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Record No. 5114

In the Supreme Court of Appeals of Virginia at Richmond

MRS. L. SNYDER, ET AL., ETC.

v.

SHIRLEY GINN

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

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5114

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 27th day of November, 1959.

MRS. L. SNYDER, ET AL., ETC., Plaintiffs in Error,

against

SHIRLEY GINN, Defendant in Error.

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

Upon the petition of Mrs. L. Snyder, B. P. Snyder and S. Snyder, individually and as partners trading as L. Snyder's Department Store, a writ of error and *supersedeas* is awarded them to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 27th day of July, 1959, in a certain motion for judgment then therein depending wherein Shirley Ginn was plaintiff and the petitioners were defendants.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of eighty-five hundred dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

* * * * *

page 6 } INSTRUCTION NO. 1-P.

The Court instructs the jury that the plaintiff in this case occupied the status of an invitee on the premises of the defendants and it was then and there the duty of the defendants to exercise reasonable care to keep and maintain said premises in a reasonably safe condition for the use of the plaintiff and if you believe from a preponderance of the evidence that the defendants failed so to do when they were guilty of negligence, and if you believe that such negligence was the sole proximate cause of plaintiff's injuries you should find for the plaintiff.

Granted December 8, 1958.

J. S. S., JR., Judge.

page 7 } INSTRUCTION NO. 3-P.

The Court instructs the jury that if you find for the plaintiff in fixing her damages you may take into consideration such of the following elements as you believe established by a preponderance of the evidence:

1. The nature, extent and duration of plaintiff's injuries;
2. Psysical pain and suffering, mental anguish and nervous shock undergone by plaintiff on account of her injuries;
3. The expense incurred by plaintiff for hospitalization and medical care in endeavoring to be cured of her injuries, and such expense as will be incurred in the future as a consequence of said injuries:
4. Loss of earnings suffered by plaintiff.

And the jury may fix damages at such sum as you believe just and proper, not exceeding the amount sued for.

Granted December 8, 1958.

J. S. S., JR., Judge.

page 8 } INSTRUCTION NO. D-1.

The Court instructs the jury that the basis of the plaintiff's claim is that the defendants negligently maintained two clear

plate glass doors and partitions in such a manner that a person, in the exercise of due care, could not upon leaving the store, discern the presence of the inside plate glass door or partition.

The fact that the defendants maintained clear plate glass doors or partitions and that the plaintiff was injured by coming into contact with one of them is not, of itself, evidence of negligence upon which a claim can be based. On the contrary, the defendant is presumed to have been free from any negligence and to have used all reasonable and proper care in connection with the selection, installation and maintenance of its doors and partitions of its store entrance and this presumption of the exercise of proper care remains with the defendants throughout the trial and applies at every stage thereof. This presumption cannot be overcome unless and until the plaintiff proves to your satisfaction, by a preponderance of the evidence, to the contrary.

If, after hearing all the evidence, you find that the defendants were not negligent, as charged, or, you are left in doubt as to whether they were negligent or not negligent, or that the plaintiff herself failed to make reasonable use of her own faculties for her own safety, or, was guilty of negligence in any decree upon her own part that either caused or contributed in any manner to the alleged accident, then the plaintiff is not entitled to any damages.

Granted 12/8/58.

J. S. S., JR.

page 9 } INSTRUCTION NO. D-2.

The Court instructs the jury that the law does not contemplate a recovery of damages in all accidental injury cases. If you find from the evidence that this claim arises out of purely accidental means, and without negligence on the part of the defendants, the plaintiff is not entitled to recover any damages.

Granted 12/8/58.

J. S. S., JR.

page 10 } INSTRUCTION NO. D-3.

The Court instructs the jury that it was the duty of the plaintiff when approaching the entrance door, with the intention of departing from the premises, to take all reasonable

precautions to look and ascertain the location of the exit door and to use the same properly, and also to use reasonable precautions to avoid the glass partition, and if you find from the evidence, that she failed in any manner or respect to do so, then she was guilty of such negligence on her part that would bar her from recovery of any damages in this case.

Granted 12/8/58.

J. S. S., JR.

page 11 } INSTRUCTION NO. D-5.

The Court instructs the jury that there is no evidence of permanent injury or damage to the plaintiff.

Granted 12/8/58.

J. S. S., JR.

page 12 } INSTRUCTION "X."

The Court instructs the jury that they must not allow sympathy for the plaintiff to enter into your deliberations.

Granted 12/8/58.

J. S. S., JR.

page 13 } INSTRUCTION NO. 2-P.

The Court instructs the jury in considering the issue of whether the premises in question were reasonably safe for plaintiff's use you may take into consideration whether other invitees met with mishap under similar circumstances as those encountered by plaintiff.

Refused December 8, 1958.

J. S. S., JR.

page 14 } INSTRUCTION NO. D-4.

The Court instructs the jury that any evidence of previous occurrences not reported to or known to the store owners or officials cannot be made the basis of the charge made in this case.

Refused 12/8/58.

J. S. S., JR.

page 15 } INSTRUCTION NO. D-6.

The Court instructs the jury that if they are unable to determine, from the evidence, whether the plaintiff was subject to emotional instability prior to the accident and they are unable to ascertain whether or not the accident produced any additional emotional instability, or, whether or not it would develop regardless of the alleged accident, then the evidence is insufficient upon which to support a claim for damages.

Refused 12/8/58.

J. S. S., JR.

page 16 } INSTRUCTION "Y."

Mr. Campbell's main argument is based on Mrs. ..... testimony—I move the court to ..... the testimony of Mrs. Bonney to the credibility of Mrs. ..... and not evidence of negligence against the defendants.

Refused 12/8/58.

J. S. S., JR.

• • • • •

page 18 } July 22, 1959.

Mr. Gordon E. Campbell
Bank of Commerce Building
Norfolk, Virginia

Mr. L. S. Parsons
Parsons, Stant, Parsons & Mirman
Board of Trade Building
Norfolk, Virginia

Gentlemen:

After a careful consideration of the transcript, instructions and briefs in this case, it is my conclusion that the motion to set aside the verdict should be overruled, and judgment entered in favor of the plaintiff on the verdict.

The cases relied upon by the defendant are strongly persuasive, but in each of these cases the plaintiff had actual knowledge of the condition upon which the alleged negligence

was based, and was properly held guilty of contributory negligence; while this is not true in the case at bar.

In my opinion, the questions of the primary negligence of the defendant and the contributory negligence of the plaintiff were properly submitted to the jury; and I am also of the opinion that the other grounds relied upon by defendant do not constitute grounds for setting aside the verdict.

An order may be presented for entry accordingly.

Very truly yours,

J. SYDNEY SMITH, JR., Judge.

JSSjr:meg

page 19 }

* * * * *

ORDER.

This day came again the parties, by counsel, on the motion heretofore made on December 8, 1958, to set aside the verdict of the jury and enter up judgment for the defendants or, in the alternative, set aside the verdict and grant the defendants a new trial upon the grounds that the said verdict is contrary to the law and the evidence, and without evidence to support it and for errors of the Court in the admission and rejection of evidence, and granting and refusal of instructions, and refusing to strike the plaintiff's evidence, and now having been fully heard and maturely considered by the Court is is overruled, to which action of the Court the defendants, by counsel, duly excepted.

Whereupon, it is considered by the Court that the plaintiff recover of the said defendants the sum of $7,500.00 with interest thereon to be computed after the rate of six per centum from the 8th day of December, 1958, until paid, together with the costs about her suit in this her behalf expended.

And thereupon the said defendant having signified the intention of presenting to the Supreme Court of Appeals of Virginia, a petition for a writ of error and *supersedeas* to the judgment herein, it is ordered that execution upon the said judgment be suspended for a period of sixty days from the date hereof upon the said defendant or someone for it entering into and acknowledging a proper suspending bond or combination suspending and *supersedeas* bond conditioned

according to law, before the Clerk of this Court,
page 20 } in the penalty of Eight Thousand Five Hundred
Dollars ($8,500.00), with security to be approved by said Clerk.

Enter July 27, 1959.

J. S. S., JR.

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page 22 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendants, Mrs. L. Snyder, B. P. Snyder and S. Snyder, individually and as partners trading as L. Snyder's Department Store, herewith serve notice of their appeal and state the following assignments of error in compliance with Rules of Court 5, Section 4:

1. The Court erred in overruling the motion to strike the plaintiff's main evidence at the close of plaintiff's testimony. Reporter's Transcript, Page 80-81.
2. The Court erred in overruling defendants' motion to strike plaintiff's testimony at the conclusion of all the evidence. Reporter's Transcript, Page 111.
3. The Court erred in overruling the motion to set aside the verdict of the jury and enter judgment for the defendants, or, in the alternative, to grant a new trial.
4. The Court erred in overruling the objection to asking the witness, Samuel Leiderman, if he knew whether or not on the occasion that Mrs. Ginn bumped into the door, whether there had been an earlier person on that day who had bumped into the door. Reporter's Transcript, Page 23.
5. The Court erred in overruling the objection to plaintiff's attorney hammering at the witness L. Gumm, and making the statement in overruling the objection by saying "I think the witness deserves to be hammered at." Resporter's Transcript, Page 58.
6. The Court erred, as shown in Reporter's Transcript,
Page 3, in overruling the objection to the question
page 23 } addressed to the witness, L. Gumm, as to whether
or not she had had a discussion with Mrs. Bonney about anyone else having bumped into that door and further by saying to the witness "answer yes or no."

7. The Court erred as shown on Reporter's Transcript, Pages 72 through 75 inclusive, wherein the Court permitted examining of Mrs. Bonney about alleged prior accidents to the time of the accident involved, over the objection and exceptions of the defendants.

8. The Court erred in refusing to strike out the testimony of Mrs. K. Bonney, as shown on Reporter's Transcript, Page 76 beginning at line 4, and in refusing to tell the jury that, if the evidence was permitted, that it could only be used to impeach the creditability of the witness, L. Gumm, and not substantive evidence against the defendants. The Court, by that refusal to limit the testimony to the creditability of the witness did thereby allow it to go to the jury for general purposes.

9. The Court erred in entering final judgment in favor of the plaintiff on the 27th day of July, 1959, over the objection and exception of the defendants.

10. The Court erred in the granting and refusal of instructions, as shown by the exception noted in Reporter's Transcript, Pages 111 through 114 inclusive.

11. The Court erred in granting any instructions on behalf of the plaintiff that submitted the case to the jury for decision.

12. The Court erred in submitting to and allowing the jury to consider evidence relating to, or involving a question of other accidents prior to or after the date of the accident involved.

MRS. L. SNYDER, ET AL., ETC.,
By L. S. PARSONS
Of Counsel.

I certify that on 8-28-59 I mailed a true copy of the foregoing pleading to each Counsel of Record for the plaintiff.

L. S. PARSONS.

Filed 8-28-59.

H. L. ....., D. C.

• • • • •

page 3 } Norfolk, Virginia, December 8, 1958.

A jury was empaneled and sworn; the reporter was sworn; the witnesses were sworn, and excluded on motion of counsel for the plaintiff; opening statements were made by counsel; and the following evidence was introduced:

SHIRLEY B. GINN,

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

Examined by Mr. Campbell:

Q. Please state your name.

A. My name is Shirley B. Ginn.

Q. Do you mind telling me how old you are, Mrs. Ginn?

A. I am twenty-five.

Q. Are you married?

A. Yes, I am.

Q. Talk a little louder because these folks over here have got to hear you. Do you have any children?

A. No, I haven't.

Q. Where are you employed?

A. City of Norfolk Health Department, Environment and Sanitation Division.

Q. How long have you been so employed?

A. For three and a half years with this department.

Q. Mrs. Ginn, prior to this accident what had
page 4 } been your state of health?

A. A nervous condition.

Q. Prior to or subsequent?

A. No; subsequent, since this accident.

Q. Prior to this accident had you been to a doctor for any nervous condition?

A. No, sir. I had not.

Q. Talk a little louder.

A. No, sir, I had not.

Q. Do you recall when the last time was that you were attended by a doctor prior to this injury?

A. Yes. I stuck a butcher knife in my finger and I was administered a tetanus shot which reacted on me.

Q. How long ago?

A. That was a year back.

Q. Other than being treated for a cold, or something of that nature, had you ever over the course of the last two or three years received any hospital treatment?

