10th you were in town in the Fulton area?

A. Yes, sir, I was.

Q. About what time did you leave home that night to come in town?

A. I don't know exactly what time it was.

Q. It was in the afternoon?

A. Yes, sir. It was late in the afternoon.

Q. You do not remember exactly what time it was; was it dark?

A. Just about dusky dark.

Elmore P. Gill.

Q. So he got in the car but nobody else got in.
A. That's right.
Q. Where did you turn? What street did you turn on?
A. Went right to the street car tracks. What's the name of the street?
page 245 } Q. Louisiana has car tracks, either Orleans—
A. Louisiana.
Q. Orleans or Louisiana Street. You were on the one that has the street car tracks?
A. Louisiana Street.
Q. Is that the one that has the drug store on the corner of Williamsburg Avenue?
A. Yes, sir.
Q. I see. Is that the block before you get to the end of Main Street, or is that the block where Main Street ends?
A. Same block Main Street ends on.
Q. The one it ends on.
A. Yes, sir. Before it goes on Williamsburg Road.
Q. I mean where is Orleans Street? Do you know where Orleans Street is?
A. It's right there across from Sternheimer's down at Fulton. It's right in the corner there. It's a street here. Sternheimer's is right over here, sits right over here, right across the street from Orleans.
Q. You say you turned down the street that had the street car tracks on it?
A. Yes, sir.
Q. Nobody was in the car but you.
A. No. Nobody but me and Haislip.
page 246 } Q. You were driving?
A. Yes, sir.
Q. Did you stop anywhere before you got to Williamsburg Road?
A. No, sir. No more than for the stop sign out there.
Q. Where was the stop sign?
A. Right there just as you turn off going over Williamsburg Road.
Q. Is the drug store on that corner?
A. Yes, sir. Right there at that drug store.
Q. Did you say you stopped for that stop sign?
A. Yes, sir.
Q. After that what did you do?
A. I turned down went on toward home.
Q. Tell the gentlemen of the jury what you did as you went along there and how this accident occurred?

Elmore P. Gill.

Q. What had been your purpose in coming in?
page 243 } A. A boy told me about I could get a job at Fulton Hill there at a service station. I went up there to see about the job. However the fellow I went to see wasn't there and I started on back down the road to go over to town here.

Q. Did you stop and have a beer some place?

A. I drank two bottles.

Q. Two bottles of beer?

A. Yes, sir.

Q. Had you had anything before you left home to drink? Had you had any *whisky?*

A. No, sir.

Q. Tell the gentlemen of the jury the circumstances under which you picked up Haislip, will you?

A. Well, I was going on down the street. I went down there, turned around on Canal Street, then I come back up the hill there. I seen him walking down the street and I stopped, picked him up, took him as I went along.

Q. How many of them were there?

A. Three of them.

Q. You picked all three up?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

Q. Who did you pick up?
page 244 } A. Just Haislip.

Q. He is the only one who got in the car?

A. Yes, sir.

Q. Was anybody else in the car with you?

A. No, sir. By myself.

Q. Was there a colored man in the car driving?

A. No, sir.

Q. Do you know any colored man who lives over there?

A. Nobody.

Q. You do not know any colored man who lives over in that section?

A. No, sir.

Q. When you stopped to pick them up, what did the other boys do?

A. Kept right on walking.

Q. Which side of the street were they on?

A. Side of the street that Sternheimers' is on.

Q. On the river side or the other?

A. Yes, sir. On the river side.

Elmore P. Gill.

Q. Did anybody ask you whether you were guilty or not guilty?
A. No, sir.
Q. Did Mr. Haislip say anything to you about the manner in which you were driving?
A. No, sir. Not as I know of.
Q. Did he ask you to slow down?
A. No, sir. Not as I know of.
Q. Did he say anything to you about letting him out?
A. No, sir.
Q. Were you in any hurry?
A. No, sir.
Q. Did you know this young man before this
page 249 } accident?
A. Yes, sir.
Q. Did you have any reason to want to drive recklessly and hurt him?
A. No, sir.
Q. You all were friendly before?
A. Yes, sir.
Q. You were pleasant and friendly?
A. Yes, sir.
Q. This pole that you struck, is it on the right-hand or left-hand side of the road?
A. Right-hand side.
Q. How close to the edge of the road is it?
A. I imagine about a foot, between there and the curbing.
Q. Something left like it pulled you over there, is that right?
A. Yes, sir.
Q. Did you ever see the picture of the car with the flat tire on the front of it?
A. No, sir.

Mr. Browder: All right. Answer Mr. Anderson. You may have the witness.

