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Record No. 5124

In the Supreme Court of Appeals of Virginia at Richmond

EDITH SWEET PICKETT

v.

ARTHUR LEONARD COOPER

FROM THE CIRCUIT COURT OF AMHERST COUNTY

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5124

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.

EDITH SWEET PICKETT, Plaintiff in Error,

against

ARTHUR LEONARD COOPER, Defendant in Error.

From the Circuit Court of Amherst County

Upon the petition of Edith Sweet Pickett a writ of error and *supersedeas* is awarded her to a judgment rendered by the Circuit Court of Amherst County on the 2nd day of June, 1959, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Arthur Leonard Cooper was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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* * * * *

At a Circuit Court of the County of Amherst, continued and held at the Court House thereof, on Tuesday, the 6th day of January, in the year of our Lord One Thousand Nine Hundred and Fifty-nine.

* * * * *

This day came again the parties, by their attorneys, and the Defendant for plea says that he is not guilty in the manner and form as the Plaintiff in her notice of motion for judgment hath alleged, and of this he puts himself upon the Country and the Plaintiff likewise. And Mr. C. R. McCarthy, Court Reporter, was duly sworn to make a true and perfect transcript of the record in this case. And thereupon came a jury, to-wit: Ambrose Shepherd, Clyde M. Mays, H. L. Brightwell, Jr., Robert L. Bell, Hardy Coffey, J. Warren Tinsley and Ramey Richeson, who having been selected, tried and empaneled in the manner provided by law, from the veniremen regularly and duly summoned to this term for the trial of criminal cases, were duly sworn well and truly to try the issue joined and a true verdict to render according to the law and the evidence.

And having fully heard the evidence and argument of counsel were sent to their room to consider of their verdict, and after sometime spent therein, returned into Court and rendered the following verdict, to-wit: "We the jury find for the defendant Arthur Leonard Cooper (Signed) J. W. Tinsley, Foreman."

page 12 } Whereupon, the Plaintiff, by her attorney, moved the Court to set aside the said verdict of the jury on the following grounds:

1—The said verdict is contrary to the law and evidence.

2—The Court erred in refusing instructions offered by Plaintiff, and also the Court erred in giving any instructions for the defendant, and furthermore that from the evidence in this case as a matter of law the defendant was guilty of negligence which was the proximate cause of the accident.

Which motion is set down for argument at some future date.

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ORDER.

This, the second day of June, 1959, came again the parties by their attorneys, and the Court having heard oral argument of counsel for the parties on March 23, 1959, and not then being advised of its judgment, took time to consider thereof, and now being advised of its judgment, the Court doth overrule the motion of the plaintiff to set aside the verdict of the jury heretofore rendered in this action on January 6, 1959, in favor of the defendant, and it is, therefore, considered by the Court that the plaintiff take nothing by her Motion for Judgment for money in this action, but for her false clamor, be in mercy, etc., and that the defendant go thereof without day and recover against the plaintiff his costs by him about his defense in this behalf expended; and the plaintiff, by her attorney, duly objected and accepted to the foregoing action of the Court.

Enter 6/2/59.

C. G. Q.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Notice is hereby given, pursuant to Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, that Edith Sweet Pickett, the plaintiff above mentioned, hereby appeals to the Supreme Court of Appeals of Virginia, from the final judgment entered in this action on June 2, 1959.

Pursuant to the aforesaid rules, the aforesaid plaintiff makes this, her assignments of error and alleges that the Court erred:

Dr. B. K. Mundy.

(1) In refusing to give instruction #2 as offered by the plaintiff and in giving instruction B and G as offered by the defendant, Cooper, because the evidence showed conclusively that the defendant was not without fault and was not faced with a sudden emergency and these instructions are based upon the doctrine of sudden emergency. The evidence being conclusive that the defendant was driving to the left of the center of the road in the direction he was traveling prior to and at the time of the collision and that as a matter of law, he was with fault in causing said collision.

page 35 } (2) In refusing to give instruction #4 offered by the plaintiff because it correctly states the principle of law that the driver of the automobile in which the plaintiff was a passenger had a right to assume that the defendant would drive upon his right and proper side of the road until he saw that the defendant was not going to return to his proper side of the road.

(3) In giving instructions #A, E, F, and K, offered by the defendant on the ground that the evidence showed as a matter of law that the defendant was guilty of negligence and that his negligence was a proximate cause of the accident. And further the Court erred in granting instruction F on the ground that the expression "it is as likely as not," is an incorrect statement of law and was misleading to the jury.

(4) In refusing to set aside the jury's verdict in favor of the defendant and grant a new trial on the ground that the evidence was conclusive that the defendant was guilty of negligence which was a proximate cause of the accident.

PAUL WHITEHEAD
Attorney at Law
512 First Colony Life Building
Lynchburg, Virginia
Attorney for the Plaintiff, Edith Sweet Pickett.

Filed in Clerk's Office Amherst Circuit Court Jul. 11, 1959.