A. No, sir.

Q. On the 25th of April were you upon the premises of L. Snyder's Department Store?

A. Yes, sir, I was.

Q. You were on the premises of L. Snyder's?

A. Yes, sir.

Q. By what entrance did you enter?
page 5 } A. I entered at the side entrance on City Hall Avenue side.

Shirley B. Ginn.

Q. What time of day was that?
A. It was approximately 11:45.

By the Court:
Q. A.M. or P.M.?
A. A.M.
By Mr. Campbell:
Q. Was that on your lunch hour?
A. Yes, sir, it was.
Q. Had you been working that day?
A. Yes, sir.
Q. Were you by yourself?
A. Yes, sir, I was.
Q. What entrance or exit were you taking?
A. I was taking the Church Street exit when I went out.
Q. What happened to you, Mrs. Ginn?
A. Well, I had gone in the side way to go to the cafeteria—
Q. You will have to talk a little louder.
A. —to go to the cafeteria to get me a cup of coffee. I had obtained this coffee in a bag and had walked through the store, just to walk through to shop. My only reason for going out of the front way, inasmuch as the side entrance page 6 } was closer to my place of employment, was that it was a pretty day and I thought I would walk through and walk out those doors and walk around the building and back to the office. I had an hour just to myself to spend.
Q. Had you to your recollection used that Church Street entrance prior to this?
A. No, sir, I had never used it. We had always come and gone out of the side entrance there, inasmuch as it was closer. We would come through the parking lot—
Q. That is enough on that. Did you come in contact with any obstruction?
A. No, sir.
Q. What happened to you?
A. I had gone through, as I say, and upon getting to the doors I glanced to each side of me. At that time there was a jewelry counter on one side, and I had glanced at that, and then I glanced up and got full straightaway, and had seen the doors—the outside doors. I was approaching diagonally.
Q. Could you see the doors—the outside doors?
A. Yes, sir, I could see the outside doors.

Shirley B. Ginn.

Q. Was there anything so far as you could notice between you and these outside doors?

A. There was nothing; there was nothing between. There was no counter or anything up there at that time. page 7 } There was nothing to obstruct my view. I could see those outside doors, but there was nothing between me and there. I was upon this plate glass frame window on the side. I was on that before I knew anything.

Q. And what happened to you?

A. I banged into this glass. At the time I hit this glass the last thing I heard was—it did not knock me out. It just completely dazed me at the time. At the time I hit it this gentleman said, "Oh, no. The second one this morning." Well, I gathered myself—

Mr. Parsons: If Your Honor please, I ask that that be stricken out and the jury be told to disregard it.

Mr. Campbell: That gentleman is a departmental head, if Your Honor please.

The Court: She has not so testified.

Mr. Campbell: I will bring that out now.

By Mr. Campbell:

Q. Do you know who the gentleman was that said that?

A. Yes; Sam Leiderman.

Q. Do you know whether or not he is the head of the Jewelry Department there?

A. No, sir, I don't know who is the head.

Mr. Campbell: He is available.

The Court: The Court will sustain the objec- page 8 } tion. The jury will understand that they cannot consider that in the case until it is shown that this statement was made by an employee of the company, someone in authority to speak for the Company.

By Mr. Campbell:

Q. Did you have any physical evidence of having struck that door?

A. Oh, yes. A knot immediately arose, puffed up on my forehead. I went back to work in that condition.

Q. Mrs. Ginn, was there anything between you and those outside doors on your line of walking to indicate that there was a glass partition or anything between you?

Shirley B. Ginn.

Mr. Parsons: If Your Honor please, I object to the form of the question. He is indicating the answer instead of asking a question.

Mr. Campbell: I asked her whether there was anything between her and the outside doors.

Mr. Parsons: You modified too much.

By Mr. Campbell:

Q. Answer that question.

A. No, sir, there was not anything between me and that door.

Q. Mrs. Ginn, have you been hospitalized as a result of this?

A. Yes, sir.

page 9 } Q. Where?

A. At DePaul Hospital for ten days.

Q. Have you been under a doctor's care?

A. Yes, sir; once a week since that time.

Q. Who was the doctor? Do you know?

A. Dr. William Gibbs.

Q. You have seen him once a week since April, or shortly thereafter?

A. Yes, sir.

Q. Are you still under his care?

A. Yes, sir, I am.

Q. Have you been subjected to any lab tests?

A. Yes, sir, I have.

Q. Who was the first doctor that you went to?

A. Dr. Laibstain.

Q. Did he refer you to someone else?

A. Yes, sir, he did. He handled me for two days and then he said—

Q. Don't say what he said. To whom did he refer you?

A. Drs. McFadden and Thomson.

Q. Did they refer you to anyone?

A. They called in Dr. Gibbs. He was brought in while I was at the hospital.

Q. Have you been put to any expense as a re-

page 10 } sult of this accident, Mrs. Ginn?

A. Yes, sir, I have.

Q. Do you recall what your hospital bill was from DePaul?

A. It was $167.00 or $168.00.

Q. How much were your laboratory tests?

A. The tests that they ran will run approximately $125.00.

Shirley B. Ginn.

By the Court:

Q. Speak louder. All of these jurors over here are trying to hear you. Speak louder.

By Mr. Campbell:

Q. What has been Dr. Gibbs' bill to date?

A. It is approximately $384.00; something like that.

Q. Have you had any medication?

A. Yes, sir. I have a prescription that is filled every ten days.

Q. Do you know how much you have had to pay for that medication?

A. It is $5.15 every refilling.

Q. Do you recall offhand what you have spent to date for that medication?

A. It is approximately $100.00—ninety something.

Q. What was the bill that you had to pay or did
page 11 } you get from Dr. Thomson?

A. His bill was $50.00.

Q. And Dr. Laibstain?

A. Eleven something.

Q. Eleven? Did you lose any time from work, Mrs. Ginn?

A. Yes, sir. Two and a half months I lost before I returned to work. I returned to work on July 15th and worked some days four hours and some days three and a half. It varied.

Q. You were out two and a half months on a straight run?

A. Yes, sir. I worked these hours in the last of August.

Q. What is your salary?

A. My salary is $236.00 a month.

Q. $236.00?

A. Yes, sir.

Q. For how long a period of time was it that you only worked three or four hours a day?

A. A month and a half.

Q. A month and a half? Mrs. Ginn, are you still suffering as a result of this accident?

A. Yes, sir, I am, but I am much better now; much better.

page 12 } Mr. Campbell: You may inquire, Mr. Parsons.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mrs. Ginn, speaking of your salary, did you continue on the pay roll during the time you were off or not?

Shirley B. Ginn.

A. Yes, sir. I had a day a month annual sick leave.

Mr. Campbell: If Your Honor please, if she used up her sick leave she is still entitled to it.

Mr. Parsons: It depends on how much she used up.

The Court: The question of sick leave would not be material, but was she paid regardless of whether she worked or not is what the inquiry is, I assume. Is that it?

Mr. Parsons: Yes, sir.

The Court: If she was paid, regardless of whether she was working or not, it would be proper.

By Mr. Parsons:

Q. You were paid?

A. Yes, sir. I had time that I had earned: a day a month. I had been with the City of Norfolk for eight
page 13 } years, so I had accumulated time.

By the Court:

Q. Then you were paid, as I understand it, on the basis of what you were entitled to as accumulated time?

A. Yes, sir.

By Mr. Parsons:

Q. How much accumulated time did you have at the time of this accident?

A. I could not give you that information. I don't know.

Q. One day a month you say you had?

A. I had a day a month.

Q. You had been working there—

A. —eight years.

Q. Had you taken your sick leave at previous times?

A. No. I had never used my sick leave.

Q. You think that you had enough sick leave time to take care of all of this two and a half months?

A. Yes, sir, I did.

Q. That kind of settles that. I am glad you did. Mrs. Ginn—

Mr. Campbell: If Your Honor please, at this time I think it might be appropriate to apprise the jury that this lady, having used up her sick leave, nevertheless it is an element of her damages, because if she should be sick be-
page 14 } yond this, there would be a loss to her.

The Court: That is a matter of argument.

Mr. Campbell: All right, sir.

Shirley B. Ginn.

The Court: I do not think the Court should necessarily make that statement.

Mr. Campbell: I will submit an instruction on that, because I think that is the law.

A. After I went back to work in July, when I went back on July 15th, when I only worked part time, I did not have the time coming to me. I had used up my time.

Mr. Campbell: If Your Honor please, I object to this line of inquiry from its inception.

Mr. Parsons: She volunteered that.

Mr. Campbell: From the inception of his making inquiry as to her sick leave. I object to it and ask the Court to instruct the jury to disregard it.

The Court: In view of your objection the Court will make the following ruling: that the time the plaintiff had accumulated as sick leave belongs to her, and it is not to be considered as reducing damages, if any, that she may be entitled to.

By Mr. Parsons:

Q. Mrs. Ginn, was that sick leave absolutely charged up to you, taken away from you, or does it still exist?

page 15 } A. No, sir. It was taken away from me.

Q. It was taken away from you?

A. Yes, sir.

Q. But the month and a half that you were on part time you did not have any sick leave?

A. That is right.

Q. Mrs. Ginn, for sometime prior to this accident you had some emotional difficulty, didn't you?

A. No, sir, I never had any emotional difficulty.

Q. None at all?

A. I led a perfectly normal life; a most contented life.

Q. You had no family difficulty before you were injured?

A. No, sir; a very happy home life.

Q. Mrs. Ginn, you had been in that store quite often, hadn't you?

A. That is right. I had done a lot of shopping there.

Q. You know that it has four floors? You have been all over it?

A. No, I don't think I have covered but three floors.

Q. Three floors? It is a big place?

A. Yes, sir.

Shirley B. Ginn.

Q. You said that you went in from the side door
page 16 } and that you went to get a cup of coffee at the cafeteria?

A. Yes, sir.

Q. That is right far back in the store, isn't it?

A. At the side entrance where I came in the cafeteria is right there at that door.

Q. Then that was a long distance from the Church Street entrance?

A. Yes, sir.

Q. You, however, walked up to the Church Street entrance to go out, because you just wanted to go that way?

A. Yes, sir. I had an hour. Usually I was with someone. We went together. We usually spent our lunch hour together. There was always one. But, this was X-ray day and, to break it down for you, we had to go on split shifts, so that was why I was alone.

Q. This was a very clear day?

A. That is right. It was a beautiful day.

Q. When you approached that doorway you said that as you approached it you glanced over at the jewelry counter, and as you did you hit your head?

A. No, sir, not as I glanced at the jewelry counter.I had glanced at the jewelry counter and had completely left that and was on my way out.

Q. When you glanced at the jewelry counter and turned, did you come almost immediately in contact with the glass?

A. No, sir.

page 17 } Q. How far were you away from that doorway when you glanced at that jewelry counter?

A. I am not thorough on measurements, sir. I can only tell you that the jewelry counter is quite near the door. But, I had stopped at the jewelry counter and had looked at what I was admiring, and had completely gathered myself and was on my way out and was looking at the doors. The doors that I saw were the Church Street doors on the outside.

Q. The jewelry counter is immediately in front of the door?

A. Yes.

Q. It is not actually in front of the plate glass window, but it is in front of the door. Is that correct?

A. No, sir, I could not say.

Q. You say that you were standing at the jewelry counter?

Shirley B. Ginn.