CROSS EXAMINATION.

By Mr. Anderson:
page 250 } Q. Mr. Gill, you say you left home at about dusk, is that correct?
A. Yes, sir.

Elmore P. Gill.

A. I was driving about 20 miles an hour, I reckon, weren't any stop signs or speed limit signs through there. I got to the corner, I put on my brakes to turn the corner. I reckon I got down to 40 or 45 miles an hour and I felt my front wheel kind of pulling to that side. And I put on my brakes a little more and I, the first thing I knowed I hit the telephone pole.

Q. You say you felt like it was pulling you?

page 247 } A. Yes, sir.

Q. How fast did you say you were going as you approached the intersection?

A. I was doing about 40 or 45.

Q. Did you slow up any before you commenced your turn?

A. Yes, sir.

Q. How fast do you think you were going as you started into the turn?

A. Around about 15 miles an hour.

Q. Were you having any trouble making the turn before you felt the thing pull on you?

A. No, sir.

Q. Did you ever see the car afterwards?

A. No, sir.

Q. Was it your car?

A. No, sir. It was my brother-in-law's.

Q. Did your door fly open on you?

A. No, sir.

Q. Was there any occasion for this young man grabbing you?

A. No, sir. Not as I know of.

Q. Were you intoxicated or drunk?

A. No, sir.

Q. Did you tell the police officers you were

page 248 } making a left turn at that corner coming down the hill?

A. No, sir.

Q. What type of a turn were you making at the time? Were you turning right or left?

A. I was making a right.

Q. Right turn. All right. Did the police officer accuse you of being drunk, offer you a blood test, or anything like that?

A. No, sir.

Q. Did you plead guilty at the Traffic Court hearing to anything?

A. I never said nothing.

Elmore P. Gill.

Q. On the right?
page 252 } A. Yes, sir. Going down.
Q. Then you got out of Nicks and you were coming on home, is that right?
A. No, sir. I was going on over town.
Q. You went on over to town after you got out of Nicks.
A. Yes, sir.
Q. Where did you go then?
A. I went over town to see my father. He weren't home, either.
Q. What part of town was that?
A. I went over on, was going over on Grove Avenue. I mean Hull Street.
Q. You were going over on Hull Street?
A. Yes, sir.
Q. Did you stop over there and have a few beers?
A. No, sir. Never stopped.
Q. You did not stop.
A. No, sir.
Q. Then you came on back.
A. Yes, sir.
Q. You came on back and you say you saw three boys—
A. Yes, sir.
Q. —including Haislip walking down the road.
A. Yes, sir.
page 253 } Q. You didn't see four?
A. No, sir. I didn't see but three of them.
Q. You didn't see but three, and you didn't have anyone in the car with you.
A. No, sir.
Q. No colored man was driving?
A. No, sir.
Q. You came on up here, you say, to Louisiana and you turned at Louisiana.
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. Isn't the normal route to come up to Orleans and turn down Orleans Avenue onto Williamsburg?
A. Yes, sir. But one is just as close as the other.
Q. One is just as close as the other.
A. Yes, sir.
Q. When the police officers talked to you, do you remember that?

Elmore P. Gill.

Q. This was in August, what would that be, around 6:30, 7:00 o'clock?
A. Around that. Just dusky dark.
Q. 6:30 or 7:00 o'clock, and you went from there on over, you say, over to Fulton to see a man about a job?
A. Up on Fulton Hill.
Q. Who was it you—
A. I went to see this fellow and he wasn't there.
Q. Who is he?
A. Runs a service station and tire place, recapping place.
Q. And then on your way back home you stopped to have a few beers, is that right?
A. Yes, sir. I had two.
Q. Had two beers. Where did you stop?
A. Nicks, down there at Fulton.
Q. Where is that in relation to Orleans and Williamsburg Road?
A. Just right on the corner.
Q. What is on the corner?
A. Nicks.
Q. On the corner of what?
page 251 } A. On the corner of Government Road there, coming round through Fulton.
Q. It is on the corner—
A. Government Road. Next to Grubb's Super Market down there in Fulton.
Q. Here is Williamsburg Road, now where would Nicks be?
A. Right down in here about, between Wood's Store and Grubb's Store. Right down there.
Q. On Williamsburg Road.
A. Yes, sir.
Q. It is on Williamsburg Road.
A. Going down through Fulton there.
Q. Nicks is on Williamsburg Road?
A. Yes, sir.
Q. Is it to the west—
A. It's to the right going down.
Q. Is it to the west of Louisiana Avenue?
A. I think it's right on the corner there.
Q. Right on the corner of Louisiana and Williamsburg?
A. Yes, sir.
Q. That is where Nicks is?
A. Yes, sir. I think so.