WM. E. SANDIDGE, Clerk.

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page 3 } DR. B. K. MUNDY,
having been first duly sworn, testifies as follows:

Dr. B. K. Mundy.

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Dr. B. K. Mundy?

A. I am.

Q. And I believe you specialize in orthopedic surgery. Is that correct?

A. That is right, yes, sir.

Q. Now, Doctor, when were you called in to see Mrs. Pickett?

A. I was called in to examine her on June 2nd, 1958, which was approximately fourteen hours after the accident happened. I was called in by Dr. Earl Owen who had examined her at the time of her admission to the hospital.

Q. Now, what did you find was the matter with her in your line of practice?

A. She had a severe contusion to the left side of her neck and the upper part of her shoulder. She had a contusion of her left knee and an avulsion, or tearing away of the extensor tendon to the left finger, the fourth finger of her left hand, it was a complete avulsion of that extensor tendon and it was necessary to immobilize it on a splint. As far as the contusion to the cervical area and to the knee was page 4 } concerned there was no active treatment that would essentially help her and it was a matter of letting time heal these contusions.

Q. I noticed you said something about her left knee. Now what about her right knee, or did you mean her right knee?

A. I am sorry. I did mean her right knee.

Q. Now, refer to your notes and tell us what you found and what treatment you rendered her and what her condition is at the present time, please sir.

A. Well, she was extremely anxious to be going home the day that I examined her and I instructed her as to the extent of her activity. I put her left fourth finger in a splint and it was only several hours later that the patient then went on home. She came to the office ten days later and the splint on the finger was changed and at that time the contusion on her knee had accumulated a small pocket of fluid in it and it had increased in tenderness over what it had been at the time of her hospitalization. When she was seen again ten days later the splint was again changed and at that time it was also apparent that the knee was tender and inflamed and extremely uncomfortable at times. She, however, was able to be up on it. On June the 30th, which was exactly four weeks after the

Dr. B. K. Mundy.

first examination, we took off the splint that she was wearing and at that time the contusion to the knee had improved and the terribly severe acute tenderness was alleviated and the pain that she was primarily concerned with at that
page 5 } time was here in the cervical spine.

She was started on a course of intermittent traction to her cervical spine which helped her.

Q. Let me ask you while you are right there what you mean by intermittent traction to the cervical spine. What do you mean by that?

A. The head is placed in a halter and approximately thirty-five pounds of pull is applied to stretch and relax the muscles and ligaments that had been injured and this is only applied for a period of two minutes or three minutes at a time.

Q. Two or three minutes each time?

A. Yes, sir.

Q. And how many times did you apply this traction to her?

A. Well I applied it three times on each treatment and the treatments were on July 21, July 28th, July 31st and on August 11th.

Q. That would have been four times and you do it three time on each treatment?

A. That is right.

Q. Is that two minutes for each time?

A. That is right, just about two minutes.

Q. Now then, Doctor, as to her finger, what progress has been made in that?

page 6 } A. Well now, at the time of the last examination which I made on September 8th it was apparent that this finger had healed with the tendon being a little bit too long. In other words when she exerted energy in that tendon her finger would not come all the way up like it ought to. It isn't a terribly disabling condition. It is hard to put on gloves. It is a little tender and it is a definite cosmetic defect, and in estimating her permanent disability I stated that she had approximately a 10% permanent loss of use of that finger.

Q. In your opinion will that continue to pain her from time to time?

A. Well, it isn't actually paining her now at this interval of time. It isn't a question of pain as much as it is a question of a cosmetic defect, plus her inability to use it as she used to use it.

Dr. B. K. Mundy.

Q. Now, with reference to her knee, you say you found when she came back some fluid on her knee. Now where did you find the fluid?

A. The fluid had accumulated in the prepatellar bursa. The prepatellar bursa is a little synovial pocket that lies under the skin on top of the kneecap and when it is injured generally after an interval of several days it begins to get enlarged and tender.

Q. Is it painful?

A. It is painful, yes, sir.

page 7 } Q. Let me ask you this, Doctor: If she progresses in the ordinary way what period of time should her knee give her trouble?

A. Well, now, the pain from a prepatellar bursa is a pain that hurts in relation to inactivity more than anything else. In other words, she would be able to do the things that she ordinarily would do but when she sits down for an hour or two it will ache and then after a period of inactivity when she first becomes ambulatory and takes two or three steps it will hurt then. It isn't actually disabling. It is painful without being disabling, and the duration of that pain lasts variably from six months to even as long as eighteen months, depending on whether the patient will get down on her knees and aggravate the condition.

Q. Would bending up and down like kneeling down to get something aggravate it?

A. The thing that aggravates it is to actually put the kneecap down to the floor and kneel on it and that does aggravate it.

Q. Now, Doctor, with reference to her neck and cervical spine there, and after giving her treatment, do you think she has made a reasonable recovery as far as being relieved of that?