A. I had just viewed the jewelry counter.

Q. You stepped away from the jewelry counter to go to the door?

A. Yes, sir. I left the jewelry counter and was walking. I did not just glance and walk.

Q. You were in a perfectly normal condition?

A. Yes, sir. I was.

page 18 } Q. As you moved did you look for the doors?

A. Yes, sir, I looked and saw the doors clear in front of me—the outside doors, yes, sir.

Q. Did you see the handles on the doors?

A. No, sir. I just saw doors on the outside. I figured that I had plenty of leeway between where I was and the doors on the outside.

Q. Did you see the framework on the doors?

Mr. Campbell: Which doors—the inside doors or the outside doors?

Mr. Parsons: The inside doors.

A. No, sir, I did not see the framework on the doors on the inside.

By Mr. Parsons:

Q. Did you see the framework at the bottom and around the sides of the plate glass windows?

A. No, sir. I was not looking for that. I was looking straight ahead. I was looking at the doors to go out.

Q. If you had looked you could have easily seen that it had a metal base on the bottom, couldn't you?

A. Yes, but you have to take into consideration that you just don't walk through and automatically glance down at the floor and all around you. My mind wasn't on the floor.

If my mind had been on the floor it would ap-
page 19 } parently have done a great deal more damage than what it did. But, my eyes were straight ahead of me.

Q. You did not look down where you were stepping?

A. No, sir, I did not look down.

Q. Mrs. Ginn, if you had looked—you had an open and obvious doorway there—you could have seen if you looked at it, couldn't you?

A. I saw the doors, yes, sir, but I struck that clear plate glass. I never saw the first set of doors.

Shirley B. Ginn.

Q. If you had been watching and looking you could have easily seen those doors with handles on them and framed in, couldn't you?

A. No, sir, I could not see that, because I was looking straight ahead. I was watching where I was going.

Q. The periphery of your eyes would cover that whole door and window, wouldn't it?

A. Maybe for some people, but it did not mine, sir. As I say, I struck this clear plate glass with absolutely no obstruction as they have now; there was nothing there to make me turn.

Q. Let's don't dodge each other. You could have easily seen the bottom casing of the window and the framing of the door if you had looked at it, couldn't you?

Mr. Campbell: If Your Honor please, she has answered that three times.

page 20 } Mr. Parsons: She has answered it by modification. I would like to have a direct answer.

By the Court:

Q. What is your answer?

A. Repeat your question, please.

By Mr. Parsons:

Q. If you had been looking at the door as you walked out, where the door was in the middle of the framework—

A. But I was coming at an angle.

Q. Let me ask the question. I want you to answer the question. If you had been looking that way you could have easily seen the doorway as distinguished from the window with the bottom casing on it, couldn't you?

A. If I was looking right straight ahead, but as I say, I was coming at an angle.

Q. If you were looking straight ahead you could have seen it, couldn't you?

A. I guess I could have.

Q. Do you want to explain it someway?

A. I think I have explained all I can explain.

Q. Mrs. Ginn, I hand you a picture of the doorway from the inside. Does that look like the situation?

A. That is right.

(Received and marked "Exhibit D-1.")

Samuel Leiderman.

Q. Did you or not know that someone had bumped into the door on that day?
A. I heard, yes.
Q. You heard?
A. Yes.
page 23 } Q. You heard the person bump into it?

Mr. Parsons: He heard of it, he said.

A. I heard of it. It is so hard to pinpoint down anything. The only recollection I have of it, I was waiting on a customer and I saw somebody come in or brought in the doorway after whatever happened.

By Mr. Parsons:
Q. Please don't tell what somebody told you.

By Mr. Campbell:
Q. Mr. Leiderman, during the months that you were there could you give me an estimate as to the number of people who had bumped into the door?

Mr. Parsons: I object to the question.
The Court: Objection sustained as to the form of the question.

By Mr. Campbell:
Q. Do you know whether or not on the occasion that Mrs. Ginn bumped into that door, whether there had been an earlier person on that day who had bumped into the door?

Mr. Parsons: I object to the question.
The Court: Objection overruled.
Mr. Parsons: Exception.

A. Will you state that again?

(The question was read by the reporter.)

A. I don't know.

page 24 } By Mr. Campbell:
Q. Mr. Leiderman, do you recall having made any expression about Mrs. Ginn being the second one on that day?

page 21 } By Mr. Parsons:

Q. Those are the conditions under which you said that you could have seen if you had been looking. Is that right?

A. Yes, sir.

Mr. Parsons: That is all.

By Mr. Cambell:

Q. You may come down.

* * * * *

(The following proceeding was had in the absence of the jury:)

Mr. Parsons: If Your Honor please, I move to strike the plaintiff's evidence, on the ground that she stated that had she been looking straight ahead she could have seen the inside doorway.

(The motion was overruled and an exception noted by Mrs. Parsons. The trial was then resumed in the presence of the jury.)

page 22 } SAMUEL LEIDERMAN,

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

Examined by Mr. Campbell:

Q. Please state your name.

A. Samuel Leiderman.

Q. Mr. Leiderman, what is your occupation?

A. Manager of Fine Jewelry Department at L. Snyder's.

Q. How long have you been connected with L. Snyder's?

A. Since August of 1957.

Q. Since August 1957?

A. Yes.

Q. Is that a separate department of the store?

A. It is a leased department.

Q. Were you on duty on the 25th of April, 1958?

A. To the best of my knowledge.

Q. Were you on duty the day that this lady bumped into the door?

A. I don't know. I could not tell you. I did not see the lady bump into the door.

Mr. Parsons: I object.
The Court: Before?
Mr. Campbell: Prior.
The Court: You are asking a new question now.

By Mr. Campbell:
Q. Prior to that, prior to the injury of Mrs. Ginn?

Mr. Parsons: Of his own knowledge.

By the Court:
Q. Of your own knowledge.
page 26 } A. Oh, no; just what I heard. I did not see anything.

By Mr. Campbell:
Q. Only what you heard?
A. That is right.

Mr. Parsons: If Your Honor please, I move to strike out his answer as to what he heard.

(The following proceeding was had in the absence of the jury.)

By Mr. Campbell:
Q. Mr. Leiderman, is it not public knowledge that there have been other people bumping into that glass panel?

Mr. Parsons: Before the accident?

By Mr. Campbell:
Q. Prior to April 25th of this past year—general knowledge in the sense that it was such an occurrence as would let it be generally known that people had bumped into the panel?

Mr. Parsons: Prior to the accident?
Mr. Campbell: I have stated that four times in my question.
Mr. Parsons: You modified it afterwards, so the witness does not understand it.

By the Court:
Q. Anything that happened after the accident
page 27 } you will disregard. If somebody else was injured after the accident, that has nothing to do with it

Samuel Leiderman.

Mr. Parsons: I object to that, if Your Honor please.
A. No, sir, I did not make any statement like that.

By Mr. Campbell:
Q. Have you seen others bump into that door?

Mr. Parsons: I object, if Your Honor please. He does not specify when.

By Mr. Campbell:
Q. Within the period of the months that you were employed there from August.

Mr. Parsons: He has never said that he was employed by L. Snyder's. He had a leased department. He operates it, himself.
The Court: You mean during the time that he performed his duties at that location?
Mr. Campbell: Yes.
The Court: Prior to?
Mr. Parsons: Prior to or after?
Mr. Campbell: Prior to.
Mr. Parsons: I still object, if Your Honor
page 25 } please.
The Court: Be specific.

By Mr. Campbell:
Q. Prior to Mrs. Ginn being injured on the 25th of April, 1958, did you have knowledge of others bumping into that door?

By Mr. Parsons:
Q. Of your own knowledge.
A. Seeing it or hearing it?
Q. Not—

Mr. Campbell: I have him under examination.

By the Court:
Q. Don't answer this question until I rule on it.

By Mr. Campbell:
Q. Do you know of others bumping into this glass panelling there at the Church Street entrance during the period of time that you were employed there?

Samuel Leiderman.

By Mr. Campbell:

Q. Have you heard of any accidents subsequent to Mrs. Ginn's?

Mr. Parsons: I object to that. It is not admissible.

The Court: It would not be admissible, of course, and I would not allow it before the jury, except he had heard it and he does not know when it was.

page 29 } By the Court:

Q. Is it your testimony that you have heard it since that time?

A. I heard that the plate glass was broken. Whether this is the party, I would not know which one.

By Mr. Campbell:

Q. When was the plate glass broken?

A. I could not tell you the time.

By Mr. Parsons:

Q. That was from the outside, too, wasn't it?

A. I take for granted that it was from the outside, because I am in the inside.

By Mr. Campbell:

Q. Is that the only instance that you have heard of people bumping into that door?

A. No. I have heard of several occasions.

Q. Several occasions?

A. Whether it was one or two or three, I would not know.

Q. In relation to the time that you went into the establishment in August, how soon after you were there was it that you heard of several occasions of people bumping into it?

A. Well—

Mr. Parsons: I think he has answered the

page 30 } question.

The Court: Object, Mr. Parsons, if you wish.

Mr. Parsons: The question is leading. He is trying to get the witness to answer what is in his mind.

The Court: The witness was not called as an adverse witness.

Mr. Campbell: I did not think that I had a right to call him as an adverse witness until he proved otherwise.

The Court: The Court will permit that question.

at all. All of these questions are predicated upon what you know, or may have known, about accidents prior to the time this lady was injured.

A. Sir, I don't know if there were other accidents; whether this was the first or the second or the third. To the best of my knowledge I would not know that.

By Mr. Campbell:

Q. Have you not heard as general knowledge—not that you saw it, but that you heard that others have bumped into that glass paneling?

A. Yes, I have.

Q. Prior to Mrs. Ginn?

A. I don't know whether it was prior or otherwise.

Q. Well, you knew when Mrs. Ginn became injured. You were on duty and you heard somebody say that she had bumped into it?

A. Yes.

Q. I am asking you, when that was brought to your attention if you had not already heard of other instances of its happening?

A. Before that I don't know. I don't know whether it was the first or the second. I don't know, to the best of my knowledge.

page 28 } Q. Mr. Leiderman, in the absence of the jury, this lady heard you say, "Oh, no. The second one this morning" when she hit that door.

A. I did not make any statement like that.

Q. She said that she heard it.

A. Are you sure it wasn't someone else in the store?

By the Court:

Q. Don't let's get in an argument. Answer the questions.

Mr. Parsons: As a matter of fact, he has no right to examine the witness that way, either here or before the jury.

By Mr. Campbell:

Q. Mr. Leiderman—

Mr. Campbell: I am taking latitude, Judge, because it is in the absence of the jury.

Samuel Leiderman.

By Mr. Campbell:

Q. How soon after you got there in August of '57 was it that you heard of people bumping into that door?

A. It was after the remodeling job.

Q. When was the remodeling done?

A. I guess it was in January sometime.

Q. In January?

A. I think that is when it was. They have the date.

Q. How soon after January was it that you heard of people bumping into the door?

A. How soon?

Q. Yes, after January. Approximate it for me.

A. I could not give you an exact date.

page 31 } Mr. Parsons: If Your Honor please, I want to make a statement. He has specifically told us three or four times that he knew nothing of anything that happened before this occurrence. Now he is trying to lead him into a situation by estimating something between January and the date of this accident.

The Court: The Court does not feel the question is improper.

A. After they fixed the Church Street side—the remodeling job there, whatever date that was I don't know—I imagine soon after that was when I heard it.

By Mr. Campbell:

Q. What would be your estimate of "soon after"?

Mr. Parsons: I object to that as being problematical, Judge.

By the Court:

Q. We do not want you to imagine, but what is your reasonable estimate?

A. When was it completed? Do you have the date?

By Mr. Campbell:

Q. I presume that will be supplied. Regardless of what the date was, was it a week or two weeks or a month after?

Mr. Parsons: Two months, maybe, or three months.

Mr. Campbell: If Your Honor please—

Samuel Leiderman.