Elmore P. Gill.

A. At the scene of the accident? Yes, sir. I remember talking to them.

Q. Your recollection then as to what occurred was better at that time than it is right now, was it not?

A. Yes, sir. I remember what happened perfectly.

Q. You told them at that time, did you not, that
page 254 } you were making a left turn?

A. No, sir.

Q. You did not tell them that?

A. No, sir.

Q. Did you tell them that you had had four or five beers?

A. No, sir. I told them I had had a couple of beers.

Q. You told them you had had a couple. Now, you say there is a stop sign at Louisiana and Williamsburg?

A. Yes, sir. Right there at the drug store.

Q. And you stopped for that, of course?

A. Yes, sir.

Q. Turned in a normal manner?

A. Yes, sir.

Q. Went on up the street.

A. Yes, sir.

Q. And then you were going, you say, about 40 or 45 miles an hour?

A. Yes, sir. Open all up through there.

Q. Around that turn there?

A. Around what turn?

Q. The turn into Hatcher.

A. No, sir. I was driving about, dropped back to about 40 then.

page 255 } Q. You were driving 40 around that turn?

A. Yes, sir. More or less. I don't know exactly.

Q. How fast can you take that turn from Williamsburg into Hatcher? Can you take it at 40 miles an hour?

A. Yes, sir.

Q. Can you take it at 50?

A. I don't know. I haven't tried it.

Q. You haven't tried it; but it is a gradual turn, is it not?

A. Yes, sir.

Q. Before this accident you knew that Haislip was a boy that lived down on Osborne Turnpike.

A. Yes, sir.

Q. That is all you knew.

A. Yes, sir. I just knew—

Elmore P. Gill.

Q. You had seen him around.
A. Yes, sir.
Q. You and he had not been out together?
A. One time.
Q. One time?
A. Yes, sir.
Q. What was that?
A. I forgot what it was now.
Q. You mean you gave him a ride one time?
A. Yes, sir.

page 256 } Mr. Anderson: All right. I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Browder:
Q. Mr. Gill, what was it just a minute ago you said something about 40 and 45; what did you say about 15 miles an hour—

Mr. Anderson: I object to that, if Your Honor please. I do not recall the witness saying anything about 15 miles an hour on direct examination or cross examination. I object to counsel leading him.
Mr. Browder: I thought he said he was going about 15 and he put his foot on the brake, or something, I thought.

A. I sure did.
Q. I beg your pardon?
A. I sure did.
Q. Where were you then?
A. Getting ready to turn off on Hatcher Street.
Q. Where was it you were going about 40 or 45?
A. Coming up, down a little further past that.
Q. Are there any buildings about Orleans Street and where this accident occurred, or is it all open country?
A. Practically all open country.
page 257 } Q. How far did you get in school, Mr. Gill?
A. I went to the second grade.
Q. Second grade is as far as you went?
A. Yes, sir.

Mr. Browder: That is all. Thank you.

Jean Gill.

By the Court:

Q. When you were first up there on the witness stand being examined by your lawyer, Mr. Browder, I thought I overheard you say something about signs. Did you make any statement about signs of any sort or not?

A. Sir?

Q. Did you make any statement at all about signs, any kind of signs?

A. Yes, sir. It's a stop sign there.

Q. Other than a stop sign; did you make any statement at all about any other kind of signs?

A. I didn't see any other.

The Court: That is what I wanted to know.

By Mr. Browder:

Q. Where is the stop sign?

A. Right there on the corner, right there by the drug store.

page 258 } Q. Whereabouts? On up near Hatcher Street or back down the street?

A. No. Back down the street a little bit. Back down the street from there.

Mr. Browder: All right. You may step down.

Witness stood aside.

JEAN GILL,

introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Browder:

Q. Will you state your name, please?

A. Mrs. Jean Gill.

Q. Are you the wife of the defendant who is sitting here by me?

A. Yes, sir.

Q. Were you at home on the afternoon and evening of August 10, 1958?

A. Yes, sir.

page 259 } Q. Was anyone else there with you?

A. Yes, sir. My father-in-law.

Jean Gill.

Q. Who else?
A. And my children.
Q. What time had your husband left home?
A. He left home that evening and went and walked to the store. He had to walk about three or four miles to the store and got some gas for the car. Then he come back. He come back in I reckon it was around 7:30. And then he, about 8:00 o'clock he says, "I believe I'll run down to Fulton and see about a job."
Q. You say he left home about 8:00 o'clock?
A. Yes, sir.
Q. Had he, to your knowledge, had anything to drink before he left home?
A. No, sir.
Q. Have you seen his automobile since this accident occurred?
A. Yes, sir. I seen it the day afterwards.
Q. Where did you see it?
A. At Coleman-Scales.
Q. Can you tell us, was anything unusual about the tires, did you see?
A. Yes, sir. The one on the right-hand side from the back, viewing it from the back on the right-hand side
page 260 } had a hole in it. Looked like it had been blown out.
Q. Had a hole in it and looked like it had been blown out?
A. Uh huh.
Q. Is this the tire you are talking about? (Referring to Plaintiff's Exhibit No. 1.) Is this the way the car looked at the time you saw it at the service station?
A. Yes, sir.
Q. You say there was a hole in the tire?
A. Yes, sir.
Q. Around the side?
A. Yes, sir.
Q. Looked like it had been blown out?
A. Yes, sir.
Q. Did it look like that? Is this exactly the way it looked?
A. Yes, sir.
Q. Who was with you when you went by Coleman-Scales?
A. Mr. Shelton.
Q. He is an uncle of yours, or somebody's—
A. He is my brother-in-law.
Q. Mr. Shelton?
A. Yes, sir.

Richard M. Shelton.

Mr. Browder: Mr. Anderson, you may question the witness.

page 261 } Mr. Anderson: I have no questions.

Witness stood aside.

RICHARD M. SHELTON,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Browder:

Q. Will you please state your name and address, sir?

A. Richard M. Shelton, 5104 Eanes Lane.

Q. Mr. Shelton, are you any relation to either Mr. Gill or Mrs. Gill?

A. Well, I'm not any relation, no more than I married Mr. Gill's sister. By marriage.

Q. Did you go to Coleman-Scales and take a look at his car following this accident?

A. Yes, sir. The next day.

Q. Who was with you?

Q. Mrs. Gill.

Q. Did you notice anything unusual about any

page 262 } of the tires?

Mr. Anderson: Just a moment. I think I am going to have to object to this, Your Honor. There has been no testimony about the tire at the scene of the accident. The car has been moved; any number of things could have happened to the tire. It would be purest conjecture to admit evidence on this point.

Mr. Browder: If it please the Court, the officer testified it looked exactly like it did in that picture.

The Court: Objection overruled.

Mr. Anderson: Exception.

By Mr. Browder: (Continuing)

Q. Did you notice anything unusual about any of the tires, Mr. Shelton?

A. The right-hand tire was flat, had blown out. The front fender on the right-hand side was smashed up and the headlight.

Q. Did you see any hole in the tire?

B. W. Hughes.

A. Well, there was a hole in it. Seemed to be a blowout or puncture, you might call it.
Q. It looked to you like a blowout type of hole?
A. Yes, sir.
Q. Have you seen this picture of the car? (Referring to Plaintiff's Exhibit No. 1)
page 263 } A. No, I haven't seen the picture.
Q. I will show you Plaintiff's Exhibit No. 1, is this the car you saw?
A. Yes, sir. That's the car.
Q. Was the tire wrapped around the rim like it is there?
A. Wrapped around the rim something similar to that picture. That's the headlight—

Mr. Browder: Your witness.

CROSS EXAMINATION.

By Mr. Anderson:
Q. Do you know how the car was moved from the scene of the accident, Mr. Shelton?
A. I guess Coleman-Scales pulled it away. I don't know. It took me a half a day to locate it.

Mr. Anderson: I have no further questions.

Witness stood aside.

Mr. Browder: I believe that is the defendant's case, Your Honor.
Mr. Anderson: We have some rebuttal.

page 264 } B. W. HUGHES,
called in rebuttal in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Will you please state your name, Mr. Hughes, to these gentlemen over here?
A. B. W. Hughes, Traffic Division, Richmond Police Department.
Q. How long have you been with the Police Department?
A. Be five years in August.

fluence. However, due to the lapse of time and the injured party had already been taken to the hospital, we did not charge him with operating under the influence. He was unsteady on his feet and his conversation was a little jumbled.

Q. Were you present in Traffic Court when his case was tried?

A. I don't believe I was, sir.

Q. Is there any doubt or question in your mind about this man being under the influence, about him being intoxicated that evening?

A. I think if they could have had a blood test possibly we could have gotten a conviction.

Q. I am not talking about a conviction, I am talking about the time you observed him and were in his presence when he was talked to, is there any doubt in your mind about his intoxication?

A. No, sir.

Mr. Anderson: I think that is all.

CROSS EXAMINATION.