The Court: Mr. Parsons, I am going to allow
page 32 } you to examine this witness. We are not going to
get anywhere if you and Mr. Campbell are going to talk between you. If you feel that the question is improper you can object.

By the Court:
Q. Answer the question if you understand it.

(The question was read by the reporter.)

A. I don't know what to tell you. I know it was after that. Whether it was a week or two weeks, I don't know.

By Mr. Campbell:
Q. Do you know whether or not it would be three or four months?
A. Could you help me out by telling me when it was completed?
Q. I am asking you whether it was within three or four months from the date of its completion, regardless of what the date of completion was?
A. I would say it was in that period, to the best of my knowledge.

By the Court:
Q. What period?
A. Within three months.

Mr. Campbell: When was it remodeled, Mr. Parsons?
Mr. Parsons: I will have to find out.
page 33 } The Court: I am going to suggest that unless
you can agree on that, you can just withdraw the witness from the stand and recall him later.
Mr. Parsons: If you want to know, I will see if I can find out. (Confers with Mr. Marx.) The first day that they were used as an entrance was the 2nd day of March, according to Mr. Marx.

By Mr. Campbell:
Q. Did you learn of Mrs. Ginn having asserted a claim against L. Snyder's?
A. No, sir, until I saw it in the paper one morning just recently. Was it last month?

A. Yes, sir.

Mr. Parsons: That is all.

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LILLIE GUMM,

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

DIRECT EXAMINATION.

Examined by Mr. Campbell:

Q. Please state your name.

A. Mrs. Lillie Gumm.

Q. Mrs. Gumm, where do you reside?

A. 2718 Westminster Avenue.

Q. Where are you employed?

A. L. Snyder's.

Q. Mrs. Gumm, how long have you been employed at L. Snyder's?

A. Eight years the 5th of this past March 5th.

Q. And you are still employed there?

A. That is right.

Q. And, of course, you are here under a subpoena?

A. That is right.

page 45 } Q. Are you not?

A. Yes, sir.

Q. Mrs. Gumm, do you recall the approximate time that Mrs. Ginn was injured in L. Snyder's?

A. No, sir.

Q. You remember the incident, that she was injured, but you don't remember the date. Is that correct?

A. No, sir. I was not there at the time, that day.

Q. You were not there that day, but you learned of it?

A. Afterwards.

Q. Do you know how soon afterwards you learned of it?

A. No, not exactly. I could not say.

Q. In what part of the store do you work, Mrs. Gumm?

A. Right up at the front of the store, the first counter.

Q. The first counter? You had been working in that position of the store for how long?

A. Since about March, I guess, is when we went up to the new part.

Q. All right, sir.

Mr. Campbell: I think that is about as far as I can go with him, if Your Honor please.

Mr. Parsons: If Your Honor please, I think I ought to make a motion to strike out this evidence.

The Court: It is not before the jury, is it?

Mr. Parsons: I just want to have it stricken.

The Court: I assume that Mr. Campbell is not going to press it any further when the jury comes back.

Mr. Campbell: I think that is correct, sir.

(The following proceeding was had in the presence of the jury:)

page 34 } The Court: Members of the jury, the Court will instruct you to disregard the last question which was asked this witness before you retired. I don't think there was an answer. If there was, disregard the answer and draw no inference from the question.

By Mr. Campbell:

Q. Mr. Leiderman, since you have had your present assignment in L. Snyder's has there been a remodeling of the entrance to Church Street?

A. Yes, sir.

Q. Do you recall whether that remodeling, so that it appeared as it does now, occurred prior to April 25th of this year?

A. Did the remodeling—

Q. Was the remodeling done prior to April 25, 1958?

A. Oh, yes. They were working on that in February or March.

Q. Thank you very much.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Leiderman, you lease this jewelry department from Snyder's?

A. Yes.

page 35 } Q. You make your own purchases and pay a percentage of what you make out of that place to them as rent?

Lillie Gumm.

Q. Was it in March that the remodeling was done?

A. Well, I can't remember just when it was finished or completed, but we went up there sometime around that time, before Easter.

page 46 } Q. Do you know Mrs. Bonney who lives on Westminster Avenue?

A. Yes, sir.

Q. And also a Mrs. Richardson who, I think, is a sister of Mrs. Ginn?

A. That is right.

Q. In your place of employment there at Snyder's were you in a position to see this Church Street entrance?

A. Yes, sir, at all times.

Q. You have discussed this matter of Mrs. Ginn's injuries with Mrs. Bonney, have you not?

A. That was how I found out that she was in the hospital. She told me, my neighbor.

Q. She was in the hospital when you learned about it?

A. That is right.

Q. So if she was in the hospital for ten days, you knew about it within that ten-day period?

A. Yes.

Q. Prior to her being in the hospital could you tell us how many other persons had bumped into that door or paneling?

Mr. Parsons: If Your Honor please—

The Court: Objection sustained.

page 47 } By Mr. Campbell:

Q. Have you seen others bump into that paneling, the plate glass, at the entrance there?

Mr. Parsons: I object to the form of the question.

Mr. Campbell: I asked her whether she had or not.

The Court: As of when?

By Mr. Campbell:

Q. Prior to Mrs. Ginn being in the hospital?

A. Since this happened?

Mr. Parsons: Not prior to being in the hospital, but prior to this accident, if Your Honor please.

By Mr. Campbell:

Q. Prior to the accident?

Lillie Gumm.

A. I have seen a couple of people bump into it.

Q. Do you recall approximately when that was, Mrs. Gumm?

A. No, sir, I could not, because at the time it did not register that I would ever have to remember it, and I do not recall it.

Q. Were the two times that you speak of on separate occasions?

A. Yes, sir.

Q. I ask you to search your memory, Mrs. Gumm, page 48 } before you answer the next question. Have you seen or known of more than two people bumping into it prior to Mrs. Ginn doing so?

A. No, sir, I could not say that I have.

Q. What is your description of the word "several"? What does the word "several" mean to you in numbers?

A. More than one.

Q. Does "several" mean more than two?

A. Not necessarily, it wouldn't.

Q. As you use it does it mean more than two?

A. No, sir. I know of two instances that I can recall.

Q. I understand that. If you were seeking to describe a matter of several instances, more than two, how would you describe it?

A. Well, when I actually saw it. I have only seen two.

Q. How many have you heard of?

Mr. Parsons: I object, if Your Honor please.

The Court: Objection sustained.

By Mr. Campbell:

Q. Mrs. Gumm, don't answer this question until counsel objects and the Court rules on it. Is it not, or is it, general knowledge that there have been any number of people to bump into that glass paneling?

page 49 } Mr. Parsons: When

By Mr. Campbell:

Q. Prior to Mrs. Ginn doing so?

Mr. Parsons: I object, if Your Honor please. A matter of general knowledge is not involved here.

Mr. Campbell: It is, too, if Your Honor please.

Lillie Gumm.

By Mr. Parsons:

Q. Is there anything about the door that would prevent persons approaching it from seeing the door and the framework and the paneling, and everything about it?

A. No, sir. The doors are paneled so that you put your hand on them as you enter the door. They are on both sides of the glass door; they are paneled around.

Mr. Parsons: This question is asked subject to the objection I made before:

By Mr. Parsons:

Q. The two that you saw, how did they happen?

A. I saw a man and a lady. The lady that I saw was sort of in a hurry. She was either in a hurry to catch the bus or get outside, and she came into it with such force. The man who came into it, the one I saw, was not looking where he was going at the time when he bumped into it. He admitted that he did not see it.

Q. These two people apparently that you saw were not looking where they were going?

A. Yes, sir, those particular two.

Mr. Parsons: I asked that without waiving my objection. Mr. Campbell got into this question about "before and after," and put me in that position.

page 52 } The Court: The Court understands your position. She has answered one way one time and another way another time. You have the right to examine her as to both theories.

By Mr. Parsons:

Q. Mrs. Gumm, you were under oath on Saturday when you made the statement that it was afterwards, weren't you?

A. Yes, sir.

Q. There is no question about that being true?

A. That is right; it was afterwards.

Mr. Parsons: That is all.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Mrs. Gumm, since that remodeling took place has there

The Court: Whose general knowledge? I will have to sustain the objection.

Mr. Campbell: I except to that.

By Mr. Campbell:

Q. You know of two instances?

A. Yes.

Mr. Campbell: You may inquire.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mrs. Gumm, on Saturday when I asked you some questions do you recall telling me that the two instances you spoke of happened after Mrs. Ginn was hurt? Did you understand Mr. Campbell awhile ago when he was talking about before and after?

A. Prior to, you mean?

page 50 } Q. Prior to or afterwards. "Prior" means that the two happened before her accident, and after that would mean that the onés you knew about or saw were after Mrs. Ginn's accident.

A. Yes, sir. They were after.

Q. Then you were mistaken when you said to Mr. Campbell—did you understand that you were saying then that it was before Mrs. Ginn's accident, and now you say it was after the accident? The two that you speak of were after Mrs. Ginn's accident?

A. Yes, sir, I think they were afterwards.

Q. That was what you told me last Saurday, wasn't it?

A. Yes, sir.

Q. At the store?

A. Yes.

Q. And that is correct?

A. That is correct. yes, sir.

Q. I will ask you, Mrs. Gumm, whether the doorway and the doors and the panels are open and obvious where anybody can see when they open it?

Mr. Campbell: If Your Honor please, that calls for a conclusion on the witness' part.

The Court: You may ask her to describe it; whether there is any obstruction. The jury, after all, has to

page 51 } answer that question.

that paneling for a week or ten days prior to your talking to Mrs. Bonney about her being in the hospital?

A. No, sir.

Q. Mrs. Gumm, did you or not tell Mrs. Bonney that people—

Mr. Parsons: I object, if Your Honor please.

The Court: Finish the question.

By the Court:

Q. Don't answer it until I rule on it.

By Mr. Campbell:

Q. Did you not tell Mrs. Bonney about people walking into and bumping into that door?

The Court: Do you object?

Mr. Parsons: Yes, sir.

The Court: Objection sustained.

page 55 } Mr. Campbell: If Your Honor please, I am taken by surprise with this witness. She is a long-time employee of Snyder's. She is in a difficult position.

The Court: I will ask the jury to go out.

(The following proceeding was had in the absence of the jury:)

Mr. Campbell: If Your Honor please, when the supoena was issued for Mrs. Gumm, as has so frequently happened, she called my office. She did not want to appear, naturally. It put her in an embarrassing position becuse she is an employee of L. Snyder's. But, in that conversation with me there was no question at all about several people having bumped into this paneling. She even went to the point of explaining that the people bumped into it because they were not paying any attention, and so on. There is no dispute at all about her having told Mrs. Bonney and others at that time, at the time Mrs. Ginn was in the hospital, that she had so discussed it. I am trying to be as kind to this lady as I can under the circumstances, but in view of the fact that she has now in response to Mr. Parson's inquiry—Mr. Parsons of course, perfectly ethically and legitimately, made contact with her after I had the subpoenas issued, so he knew who my witnesses were.

been any breakage of glass around the entrance so that it had to be repaired?

A. Yes, sir, there has.

Q. Do you know when that took place?

A. No, sir, I do not.

Q. Was that prior to Mrs. Ginn's injury?

A. I could not say.

Q. Was it subsequent to Mrs. Ginn's injury?

page 63 } A. I did not understand.

Q. Was it subsequent to Mrs. Ginn's injury?

By the Court:

Q. "Subsequent" means after and "prior" means before. so there cannot be any misunderstanding. "Prior" means before the injury and "subsequent" means after.

A. I really don't know. I can't recall. As to that part I could not say and tell the truth, because I would not know.

By Mr. Campbell:

Q. I will ask you this, Mrs. Gumm: At the time you knew of Mrs. Ginn being in the hospital, from the time you learned of it for a week or ten days before did you hear of anybody walking into that glass paneling?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Not from a period of ten days prior to your knowledge of her being in the hospital?