By Mr. Browder:

Q. Mr. Hughes, did anybody offer him a blood
page 267 } test?

A. No, sir. We didn't charge him with operating under the influence.

Q. That is an absolute requirement under the law if you are going to charge him with it, is it not?

A. That's right.

Q. You say his eyes were blood shot, he had a strong odor of alcohol on him, and he talked a little thick, is that the way it is?

A. Yes, sir. That is correct.

Q. You never even saw him before, you never knew how he talked before?

A. No, sir. Never saw him before.

Q. He had a lick on the nose; you could see where his nose had been cut, could you not?

A. He didn't claim injury at the scene.

Q. I know, but he had some, did he not?

A. I recall that he did have maybe a scratch. I don't recall how severe it was.

Q. He was limping a little bit and complaining a little bit about his leg, too, was he not?

B. W. Hughes.

Q. How long have you been investigating traffic accidents?
A. Four years and two months.
Q. Officer, were you with Officer Hayden the evening that he investigated, or that the two of you investigated an accident at Hatcher and Williamsburg Road?
A. Yes, sir.

Mr. Browder: I understand this is going to be rebuttal now, Mr. Anderson?
Mr. Anderson: That is right.

Q. That was in August, August 10th, last year?
A. I don't have any notes as to what date it was.
Q. All right, sir, let me ask you this: Do you
page 265 } remember this man here being at the scene of the accident?
A. Yes, sir.
Q. Will you state to us, did you talk with him?
A. I didn't question him myself. I was with Officer Hayden when he questioned him, the man.
Q. Were you close to him?
A. Yes, sir. I was in his presence.
Q. Would you tell us what his condition was—

Mr. Browder: Just a minute.

Q. —in regards to intoxication—let me finish the question —intoxication or sobriety?

Mr. Browder: Just a minute. If Your Honor please, this is not proper rebuttal testimony. The plaintiff has alleged that as a part of his original case; he undertook to prove it. We had to put our evidence on in conflict with it. This is certainly not proper rebuttal testimony. I object to it.
Mr. Anderson: I think it is proper. This officer, if Your Honor please, was not the primary investigating officer who wrote up the report.
The Court: I will overrule the objection.
Mr. Browder: I note the exception.

Q. You go ahead.
A. I observed his eyes as being blood shot and
page 266 } I smelled the odor of alcohol very distinctly on the man. And Officer Hayden and I discussed whether we should charge him with operating under the in-

been here all day long. I do not think it is proper rebuttal testimony.

Mr. Anderson: I think it is. We were certainly taken by surprise by the man claiming that he didn't even pick up these boys.

Mr. Browder: You have already put on three or four witnesses to testify what happened.

page 270 } Mr. Anderson: That may be, but I did not put this boy on. I am putting him on now to remove any questions about it.

The Court: I will overrule the objection, gentlemen.

Mr. Browder: I note the exception, sir.

By Mr. Anderson: (Continuing)

Q. There were how many of you?

A. Four.

Q. Who were they?

A. Louis Haislip, Clarence Davis, and William Haislip and me.

Q. Did you get in the car?

A. Yes, sir.

Q. Who else got in the car with you?

A. The other three boys.

Q. The other three boys.

A. Yes, sir.

Q. Who was in the front seat of the car?

A. Buddy Gill and the other guy.

Q. The other guy, can you describe him? Is he a white man, a colored man—

A. Colored.

Q. And the four of you got in the car?

A. Yes, sir.

page 271 } Q. Where did you get out of the car?

A. About three blocks from where we got in.

Q. After you had gotten in—

A. Yes, sir.

Q. —what happened to Eddie? Did he stay in the car?

A. Yes, sir.

Q. This colored man that was in the car, was he behind the hind the wheel?

A. Yes, sir.

Q. Where did he go when the car stopped?

A. I guess he went home.

Q. He went across the street?

A. Yes, sir. He went across the street.

Baynard Haislip.

A. I don't recall.
Q. It wasn't your responsibility at all, was it, Mr. Hughes.
A. No, sir.

Mr. Browder: All right, sir. That is all.

page 268 } A. I do recall he asked him if he was injured. He said that he didn't think he was.

Mr. Browder: All right.

RE-DIRECT EXAMINATION.

By Mr. Anderson:
Q. Officer, in investigating traffic accidents, do you attempt to determine a person's condition as to intoxication or sobriety? Is that one of the things you look for?
A. Yes, sir.

Mr. Anderson: All right, sir.