A. No, sir.

Q. Did you discuss with Mrs. Bonney Mrs. Ginn being in the hospital?

Mr. Parsons: I object, if Your Honor please. I don't believe that has anything to do with the case.

page 54 } By Mr. Campbell:

Q. Did you discuss that? Did you discuss with Mrs. Bonney Mrs. Ginn being in the hospital?

A. She told me that she heard that she was hurt.

Q. I don't want to ask you what she told you. But, you did know through Mrs. Bonney that Mrs. Ginn was in the hospital?

A. Yes, sir.

Q. You say that you did not hear of anybody walking into

see each other very seldom. She is the one that told me about that. After awhile she was in there. I did not know anything about it until then.

Q. Mrs. Gumm, as the record now stands you have answered a question in two diametrically opposite ways. You told me that you knew of the two people bumping into it prior to Mrs. Ginn being injured. Under cross-examination page 58 } you told a completely different story.

A. I did not understand it. I meant afterwards, after she was hurt. When you said "prior" I was really excited.

Q. Mrs. Gumm—

Mr. Parsons: Let her explain it.

By the Court:

Q. Are you through explaining it?

A. Yes, sir.

By Mr. Campbell:

Q. Mrs. Gumm, how could you make a mistake about that, because you were talking to Mrs. Bonney at a time when you learned that Mrs. Ginn was in the hospital? I have got Mrs. Bonney here to so testify if it becomes necessary. But, how could you do that? I have already asked you in your previous testimony whether from the time—

Mr. Parsons: If Your Honor please, I must object to Mr. Campbell hammering at the witness.

The Court: Mr. Parsons, I think the witness deserves to be hammered at. I overrule your objection.

Mr. Parsons: Exception.

By Mr. Campbell:

Q. You have told me that from the time you learned she was in the hospital, for a period of a week or ten days prior to that time, you had learned of no one bumping into it. page 59 } Now, you told Mrs. Bonney that you knew of several people bumping into it. You have already testified that from the period of ten days prior to Mrs. Ginn being in the hospital you know nothing about anybody bumping into it. How could you be confused on that?

A. Just going and touching it and finding out that it is glass, would you call that "bumping into it"?

Q. You have described two bumpings.

Mr. Parsons: And before, Mr. Campbell.

page 56 } Mr. Campbell: You did not get the statement until after the subpoenas were served. So, in view of the fact that she has given him one answer which is contrary to what I expected her to testify to, I feel that I should be entitled to cross examine her.

The Court: If I permitted you to do that before the jury, what would be the result of it? It could not be used for any other purpose other than to cancel her prior statement I will permit you in the absence of the jury to ask her which statement is correct.

By Mr. Campbell:

Q. Mrs. Gumm, I have Mrs. Bonney here and I have Mrs. Richardson here. I ask you now whether at the time you were talking to Mrs. Bonney you did not tell her that any number of people had bumped into that paneling, at a time when you were talking to her when Mrs. Ginn was in the hospital?

A. I really can't remember that. I cannot remember telling her that any number of people had bumped into the thing at the time she was in the hospital.

Q. Did you tell her that two people had bumped into it? Otherwise I would have never known who you were.

Mr. Parson: Don't argue with the witness, Mr. Campbell.

page 57 } Mr. Campbell: I am trying to be fair to the lady. I am not arguing with her.

A. I can't remember if I told her that I had seen someone bump into it or not. I heard it. I did not see them at all; I heard it. That is the main thing, I heard it. I am busy with my work. When I heard it and turned around, someone had bumped into it. But, actually seeing it, I did not see any of it—see anything.

Q. How many times have you heard of it happening, approximately?

A. I know of two people that I said I saw—I saw this man walk into it and I know that this colored woman was hurrying and ran into it.

Q. Did you tell Mrs. Bonney that?

A. I can't say that I remember telling her that. If I could, I would say so.

Q. Mrs. Gumm, do you know whether you talked with Mrs. Bonney after Mrs. Ginn got out of the hospital?

A. Well, she is my second-door neighbor. I can't recall. We

Lillie Gumm.

Didn't I tell you at that time that I did not want you to get the idea, or for anybody to get the idea, that the store would interfere in anyway with your testimony; that they wanted you to testify as to just what you knew?

A. Yes, sir.

Q. And exactly what you knew, and that we were not in anyway attempting to hamper you in anyway, whatsoever. I told you that, didn't I?

A. Yes, sir.

Q. That you had a perfect right to testify and had a perfect right to talk to Mr. Campbell?

Mr. Parsons: If Your Honor please, it is a little difficult for me to follow some of this. I don't believe the lady understood.

The Court: Mr. Parsons, the Court won't express any views as to whether she understood it or not. It was certainly asked very clearly, if she was listening. But, that is not the point before the Court, as to whether she did or did not. The Court cannot conceive of how she failed to understand it.

But, Mr. Campbell, getting back to the legal situation, two contradictory statements are before the jury. That
page 62 } is all there is to it as far as the jury is concerned, isn't it?

Mr. Campbell: No, sir. I think I ought to be entitled to cross examine her on her previous statement in order to correct, whether I do it successfully or unsuccessfully, her second statement. She has made two statements. Further interrogation of her might confirm one as opposed to the other.

The Court: The Court is going to take a short recess. When we come back I will permit you to ask her some more questions. As to how far you can go, I will rule on that at the time.

(Thereupon, a short recess was taken, after which Mrs. Gumm was recalled and further testified in the presence of the jury.)

By Mr. Campbell:

Q. Mrs. Gumm, while Mrs. Ginn was in the hospital I believe you say that you talked to Mrs. Bonney. What, if anything, did you tell Mrs. Bonney about others having bumped into that glass paneling.

Mr. Parsons: Objection.

Lillie Gumm.

A. They actually bumped in it. I have known of a lot of people to go into the glass, but not hurt themselves.

Q. Do I understand you to say then that you know of two that bumped into it that hurt themselves?

A. No, sir, no one hurt themselves.

Q. From the time that Mrs. Ginn was in the hospital up to the present time have you heard of anyone bumping into it?

A. I have seen two people bump into it.

Q. Two people since Mrs. Ginn was in the hospital?

A. That is right.

Q. How many prior to that?

A. I don't recall any.

Q. Mrs. Gumm, you called me—was it Friday or Saturday—

A. Thursday when I got the subpoena. I told you that I did not know why I had to come, that I wasn't there page 60 } and did not know a thing about it, and I had only heard about it. What I had seen were people who were just in a hurry. They were in a hurry to get out and were not looking where they were going. That is all. They just were not looking where they were going.

Q. All of that was prior to Mrs. Ginn being injured—you told me that just as plainly as you are telling it to me now, prior to Mrs. Ginn being hurt.

A. I did not say when. I did not know when the time was. The time did not mean anything to me.

Q. Mrs. Gumm, when I talked to you about it, what you said right then in response to my inquiry of you or explanation of why you had to be subpoenaed, because prior to Mrs. Ginn being injured these people had walked into it.

A. There was no time mentioned.

Q. I beg your pardon?

A. In the conversation there was no time mentioned at all, as to when it happened, or anything I had seen.

Q. What is your position now? How many people now do you know of or have heard of running into it?

A. I have seen two.

Mr. Campbell: If Your Honor please, I think I ought to be entitled to cross examine the lady in the presence of the jury.

Mr. Parsons: Before the jury comes in I want page 61 } to ask her something.

By Mr. Parsons:

Q. Mrs. Gumm, on Saturday I interviewed you at the store.

learned that Mrs. Ginn was in the hospital, for a period of ten days or two weeks prior thereto you had not seen anybody during that period of time crash into it?

A. Prior to the time that she was in the hospital?

Q. For a period of a week or ten days prior to the time that you learned she was in the hospital, during that interval of a week or ten days am I correct in my recollection that you said you did not see anybody within that span of time?

A. I don't remember the time. I could not tell you. It is impossible for me to tell you when.

Q. Did you not earlier testify that during that period of a week or ten days prior to your learning that Mrs. Ginn was in the hospital, that within that span of time you saw
page 65 } no one bump into it? Isn't that what you testified to?

A. I just can't remember the times and dates.

Q. I am not asking you for times and dates now, Mrs. Gumm. I am asking you as to what you testified to earlier this morning.

By Mr. Parsons:

Q. Do you understand the question, Mrs. Gumm?

Mr. Campbell: If Your Honor please, I don't see how I could make it any clearer than that.

By the Court:

Q. Do you understand it or not? Is is hardly necessary, I assume, for the Court to tell you that if you do not understand a question which you have to answer under oath, you should not answer it until you do understand it. That should be obvious to you without the Court having to tell you that.

A. As I recall, I don't remember anyone bumping into any doors during that time, after.

By Mr. Campbell:

Q. That is what you testified to this morning. Isn't that right?

A. (No answer.)

Mr. Parsons: If Your Honor please, the record shows what she testified to. I may be wrong in objecting, but I object to that line of questioning.

Lillie Gumm.

The Court: Objection sustained.
Mr. Campbell: I note an exception, sir.

By Mr. Campbell:
Q. At the time you talked to Mrs. Bonney I
page 63 } understand that Mrs. Ginn was in the hospital. Is that correct?
A. I think she was in the hospital. I don't know how long it had been. Mrs. Bonney had been to the hospital and had seen her and had talked to me about her. I don't know whether she was in the hospital at the time. I would not like to say for sure that she was in the hospital then or not.
Q. Didn't you in your original testimony say that you had learned that she was in the hospital—
A. Through Mrs. Bonney I learned that she was in the hospital.
Q. At that time, without asking you what you said, did you have a discussion with Mrs. Bonney about anyone else having bumped into that door?

Mr. Parsons: Objection.
The Court: Objection overruled.

By the Court:
Q. Answer "Yes" or "No." Do you understand the question?
A. Ask that again, please.

(The question was read by the reporter.)

Mr. Parsons: Note my exception.
A. I can't recall for sure saying anything.

By Mr. Campbell:
Q. You don't recall talking to Mrs. Bonney about that?
A. I only stopped there for a few moments.
page 64 } That was how I found out, while waiting for the bus in front of her door. I did not have long, and I don't remember what I said to her.
Q. Do you recall the dates that you saw the two people crash into that door?
A. No, sir; times nor dates at all.
Q. You do not?
A. No, sir.
Q. Am I correct in my recollection that from the time you

Katherine Bonney.

Q. I am not asking you the next question as to what was said between you and Mrs. Gumm, but did you discuss with Mrs. Gumm the fact that Mrs. Ginn had been injured in L. Snyder's Department Store?

A. Yes, sir.

Q. At the time you discussed it with Mrs. Gumm was Mrs. Ginn then in the hospital?

A. Yes, sir.

Q. Did you ever discuss it with Mrs. Gumm after Mrs. Ginn was released from the hospital?

A. Not to my knowledge, no, sir.

Q. Don't answer this question until counsel has a chance to object and the Court can rule on it. At the time you were talking to Mrs. Gumm while Mrs. Ginn was in the hospital, did Mrs. Gumm say anything to you about knowing of others who had crashed into that glass paneling?

Mr. Parsons: Objection, if Your Honor please.

The Court: Do you wish to be heard on it in the
page 72 } absence of the jury?

Mr. Campbell: Yes, sir.

(The following proceeding was had in the absence of the jury:)

The Court: Do you want to state your objection?

Mr. Parsons: In the first place, if Your Honor please, it is a little bit difficult for me to understand how this thing is approached. The only purpose of this, of course, could be to discredit Mrs. Gumm's testimony. He is attempting to discredit his own witness, and discredit the very statement upon which he relies when he does so. Along with it he attempts of course, to discredit her as to what she said on cross examination. It seems to me that it is a collateral issue. I don't think he ought to be allowed to do that. As a matter of fact, there are only two statements here involved. One is that she said she did not understand the "prior" question. That is a question for the jury to determine. When I asked her plainly what she said to me under oath, she said exactly the opposite thing. It seems to me that is clear enough without having to make any explanation by any other witness of some conversation that took place not in the presence of any

of the parties to this case, not even the plaintiff.
page 73 } Mr. Campbell: If Your Honor please, in the first part of Mr. Parsons' objection, that it is a collateral matter, that has already been ruled upon by the

page 66 } By the Court:

Q. Do you have any answer or not?

A. No, sir.

The Court: Proceed with the next question.