Witness stood aside.

page 269 } BAYNARD HAISLIP,
called in rebuttal in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:
Q. Baynard, I believe you are the brother of Eddie Haislip here?
A. Yes, sir.
Q. How old are you?
A. Seventeen.
Q. I only want to ask you one or two questions about the night that Mr. Gill picked you up. How many of there were you?
A. Four.
Q. Who were they?
A. Louis—

Mr. Browder: If Your Honor please, is there any reason why this witness should not have testified before? He has

Mr. Anderson: That is the plaintiff's case, if Your Honor please.

The Court: The plaintiff rests?

Mr. Anderson: Yes, sir.

The Court: Gentlemen of the jury, the Court has so many other appointments tomorrow on other matters that we will have to finish this case tonight. Suppose you be back at 7:00 o'clock, then, gentlemen. The same admonition I have given you before will continue through in connection with this recess for dinner. Be back then please at 7:00 o'clock.

Note: Court and counsel retire to Chambers at 5:33 P. M. as follows:

page 274 } In Chambers.

Mr. Browder: Your Honor, I would like to renew my motion now that all the evidence is in to strike the evidence on the same ground we made before.

The Court: All right. I will overrule your motion.

Mr. Browder: Exception noted.

Mr. Anderson: I am going to object to any instructions on contributory negligence. It certainly is incumbent upon the defendant to make out a case of contributory negligence unless it is shown by the evidence of the plaintiff. According to him he wasn't doing anything wrong. So he certainly cannot say if he wasn't negligent according to his evidence that the plaintiff was contributorily negligent. By the same token there is no evidence at all upon which a contributory negligence instruction can be based.

Mr. Browder: If Your Honor please, during the trial of the testimony being offered by the gentleman from the barber school, Your Honor said that you would wait and see whether it was connected up in any way before you would determine whether or not you would strike that evidence out.

page 275 } I again move to strike his entire evidence out on the ground that it was not connected up in any way. It undertook to prove that this boy was not suited to be a barber—I guess that was the object in introducing it—although he did not very well prove that upon the ground that he had never done any barbering before or anything of a similar nature.

Mr. Anderson: That evidence the Court excluded. The Court sustained the objection to my questions relating to the

Baynard Haislip.

Mr. Anderson: All right. I have no further questions.

CROSS EXAMINATION.

By Mr. Browder:

Q. How far was it from where you got out to Louisiana and Williamsburg Avenue?

A. How far we got out?

Q. How far did you get out from Williamsburg Avenue?

A. We didn't get out on Williamsburg Avenue.

Q. I know you didn't. How far were you from
page 272 } Williamsburg Avenue when you got out?

A. About two or three blocks.

Q. Two or three blocks?

A. Yes, sir.

Q. The street is perfectly straight up there, is it not?

A. Yes.

Q. You could see all the way up to Louisiana Street, could you not?

A. I could see.

Mr. Anderson: Just a minute.

Q. I meant up to Williamsburg Avenue, could you?

A. Yes, sir.

Q. Did you see the car go on up to Williamsburg Avenue and turn right?

A. He went on up to Williamsburg and went on down Williamsburg Road.

Q. He turned right at that corner, did he not, he turned right?

A. Yes, sir.

Q. You saw it do that, did you not? Did you see it make the turn up on Williamsburg Avenue?

A. No, sir.

Q. You could have if you had been looking,
page 273 } could you not?

A. I don't think so.

Q. Why?

A. Too dark. Couldn't see it.

Mr. Browder: All right, no further questions.

Witness stood aside.

Court's refusal to grant Instruction No. D for the reason that it is a correct statement of the law not elsewhere covered in any other instruction.

INSTRUCTION NO. H.

(Refused).

Mr. Browder: The defendant objects and excepts to the Court's failure to grant Instruction No. H. upon the ground that it is a correct statement of the law not elsewhere covered in any other instruction.

INSTRUCTION NO. I.

(Refused).

Mr. Browder: The defendant objects and excepts to the Court's failure to grant Instruction No. I for the reason that it is a correct statement of the law not elsewhere covered by any other instruction.

INSTRUCTION NOS. 8 & 9.

(Refused).

Mr. Anderson: The plaintiff objects and excepts to the refusal of Instructions Nos. 8 & 9 as being correct statement of the law and supported by the evidence.

page 278

INSTRUCTION NO. 7.

(Given).

Mr. Anderson: The plaintiff objects and excepts to the granting of Instruction No. 7 on the ground that there is not sufficient evidence to support it.

HERE ENDS THE OBJECTIONS AND EXCEPTIONS TO THE INSTRUCTIONS

Note: Court and counsel now return to the courtroom, court is reconvened at 7:40 P.M., and the hearing continues before the jury as follows:

Jury in.

affect that this would have on the boy's trade as a barber. So that evidence has been excluded.