By Mr. Campbell:

Q. You say that you have no recollection of time nor place—or, rather, time nor date. Does that apply equally to all of the incidents that you have by way of recollection as to people bumping into that door?

Mr. Parsons: Objection.

The Court: I sustain the objection.

Mr. Campbell: That is all.

By Mr. Campbell:

Q. You may come down, Mrs. Gumm.

The Court: Do you have any questions, Mr. Parsons?

Mr. Parsons: No.

* * * * *

page 70 }

* * * * *

KATHERINE BONNEY.

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

DIRECT EXAMINATION.

Examined by Mr. Campbell:

Q. Please state your name.

A. Katherine Bonney.

Q. Where do you work, Mrs. Bonney?

page 71 } A. I don't. I am a housewife.

Q. Do you know Mrs. Gumm, an employee of L. Snyder's Department Store?

A. Yes, sir. She is a neighbor of mine.

Q. Do you recall the time that Mrs. Ginn was in the hospital?

A. Yes, sir.

Court as to the admissibility of that testimony. Mrs. Gumm proved adverse, and I was permitted to cross examine her. But, even aside from that theory of her proving adverse and being entitled to contradict her on that score, we have Mrs. Gumm in her final statement under my examination stating that she did not know any of the dates or any of the times, which negatives the statement that she gave Mr. Parsons, and certainly leaves open for clarification her previous statement to me.

Now, Mrs. Gumm, giving her full credit for being as sincere as she can possibly be, has said that she talked to Mrs. Bonney and discussed it with Mrs. Bonney, but she did not know whether it was while Mrs. Ginn was in the hospital or whether it was after Mrs. Ginn was in the hospital. The purpose of this witness is to pin it down as to the time element involved. She has said that she did not talk to Mrs. Gumm subsequent to Mrs. Ginn being released from the hospital. Mrs. Gumm has testified that she did tell this lady what had happened; namely, that several people had bumped into this door. So, it is not a question of contra-
page 74 } diction. It is a question of clarifying the issue as to the time and exactly what was said. So, I think I have a perfect right to introduce this testimony relating to what Mrs. Gumm said, which was contradictory on her own two statements.

Mr. Parsons: I think counsel is a little bit in error. Mrs. Gumm has never said that she told this lady about any prior accident. She did not recall it at all. If it is just the time element, he has already covered that. I did not object to the time element.

The Court: My recollection is that Mrs. Gumm said that whatever she told Mrs. Bonney, which she did not remember whether it was before or after—

Mr. Parsons: She said she did not remember telling her anything about any other accidents, too.

Mr. Campbell: I don't think that is correct.

The Court: She said first that it was afterwards, and then she said it was not afterwards. First she said it was before—prior—which she said she did not know what "prior" meant. But, she said it was prior, and then later she said she thought it was subsequent. According to my recollection, she did say that she had told Mrs. Bonney that she was aware of at least two instances in which persons had run
page 75 } into this plate glass door.

Mr. Parsons: I think if you will have the record read, she did not say that she had told Mrs. Bonney about

two instances; that she did not remember any such statement. That is my memory of what she said.

Mr. Campbell: It is not mine, Mr. Parsons.

The Court: My recollection is that she said she positively did tell Mrs. Bonney that. Then she was asked whether she told that before Mrs. Ginn was released from the hospital and she said, "Yes," and then on cross examination she said it was afterwards.

Mr. Parsons: If the record shows that she did not recall telling Mrs. Bonney that, would that change it?

The Court: If that were her story right straight along, but that wasn't the point. She made the positive statement—

Mr. Parsons: I call for the record, if Your Honor please, because I don't think it happened.

(That portion of the record was read by the reporter.)

The Court: I will overrule the objection and permit it.

Mr. Parsons: Exception.

page 76 } (The trial was then resumed in the presence of the jury.)

By Mr. Campbell:

Q. Mrs. Bonney, on the occasion that you talked to Mrs. Gumm while Mrs. Ginn was in the hospital what, if anything, did Mrs. Gumm tell you about her knowledge of other people having crashed into this glass paneling?

A. She said she did not know why, but several people had bumped into it. That was all she said. She did not say how many, or anything like that. She said that she did not know why, but several people had bumped into it.

Mr. Campbell: You may inquire, Mr. Parsons.

Mr. Parsons: No questions. I ask Your Honor to strike it.

The Court: Objection overruled. Note your exception.

Mr. Parsons: I will also ask Your Honor to instruct the jury that it is merely evidence to impeach the credibility of the witness, and not substantive evidence against the defendant.

The Court: The Court has ruled that that testimony is to be considered by you in connection with the testimony of Mrs. Gumm to determine at what time the conversation took

Virginia G. Cofer.

Q. After this accident was she away from work for any period of time?

A. Yes, about—

page 79 } Q. Your best estimate.

A. About forty-five days. It was longer than that, actually. It was forty-five days' leave time.

Q. Forty-five days, you say?

A. Yes.

The Court: Leave time.

By Mr. Campbell:

Q. When she finally came back to work did she work full time?

A. No; she worked part time.

Q. Were you able to notice any difference in her conduct and mannerisms when she returned to work?

A. Yes, I did.

Q. What did you observe was her condition?

A. She was very nervous. She tired very easily. She had a definite nervous reaction there; a twitch, I guess you would call it.

Q. A twitch?

A. Her eyes were very nervous.. They would blink.

Mr. Campbell: You may inquire.

Mr. Parsons: No questions.

Mr. Campbell: We rest, if Your Honor please.

page 80 } (The following proceeding was had in the absence of the jury:)

Mr. Parsons: We move to strike the Plaintiff's evidence, if Your Honor please, on two grounds. One, there is no evidence of negligence in the erection and maintenance of this entrance. Patently from looking at it, it is plainly visible, open and obvious to any person using it. The plaintiff, herself, stated that if she had been looking she could have seen the doors, themselves. They are outlined. They have panels on them. The plate glass window to the side was all the way to the top of the ceiling. Any person approaching that door with the slightest caution, by vision could determine where the door was. Under her own statement she said, herself, that if she had been looking she could have seen it and seen

place between Mrs. Gumm and this witness, and
page 77 } what time Mrs. Gumm was referring to with reference to the alleged occurrences of the people bumping into the partition. In other words, whether Mrs. Gumm's testimony has to do with these occurrences having taken place before or after Mrs. Ginn was injured. If they took place after Mrs. Ginn was injured, they are not admissible and you will disregard them.

By Mr. Campbell:
Q. You may come down, Mrs. Bonney.

VIRGINIA G. COFER,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Campbell:
Q. Please state your name.
A. Virginia G. Cofer.
Q. Where are you employed, Mrs. Cofer?
A. Department of Public Health for the City of Norfolk.
Q. How long have you been so employed?
A. Six years last October.
page 78 } Q. Do you know Mrs. Shirley Ginn?
A. Yes, I do.
Q. Does she work in the same department with you?
A. She did.
Q. For how long a period of time were you a co-worker with her?
A. Three years.
Q. Were you on duty on the 25th of April, the date of her accident?
A. I was.
Q. Did you see her that afternoon when she returned from lunch?
A. Yes.
Q. What was her appearance?
A. She came into the office. We immediately noticed that she had a large bump on her forehead, and I asked her—
Q. You can't say what she told you, nor can you say what you asked her. But, prior to that injury what kind of person had she been emotionally or from a nervous point of view?
A. Well, I would not say that she was a nervous person. She was very stable.

Edward Marx.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Marx, that plate glass paneling is kept very clean and spotless, is it not?

A. Yes, sir.

Q. And there are no defects in that paneling that are discernible by the naked eye, are there?

A. Defects? None that I know of.

Q. It is not a frosted piece of plate glass, is it?

A. No, sir.

Q. It is perfectly clear?

A. Yes, sir.

Q. It is not difficult to see completely through it? You can see what is on the other side?

page 83 } A. It is clear glass.

Q. Who is your manager of the store?

A. It is a partnership; Mr. Sol Snyder and Mr. Ben Paul Snyder.

Q. I know, but you have various managers of different departments, do you not?

A. We have department managers, buyers, and so forth.

Q. Who is your active managing head on the level below the owners?

A. I am considered in that position, just below the owners.

Q. You are the controller?

A. Yes, sir.

Q. You remain in the office?

A. Yes, sir.

Q. Who stays out on the floor?

A. We have a number of department managers.

Q. That is what I am asking you. Who stays out on the first floor?

A. We have several departments managers on the first floor in their departments. We have no designated store manager aside from the two owners.

Q. Do you have someone in a supervisory capacity to provide general supervision over the store, particularly we will say the first floor?

page 84 } A. Mr. Sol Snyder as one of the owners supervises the entire store.

Q. Do you have any general foreman or supervisor who has overall supervision of the departments on the first floor?

A. None besides the owner.

the door. Beyond that there is absolutely no evidence that it is a dangerous place. There is not anything dangerous about the doors or windows, or anything else. The mere fact that you have a plate glass window is not dangerous. It is used everywhere.

I don't know that I need to stress any further argument on that subject.

Mr. Campbell: If Your Honor please, we have a situation where the evidence discloses that not only Mrs. page 81 } Ginn but any number of people—certainly two, and by the statement of one of the witnesses at least several people—had walked into this transparent plate glass door or the paneling to one side.

(The motion was further argued, overruled, and an exception noted by Mr. Parsons. The trial was then resumed in the presence of the jury.)

EDWARD MARX,

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

Examined by Mr. Parsons:

Q. Mr. Marx, what is your position with Snyder's?

A. Controller.

Q. Do any reports of occurrences of accidents come through your office?

A. Yes.

Mr. Parsons: If Your Honor please, this is asked without waiving my exception.

By Mr. Parsons:

Q. Did you have any knowledge, or did anybody connected with the ownership of the store have any knowl- page 82 } edge, of any accidents prior to Mrs. Ginn's accident?

A. No, sir, none whatever.

Q. Do you know who drew the plans for that door?

A. Bernard Spigel was the architect.

Q. Who erected it?

A. J. E. Weddle & Company.

Q. Contractors?

A. Contractors.

Mr. Parsons: The witness is with you.

thority would permit him to make an appropriate
page 86 } handling of such a complaint?

Mr. Parsons: Do what? Do you want him to change the door, or something?

The Court : He said to make—

Mr. Campbell: —an appropriate handling of a complaint. It is just as plain as the English language can be.

Mr. Parsons: Go ahead.

A. Would you repeat your question, please?

By Mr. Campbell:

Q. Do you have anyone in your employ, other than the partners of the business or yourself, who has the discretion or the authority to give an appropriate handling to any complaints?

A. I had no one at the time, no, sir.

Q. I beg your pardon?

A. No, sir, we had no one else at the time.

Q. Did you not have some woman who was designated as the person to whom such complaints should be made?

A. At the time we had no one, no, sir.

Q. When did you have such a woman?

A. You are probably referring to the personnel manager who had authority to take such complaints prior to the time of this accident. She was not with us at the time. The office was vacant. Those complaints came to me.

page 87 } Q. When did you let that person go in the Personnel Department?