The other evidence is that when he came to work at the barber school, what is required of a barber—standing on his feet and so forth, whether the boy had any back trouble while he was there. I did object to the exclusion of the evidence as to the affect his injuries will have upon his trade. I think it is proper evidence.

The Court: I am going to overrule the defendant's motion.

Mr. Browder: I note the exception.

page 276 } The Court: That was the only motion the Court had under reservation. I previously ruled out what you wanted to put in, and you have already taken your objections and exceptions to that, as I recall it.

HERE BEGIN THE OBJECTIONS AND EXCEPTIONS TO THE INSTRUCTIONS.

Mr. Browder: The defendant objects and excepts to the granting of any finding instructions in favor of the plaintiff for the reasons assigned in his motions to strike the plaintiff's evidence.

INSTRUCTION NO. 2.

(Given).

Mr. Browder: The defendant objects and excepts to the giving of Instruction No. 2 in that it refers to a speed in excess of 25 miles per hour and there being no evidence upon which the Court could hold that the speed limit at that particular point of the accident was 25 miles per hour.

INSTRUCTION NO. C.

(Refused).

Mr. Browder: The defendant objects and excepts to the Court's failure to grant Instruction No. C upon the ground that it is a correct statement of the law not elsewhere covered by any other instruction.

page 277 } INSTRUCTION NO. D.

(Refused).

Mr. Browder: The defendant objects and excepts to the

Gentlemen of the jury is that your verdict?
The Jury: Yes, ma'am.

Note: Thereupon there being no motion before the jury retired, the jury is dismissed and the following motion made:

page 281 } MOTION TO SET ASIDE THE VERDICT.

Mr. Browder: If it pleases Your Honor, the defendant moves the Court to set aside the verdict of the jury and enter up final judgment for the defendant upon the ground that there is no evidence of any gross negligence on his part efficiently contributing to the accident; upon the ground that the evidence is conclusive that the plaintiff was guilty of negligence as a matter of law efficiently contributing to the injuries received by him; or in the alternative, moves the Court to set aside the verdict and award a new trial for errors in the admission and exclusion of evidence; for error of the Court in failing to grant the various motions for mistrial and so forth during the course of the trial; for errors of the Court in granting and refusing instructions; and for the other errors apparent on the face of the record.

I would very much like to have the evidence transcribed and argue the point, sir.

The Court: Would you gentlemen care to say anything at this time, or not?

Mr. Anderson: No, sir, except this: I think it was a jury question. The jury was adequately and properly
page 282 } instructed and I for one can think of no error in it that would appear from the reporter's transcription, or that occurred during the course of the trial. We ask that judgment be entered.

The Court: What particular points, Mr. Browder, did you have in mind to be written up for the purpose of further argument on your motion?

Mr. Browder: Your Honor, I would like to have the entire evidence written up.

I feel that the verdict is contrary to the law and the evidence; I feel that there is no credible testimony on which the jury could possibly have found any gross negligence that caused this accident. I think the testimony that he was undertaking to make a right turn at 60 or 65 miles-an-hour at this particular point is absolutely incredible. I feel that Mr. Anderson went directly into the teeth of the Court's ruling before we started into the case in telling the jury about the man being unable to work—I mean to the fact that his

The Court: Gentlemen of the jury, you have heard the evidence. It is now the duty of the Court to instruct you as to the law applicable to this case. These are all instructions of the Court to be read and considered together.

Note: The Court now reads the written instructions. Thereupon following the Court's reading of the instructions to the jury, the case is argued by coun-
page 279 } sel.

The Court: Gentlemen of the jury, with you in the jury room you will have the original suit papers, the instructions of the Court, and the exhibits presented.

Gentlemen, this is the original suit paper on the back of which your foreman will write your verdict. To guide you, I will place a mark back here; this will be the area of the paper on which you will write your verdict.

This paper here is an alternative form verdict in blank, simply to guide you as to how your foreman would write it on here. Your foreman writes it and signs it. The order in which this appears on here is no indication at all from the Court about this. It just so happens it was drawn up in this way. One is what is called a defendant's verdict; the other is what is called a plaintiff's verdict. I think when you read that you will be able to put your verdict in this form—as I said, this is merely a form for your foreman to use —on the back of the Motion for Judgment.

Your sheriff will be in attendance right outside the door. When you have arrived at your verdict before
page 280 } coming back in Court your foreman will sign it on the back, knock on the door and advise the sheriff. He will in turn let me know and we will come back and receive your verdict.

Gentlemen, the case is now in your hands. Follow the sheriff.