A. She resigned sometime prior.

Q. At what time prior?

A. Several weeks prior to this accident.

Q. When was it, if you can recall?

A. I don't know the exact date.

Q. Is the office vacant now?

A. Yes. We have a girl filling in, but that particular office is still vacant.

Q. When did the girl start filling in?

A. Probably when this vacancy occurred.

Q. When the vacancy occurred, and that was several months or weeks prior to this happening?

A. Yes, sir.

Q. This other girl was filling in?

A. Yes, sir.

Q. Mr. Sol Snyder does not stay there on the first floor generally, does he?

A. No, sir.

Q. Well, who does?

A. The various department managers. We have a floorwalker, if that is what you are getting at.

Q. That is exactly what I am getting at. Who is the floorwalker?

A. Mr. Burt.

Q. Is Mr. Burt here today?

A. He is not in court, no, sir.

Q. Do I understand from you that you handle the Complaint Department?

A. The reports come to my office.

Q. Do you handle the Complaint Department?

A. Yes, sir.

Q. And you tell this Court there has been no complaint made to you about this entrance?

A. That is right.

page 85 } Mr. Parsons: You mean prior to the accident?
Mr. Campbell: Yes.

By Mr. Campbell:

Q. Have you not discussed with your employers the fact that people have bumped into that entrance?

Mr. Parsons: I object, if Your Honor please, unless it was before the accident.

By Mr. Campbell:

Q. Before the accident?

A. No, sir. We had no knowledge of any occurrence prior to this accident.

Q. I understand that you had no knowledge of it, but I am asking you whether any of your employees prior to this accident have discussed it with you?

A. No, sir, none, sir.

Q. Would any of your employees be in a position to handle such a complaint or incident without referring it to you?

A. Not unless they went to Mr. Snyder directly. They all come to my office.

Q. You mean that they are supposed to come to your office?

A. Yes, sir.

Q. Do you have anyone in a supervisory capacity whose au-

Edward Marx.

A. Yes, they would come to her.
Q. So you did have a woman that would be handling that?

Mr. Campbell: That is all.

A. She is handling it now.

RE-DIRECT EXAMINATION.

By Mr. Parsons:
Q. When she took the report what did she do with it?

Mr. Campbell: If Your Honor please, I object to what the woman may have done with it. She may have put it in the wastebasket or something else.
The Court: Objection overruled.

By Mr. Parsons:
Q. What became of the report? When she took page 90 } it where did it go?
A. She showed it to me. We put it in a file.
Q. As a part of your records?
A. Yes.
Q. She was doing it under your direction?
A. Yes, sir.

Mr. Parsons: That is all.

RE-CROSS EXAMINATION.

By Mr. Campbell:
Q. Do you know whether or not she has done that in every instance that she has gotten a complaint?
A. Yes, sir.

Mr. Parsons: I object to that, if Your Honor please.
The Court: He said, "Yes, sir." Do you want to let it stand?
Mr. Campbell: No, sir. I want to ask him another question: how he knows it?
The Court: Go ahead.

By Mr. Campbell:
Q. How do you know that she has?

Edward Marx.

Q. Wouldn't this other girl be the person then to handle such complaints?

A. No, sir. She is not a fully qualified personnel manager. She would just fill in temporarily until we could fill the position. All she did was hiring employees. She took care of nothing else.

Q. Mr. Marx, if one person resigned and you had another person filling in on that job, regardless of the
page 88 } qualifications of that person that filled in, she was filling in on the job that was vacant. Isn't that true?

A. No, sir. All she was doing was taking applications for employment. It was makeshift until we could fill the position, which we have not done yet.

Q. Mrs. Ginn, when she made her complaint or called up there, if she was told by your personnel—

Mr. Parsons: Not what somebody told her. You are testifying now.

Mr. Campbell: I am posing the question.

By Mr. Campbell:

Q. If Mrs. Ginn should testify that she called up your office, or the office of L. Snyder's, to make this complaint and was told that she would have to make it to some lady there, who would be that lady?

A. That was our pay clerk.

Q. What?

A. If Mrs. Ginn telephoned our office, one of the lady clerks answered the telephone and told her that she would take her telephone message and have our paymaster type the report. The reason for that is that the paymaster is the one that types up these reports, which I see after she types them.

Q. The paymaster is a lady?

A. Yes, sir; the pay clerk.

page 89 } Q. Certainly the call from Mrs. Ginn was funneled through to some lady?

A. Yes, sir.

Q. You call her "the paymaster;" is that what you call her?

A. That is right.

Q. If any other complaints were made of a similar nature would they not be funneled through to the paymaster who is a woman?

Patsy Mae Drake.

A. Yes.
Q. Had you been on that counter all of that time, from the 15th of March up until the 25th of April when this accident happened?
A. Yes, sir.

Mr. Parsons: The witness is with you.

page 93 } CROSS EXAMINATION.

By Mr. Campbell:
Q. I did not get very clearly, Miss Drake, where you were. You were working at the time?
A. Yes, sir.
Q. Behind what counter were you working?
A. I was at the costume jewelry. I was standing facing the doors.
Q. Where is the costume jewelry located with reference to the doors?
A. Right in front of the doors, I guess.
Q. How far from the doors?
A. I would say about here to the first bench there.
Q. From here to here?
A. No.
Q. The first bench back there?
A. Yes.
Q. And directly in front of the doors?
A. That is right.
Q. So if anybody should be walking on either side of the costume counter going straight ahead, they would be facing the panel rather than the door that was centered in the center?
A. The costume jewelry was right in front of the doors, and then the two panels.
page 94 } Q. You were at the costume jewelry counter?
A. That is right.
Q. Behind Mrs. Ginn?
A. That is right.
Q. If you were standing behind her, Miss Drake, how could you tell what she was looking at when her back was to you?
A. Her head was turned.
Q. What caused you to keep your eyes upon her?
A. As it was, I was standing by the register. There is an opening. There is a counter here and there is an opening,

Patsy Mae Drake.

A. That is her job, and that is what she told
page 91 } me; everyone that has been reported, everyone
that has come to her attention.

Q. Have you gone over her personal file to see whether or not—

Mr. Parsons: Objection.
The Court: Objection sustained.

By Mr. Campbell:
Q. You may come down, Mr. Marx.

Mr. Campbell: That is all.

PATSY MAE DRAKE,
called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Parsons:
Q. Your name is Patsy Mae Drake?
A. That is right.
Q. Where do you live, Miss Drake?
A. Right now I am staying with my mother at 109 Sherwood Drive.
Q. Were you working at L. Snyder's last April?
A. Yes, sir.
page 92 } Q. I call your attention to the day that this lady,
Mrs. Ginn, had an accident. Will you tell us whether you saw it or not?
A. I saw it.
Q. Tell us just what you saw and how it happened.
A. I was standing facing the door—the paneling on the side. I caught a glimpse of her coming up on my left side. She was walking slowly. As she almost approached the windows and everything, she was glancing over, and when she turned she turned just about the time she hit the glass panel of the door.
Q. Where was she looking at the time as she approached and hit the panel?
A. She was looking over to her left toward the jewelry counter.
Q. How long had you been at that counter, Miss Drake?
A. They put it up in March, and I had come there about two weeks or something like that afterwards.
Q. About the 15th of March?

Patsy Mae Drake.

A. No, sir. I did not know that anybody had walked her back.

Q. Who came up to Mrs. Ginn when she crashed into that panel?

A. I did not see no one.

Q. You did not see anybody come up?

A. No, sir.

Q. To inquire as to whether she was hurt or not?

A. No, sir.

Q. You did not see several people gather around her, making inquiry as to whether she was hurt?

A. No, sir.

Q. Did you leave after she crashed into it?

A. No, sir.

Q. And yet you did not see any of that?

A. No, sir.

Q. Was your attention distracted elsewhere?

page 97 } A. When she hit her head she walked on out, so I figured that she had not hurt herself.

Q. Did you hear Samuel Leiderman say, "Oh, no. This is the second one this morning"?

A. No, sir.

Q. Did you hear anybody say that?

A. No, sir.

Q. So you saw her bump into it, and that was all you did see?

A. Yes, sir.

Q. Where was your floorwalker at or about that time? Do you know?

A. No, sir. He wasn't in front; I know that.

Q. So far as your knowledge as an employee of the store to whom are you supposed to make complaints of such things?

A. Mr. Goldsticker, I believe.

Q. Mr. Goldstein?

A. Mr. Goldsticker.

Q. Who is Mr. Goldsticker?

A. I think he is now personnel manager.

Q. Was he employed at L. Snyder's at the time this lady was hurt?

A. Yes, sir.

Q. What position did he hold then?

page 98 } A. Personnel manager, and he took care of our counter and the hosiery counter.

and there is a counter here. Right here is your register. I was standing at the register looking out the door. Business was real slow that day. There wasn't nothing going on. I caught her in my vision. I always see if anyone is coming toward the counter.

Q. Did you by any chance report her mishap to any of your superiors?

A. No, sir. When she did hit her head she went on out.

Q. You did not report that to anyone?

A. No, sir.

Q. Had you seen anyone else prior to her running into it doing likewise? That same morning you did not?

A. No, sir.

page 95 } Q. You have been employed on that costume jewelry counter for how long now?

A. I came there about March 15th.

Q. Was that about the time this new entrance was put in?

A. I think it was put in about the 1st of March, or something like that.

Q. About what hour was it that Mrs. Ginn bumped into the doorway?

A. I had come back from lunch. I went to lunch at 11:30. I generally get back at 12:00. So, it would be somewhere around between 12:00 and 1:00.

Q. So far as you know is this the only instance of this happening prior to Mrs. Ginn walking into it?

A. Yes, sir. I had never heard nor seen anything.

Q. Was Samuel Leiderman on duty that morning?

A. Yes, sir.

Q. Do you know whether or not he saw Mrs. Ginn bump into it?

A. I don't know.

Q. Who else was there by way of employees of L. Snyder's?

A. I was the only one at my counter. I wasn't conscious of who was working at the men's counter or the other jewelry counter, because during the lunch period they go to

page 96 } lunch and come back.

Q. Do you know what gentleman it was that walked Mrs. Ginn back to her place of employment?

A. No, sir.

Q. You do not know who that gentleman was?

A. No.

Q. After she left did you miss any gentleman that was employed there at Snyder's?

Patsy Mae Drake.

Q. He took care of your counter and the hosiery counter and was personnel—

A. —manager.

Q. Manager? And you are sure that Mr. Goldsticker was employed by L. Snyder's at that time?

A. Yes, sir.

Q. Under the terms of your employment are you advised or required to bring to the attention of any of your supervisors any mishap that customers might have in your establishment?

A. I was never told to report anything.

Q. You were not told to report anything?

A. No.

Q. Without being told to, had you done so?

A. No, sir.

Q. But you do understand that Mr. Goldsticker is the one that it should be reported to?

A. I presume so, since he was over me. He was my superior.

Q. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Parsons:

Q. By whom are you employed now?

page 99 } A. Right now I am at Silco's. That is a cut price store in Portsmouth.

Q. You are working at Philco in Portsmouth?

A. Silco—S-i-l-c-o.

Q. How long has it been since you worked for L. Snyder's?

A. I left there on July 18th—17th.

Q. Last year?

A. That is right; this year.

By the Court:

Q. '58 you mean?

A. Yes.

By Mr. Parsons:

Q. And you have not worked there since last July then?

A. No, sir.

Mr. Parsons: That is all.

page 100 } BERNARD B. SPIGEL,

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

Examined by Mr. Parsons:

Q. You are Mr. Bernard Spigel?

A. Yes, sir.

Q. What is your middle initial?

A. Bernard B.

Q. What is your profession?

A. I am an architect.

Q. Where did you take your education in architecture?

A. I studied architecture at Carnegie Tech in Pittsburgh. I have been in business for myself since 1920.

Q. You have been engaged in that business in Norfolk since 1920?

A. Yes, sir.

Q. Have you had occasion to design store windows and doors and entrances during this period of years?

A. Yes, sir. We have had jobs from Brooklyn to Texas. We sort of specialize in commercial building.

Q. Tell us whether you were engaged to design the entrance to Snyder's store that is there now and was put in there in February or March 1958?

A. Snyder's store employed me as the architect to lay out that change that was made in the entrance facing

page 101 } Church Street.