Note: The jury retires at 8:45 p.m. and return at 9:37 p.m., as follows:

The Clerk: Gentlemen of the jury have you agreed upon a verdict?

The Foreman: We have.

The Clerk: Edward Louis Haislip an infant who sues by Virginia P. Haislip, his mother and next friend v. Elmore Payton Gill, Jr.: "We the jury on the issue joined find in favor of the plaintiff and assess his damages at $9,075.00 Signed C. H. Duggins, Foreman."

person conform to speed limitation signs if they were placed in the proper place was not met.

Aside from that, the evidence is that this was absolutely open territory. Everywhere around there. There were vacant fields on all four corners of this intersection, on page 285 } all four sides of this intersection for over three hundred feet, so that you could not pin point the spot a residential district or any other type of district.

Your Honor said you remembered the case of *Carroll* v. *Miller* that I cited as an authority for an instruction which I offered: That running off the road and hitting a telephone pole was not evidence of negligence. My recollection was that in this case the man ran over a curbing in the City of Norfolk and struck a tree. The Court said that that was not negligence.

The Court: I think that is true. The difference in speed would probably be materially different on that.

Mr. Browder: The Court said the fact you run off the road is not evidence of negligence.

One of my instructions on the subject, and other instructions that I offered, was that: Even if you believe he was guilty of gross negligence and if you believe the plaintiff was guilty of negligence you should not compare the negligence. That is the rule in Virginia. I have never seen a case tired in which that instruction was not given.

Your Honor is expecting me here at this time page 286 } of night to remember every error in the record, which I think was in error.

I feel that the verdict was unusually large. I have not made the motion that it was excessive, but I think that some of this evidence that went in with regard to his not being able to keep his job over at Larus and Brother is very likely to have had a considerable effect on the jury in their verdict. Also, the testimony of this man about the scars on his face and that kind of thing was not, in my opinion, proper.

I think that many of these things which came up in connection with the case are things upon further reflection that Your Honor would probably find meritorious.

The Court: Mr. Browder, of course the Court wants to recognize any motion made by attorneys as being a serious one. On the other hand, on each of the points that you have raised I have given such consideration as the Court could in the process of a normal trial day—if you call up to 10:00 o'clock at night a normal trial day. But I do not feel that those things which you are assigning as grounds for your motion to set aside would lead the Court to a different

employer could not hold a job open for him. I think evidence of that type without connecting it up in any manner whatsoever to any relevant point in the case is error. I feel that the Court's allowing testimony of the witness from Larus and Brother, as I recall it, with regard to the fact page 283 } that he wouldn't let him work was improper. I feel the evidence of the gentleman from the barber school that a barber has to be good looking and so forth and so on was not proper before the Court, since this man was not engaged in that line of endeavor before. I feel that the Court's allowing the secondary evidence of the plea of guilty, which I am completely satisfied would not be sustained by the records in Court—I have never seen a case of guilty entered in the Traffic Court of the City of Richmond. They never ask anybody whether they are guilty or not—was error. Maybe they do, but very, very seldom they ever do.

The Court: Did we not have that in one of your previous cases, upon this point of admission against interest on direct testimony of a similar nature?

Mr. Browder: I do not think that is admission against interest. I do not think that the person pleads guilty is the best evidence, whether he pleads guilty or not. The best evidence is the record of the Traffic Court, which is not here. Unfortunately, I did as I told the jury, I did send out just a very few seconds that the police officer testified about it. I had somebody go to the Traffic Court and I was told there would be somebody there at 2:00 o'clock. They page 284 } went back at 2:00 o'clock and they were told that they were closed up for the day. Your Honor said we were going to complete this case tonight, so there wasn't anything I could do about that.

I think that this man was on a street approaching an intersection. There is absolutely no testimony whatsoever from anybody that there were any signs limiting the speed to 25 miles-an-hour on any street that he was on. There was evidence that there were some signs at various other places a couple miles away in one instance, a mile or so away from another direction, and several blocks away from another direction. The conditions are all different in those spots. It is impossible to know what the speed limit was at the scene of the accident taking the route this man went down: Main Street then either on Louisiana or Orleans Street. There is no evidence at all of any speed limitation signs there. I do not think there are any, but certainly there is no evidence of it. I think that that being true that the requirement that a

ruling if it had the evidence all written up and
page 287 } we go through the more formal matters of arguing the motion at a later time.

I will concede there are some close points in the case. At the same time, I believe that the Court after hearing the evidence and ruling as it did, and granting instructions as it did and refusing those which it did, that the matter was a jury question. For that reason the Court will overrule your motion.

Mr. Browder: I note the exception to the ruling of the Court.

• • • • •

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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