Q. Was that design a standard and approved type for mercantile establishments of that kind?

A. Yes, sir. The front is in line with the new designs that we are doing now. There is nothing unusual about it. They are all standard designs. We use standard doors and equipment that are made by the Pittsburgh Plate Glass Company.

Q. Tell us whether these types of doors are used generally by well regulated stores all over the country?

A. Yes, sir. It is nothing but a standard installation which we have done on numerous occasions.

Mr. Parsons: The witness is with you.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Spigel, you are pretty well renowned for having modernistic tendencies in your architecture, are you not?

A. Not particularly so.

Bernard B. Spigel.

A. Here are the doors. Now, the door has a frame around it. It is well defined. How anyone could miss seeing it I don't know.

Mr. Campbell: Just a moment.

By the Court:

Q. Mr. Spigel, don't argue the case. Just explain to the jury what you consider the physical facts are, and then you will have to stop.

A. I just want to point out that there is a com-
page 104 } plete frame around each one of these doors.

By Mr. Parsons:

Q. Has the panel to the left of it got a frame around it, too?

A. This has a frame around the whole panel. But, this is a door frame. You see, this has a frame around it—I should say the stiles of the door—in addition to this frame that goes all the way around here. You see, the plate glass is held in place by this wide panel, or what we call the stiles of the door, and the crossbars here. Of course that emphasizes the point where the door is.

RE-CROSS EXAMINATION.

By Mr. Campbell:

Q. What is the width of the panel on either side of that door?

A. I would have to approximate it. I don't recall the plans that we made sometime ago.

Q. You know what the approximate widths of your doors are. You have the picture there to show you.

A. I would guess that as being about four feet.

Q. How wide are your doors?

A. The doors I think are five feet or six feet.
page 105 } Q. Six feet?

A. Yes, sir. For that opening, as I recall it, there is a pair of three foot doors there, making it six feet.

Q. And that would make the other approximately how wide?

A. I would say around four feet.

Q. So there would be a four-foot panel to be completely free of the door. What would be your estimate as to the width of this window?

Bernard B. Spigel.

Q. Let's don't be modest. You are recognized as a person who modernizes and brings the latest type of architecture to commercial establishments. Isn't that true?

page 102 } A. We try to keep up with the trend, yes, sir.

Q. Yes, you certainly do. As to this particular entrance—and I am not being critical of you as the architect—if a person is approaching that paneling, being clear, transparent plate glass, they can see the outer doors, but in looking at the panel itself, the panel is invisible, is it not?

A. It is very rare that you would have shadows on it. It is very rare that you could not see right through without a lot of reflection around it.

Q. That is exactly the point I am getting at, Mr. Spigel—not the installation, but the circumstances of the peculiar setting enters into the picture, does it not?

A. Peculiar?

Q. You—

Mr. Parsons: Let him answer your question.

A. I would like to say we have made, I don't know how many installations that are just like it.

By Mr. Campbell:

Q. Yes, but it involves the question of the direction of the sun, the shadows from the building across the street? Many elements enter into the question of a person looking at the panel, itself, and finding it invisible—that is, its presence being invisible, but being able to see through and see the doors on the outer side?

page 103 } A. Well, there could be. I have not examined it from that standpoint.

Q. Thank you, Mr. Spigel.

Mr. Campbell: That is all.

RE-DIRECT EXAMINATION.

By Mr. Parsons:

Q. Mr. Spigel, since he has opened it up—To anybody who is approaching that door it is perfectly open—and obvious what the conditions are?

A. Mr. Parsons, do you have that picture?

Q. There it is right there. Step over there and explain it to the jury.

A. This is plate glass, and the object is to make it transparent so the people can see the merchandise in-
page 107 } side the store.

Mr. Campbell: That is all.

JAMES E. WEDDLE,
called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Parsons:
Q. Mr. Weddle, you are of J. E. Weddle & Company?
A. Yes, sir.
Q. You are in the contracting business in the City of Norfolk?
A. Yes, sir.
Q. How long have you been in the contracting business?
A. I have been in the contracting business six years, myself. I work with my father who was in the business before.
Q. You and your father are engaged in building store entrances and things of that kind?
A. Yes, sir.
Q. Will you state whether or not your organi-
page 108 } zation installed the windows of L. Snyder's in 1958?
A. Yes, we did the first of the year.
Q. Along about February or March, was it?
A. January and February mostly.
Q. Will you state whether or not you did that according to the architect's plans?
A. Yes, sir. That job was built according to the plans and specifications.
Q. Is that a standard and approved plan for doors of that type, used by merchants generally?
A. Yes, sir, I would say so. I notice there are several buildings around town that have that same type of entrance.
Q. Do you install similar doors in other places?
A. Yes, sir.

Mr. Parsons: The witness is with you.

CROSS EXAMINATION.

By Mr. Campbell:
Q. Mr. Weddle, you followed the architect's sketch on this?

A. Three and a half feet.
Q. Three and a half feet? Would it be fair to say that from here to here is four feet?
A. Yes, sir.
Q. So a person approaching this panel would have an area from here to about here without coming in contact with the door?
A. You mean the side paneling of the door?
Q. Yes, the side paneling.
A. If they are aiming in that direction, yes.
Q. If a person should be walking over that wide a span as between my two hands—

Mr. Parsons: If Your Honor please, he is going into a hypothetical question.
Mr. Campbell: I have an expert here.
The Court: Let him ask the question.

page 106 } By the Court:
Q. Don't answer it, Mr. Spigel, until I rule on it.

By Mr. Campbell:
Q. As he approached that panel would or not the outer doors be in line with his vision as you have constructed this?

The Court: Is there any objection to that?
Mr. Parsons: No. Let him answer it.

By the Court:
Q. Answer it.
A. I don't quite understand. You want to know whether the doors would be in line with it?

By Mr. Campbell:
Q. Yes, in line with one's vision.
A. You mean would you see the doors as you are coming up to them?
Q. The outer doors, yes?
A. Yes, sir.
Q. Yes, sir.
A. Sure, you would see the doors.
Q. That is exactly the point. There was nothing in the way of this plate glass being defective or anything that would keep it from being transparent?

Paul D. Woodward.

Mr. Campbell: You are seeking from him his impression.
The Court: He cannot testify unless it is assumed that there has been no change in the doors. But, if there has been, of course the Court would not permit the testimony.
Mr. Parsons: I don't know if he saw the same condition or not.

page 111 } By Mr. Parsons:
Q. Therefore, come down, Mr. Woodward.

Mr. Parsons: That is all. We rest, if Your Honor please.
The Court: Do you have any further testimony?
Mr. Campbell: No, sir.

(The following proceeding was had in the absence of the jury:)

Mr. Parsons: If Your Honor please, I want to renew my motion to strike the plaintiff's evidence in the light of what has been shown as being undisputed that the owners of the store had absolutely no knowledge of any prior accidents which would indicate a dangerous condition; and, even if there had been a prior accident, there is still no evidence that this was an unreasonable condition or that they did not exercise reasonable care in its installation and maintenance.
The Court: I will overrule your motion. Note your exception.
Mr. Parsons: I note an exception.

page 112 } EXCEPTIONS TO THE INSTRUCTIONS.

Mr. Parsons: The defendants object and except to the granting of any instructions on behalf of the plaintiff on the ground, first, that there has been no evidence of negligence as alleged on the part of the defendants. Secondly, there has been plainly shown by the plaintiff's own evidence and the undisputed facts of this case that the plaintiff's acts, herself, were the sole cause of the accident, and she was at least contributorily negligent.

Mr. Parsons: The defendants except to the granting of Instruction 1-P, for the reasons above stated, and for the additional reason that it ignores the question of contributory negligence upon the part of the plaintiff.

A. Yes, sir.

Q. Has Mr. Spigel designed a similar entrance on any other store that you have installed?

page 109 } A. Well, there are some similar. I think Rice's has a similar entrance, only the side panels are not as wide as this one. That was one that we did for Mr. Spigel.

Q. But it was not the same as this one at Snyder's?

A. No, sir, not exactly the same.

Q. The side panels are about four feet wide, aren't they?

A. Yes, sir, I would guess they are just about that.

Q. If you approached it diagonally, not coming right head-on but diagonally, you would look out and see the outer doors opening off of Church Street, wouldn't you?

Mr. Parsons: If Your Honor please, that seems to be a question that answers itself.

The Court: Objection sustained.

By Mr. Campbell:

Q. That is all, Mr. Weddle. Thank you.

PAUL D. WOODWARD,

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

Examined by Mr. Parsons:

Q. You are Mr. Paul A. Woodward?

page 110 } A. Paul D. Woodward.

Q. What is your business?

A. I am an architect.

Q. At my request did you examine the store front at Snyder's?

A. Yes, sir, I did on two occasions; once on the 24th of November and again last Saturday.

Q. Will you tell us—

Mr. Campbell: If Your Honor please, I happened to be out there, myself, last Saturday, and unless this gentleman saw the store under the identical conditions as it was on the 25th of April, he is not qualified to testify.

The Court: I will permit Mr. Parsons to recall one of his witnesses—

Mr. Parsons: I am not going to ask him what the conditions were on Saturday.

Mr. Parsons: The defendants object and except to the granting of Instruction 3-P for the above stated reasons to all instructions, and for the additional reason page 113 } that the evidence does not warrant the finding of any damages against the defendants, and there has been no evidence of physical pain and mental suffering introduced in the case, nor has there been any evidence as to what expense, if any, will be incurred in the future as a consequence of said injuries.

Mr. Parsons: The defendants except to the refusal of the Court to grant Instruction D-4, because there is no evidence in this case that the defendants had any knowledge of any previous accident or occurrences of any kind that would bring to their attention any dangerous condition at the entrance doors; and that the instruction should have been granted because there is no evidence of any previous occurrences, the only evidence being that of the witness Mrs. Gumm who had stated that she knew of two occurrences prior to the accident to the plaintiff here, and which she later explained she did not understand the meaning of the question and said that they were subsequent to the accident. This evidence is not substantive evidence and is not bringing home knowledge to the defendants in any sense, and would not page 114 } charge them with any duty to anticipate other injuries.

Mr. Parsons: The defendants except to the refusal of the granting of Instruction D-6, because the medical testimony in this case indicated that the plaintiff did have a setup of emotional instability prior to the accident, and there has been no distinction between that medical finding and the medical finding after that, even though the doctor has testified that in his opinion the conditions he found after the accident had a traumatic relationship. The doctor also said that he treated a great many patients who had the same difficulty that did not arise from accidents, and it follows that it could arise to any person or any individual without the intervention of any traumatic accident.

Mr. Campbell: The plaintiff objects and excepts to the action of the Court in granting Instruction D-3, on the ground that it picks out a portion of the evidence and emphasizes it and fails to take into consideration all of the page 115 } evidence, particularly that which was favorable to the plaintiff; namely, that the presence of the

plate glass panel was not discernible because of its being invisible. And, as presented by this instruction, it tends to suggest to the jury the fact that through the exercise of reasonable care the plaintiff should have seen the glass paneling which, as above stated, is contrary to the contention of the plaintiff. This instruction consequently is misleading to the jury.

page 116 } JUDGE'S CERTIFICATE.

I, J. Sydney Smith, Jr., Judge of the Court of Law and Chancery of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings of the case of Shirley Ginn *v.* Mrs. L. Snyder, et al., tried in said court on the 8th day of December, 1958, and includes all the testimony offered, the motions and objections of the parties, the rulings of the Court, and the exceptions of the parties, and all other proceedings of said trial.

I further certify that the exhibit offered in evidence, as described by the foregoing record, and designated as Defendants' Exhibit 1, is all of the exhibits offered upon said trial, and the original thereof has been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final order in said cause, and that the attorney for the plaintiff had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 28th day of July, 1958.

J. SYDNEY SMITH, JR., Judge.

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A Copy—Teste:

H. G. TURNER, Clerk.

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