A. Of course, my last examination was back on September the 8th and at that time I was under the impression

page 8 } that her back was completely free in all of its movements and that it was free without any pain, and at that time I instructed the patient if any acute painful episode appeared that she call me and come in for a continuation of these treatments.

Q. Now then, according to your following of the progress in this case, when you saw her last in September did the pain then continue or had it gradually gone away?

A. I was under the impression at that time that the pain had left.

Dr. B. K. Mundy.

Q. Now then, with reference to her knee, as I understand you, you say that is not disabling but the pain may be there anywhere from six to eighteen months, depending upon how it progresses. Is that right?

A. That is right.

Q. Now, I overlooked asking you but in your line of practice you deal with joints and bones and that type of practice, do you not?

A. That is right, orthopedic surgery.

Q. Now then, with reference to her ring finger on her left hand, where was that bone fractured?

A. It was an avulsion of the extensor tendon, the tendon that inserts into a little lip of bone there at the phalanx here and when the tendon pulls it pulls a piece of bone along with it.

Q. Now, Doctor, for the treatment that you
page 9 } rendered this lady at the hospital and in your office
what is your bill to date?

A. My total bill to date was $39.00.

By the Court:

Q. That doesn't include any fee for appearing here today?

A. No, sir.

By Mr. Whitehead:

Q. Now, as far as the scar on her knee, is that scar permanent or not?

A. Well now, I have not examined her for the purpose of determining that and I have no record of it and I would rather not testify from memory about it.

Mr. Whitehead: You may cross examine.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Dr. Mundy, when you saw this lady the first time that was June 2nd on the day following the accident and you found the contusion of the neck and the shoulder and of the right knee?

A. That is right.

Q. Is a contusion a bruise?

A. It is, yes, sir.

Dr. B. K. Mundy.

Q. And then, of course, you found the difficulty
page 10 } with the tendon of the ring finger—that is this finger here, is it not?

A. That is right.

Q. Now, when you examined her on the 2nd of June and made those findings was there anything to indicate to you she shouldn't go on home?

A. Well, I actually thought that Mrs. Pickett was hurrying it a little bit. She was very anxious to leave. She was very dissatisfied being away from home and I actually tried to get her to stay on for a day or two longer because I thought she had not realized fully how much these things were going to hurt her.

Q. Now, Doctor, she was referred to you or you were called in by Dr. Earl Owen?

A. That is right.

Q. Have you conferred with any other doctor about her condition?

A. I have not.

Q. Did you see her in the Memorial Hospital for the three or four days she was over there?

A. No, sir, I did not.

Q. Did you put her in the Memorial Hospital?

A. No, sir, I did not.

Q. Now then, about the knee, I was checking this report—
On June 30th, within four weeks, you found that
page 11 } the knee had improved?

A. It had improved to the extent there was no longer any accumulation of fluid in the prepatellar bursa.

Q. That is the pocket of fluid you referred to which you found on your second examination of June 12th?

A. That is right, yes, sir.

Q. Then on June 23rd you changed the splint and the fluid was clearing up and on June 30th the knee had improved and actually at that time you could no longer detect any increased fluid in the bursa, and also on June 30th, at the end of that month, you took the splint off the finger?

A. That is right.

Q. Now then, on July 21st, a month and a half after the accident, was the first time she complained of pain in the neck?

A. Oh no, it wasn't the first time she had complained of it. She complained of that right when I examined her, when

Dr. B. K. Mundy.

I examined her in the first instance. Her pain in the cervical spine was her predominant complaint.

Q. On the 21st of July that was her main complaint?

A. Yes, sir.

Q. So far as you were concerned the other complaints had sort of cleared up and she was complaining of the pain in the neck?

A. That is correct.

page 12 } Q. When you put the halter on and stretched the neck up what you are actually doing is stretching the muscles and tendons to take the spasm out of them and relieve them?

A. Yes, sir.

Q. That is not a painful thing at all. It relieves the pain?

A. It isn't the pain as much as it causes a degree of apprehension which the patient has the first time or two and then after that usually the patient actually enjoys it.

Q. Now, you gave this treatment on four visits to the office, July 21st, 28th, 31st and August 11th?

A. That is right.

Q. Now then, when you saw her on September the 8th the neck had no pain in it and it wasn't necessary to give her any traction at that time?

A. That is correct.

Q. And she didn't complain of any pain in the knee at that time?

A. Yes, she had an intermittent pain. Now, perhaps it was not paining at that particular time but it had hurt.

Q. Now, you thought that it was only a question of time and the things she had would clear up?

A. That is right.

Q. And there was no reason for you to have her come back. There was no other treatment you could give her?

page 13 } A. That is correct.

Q. And you told her if she had any more trouble to come back to you?

A. That is right.

Q. And you haven't seen her since that time?

A. That is right.

Q. Other than the things you have mentioned did you notice anything else wrong with her? Did she complain of anything else to you?

A. Well now, she at the time of her original admission had lacerations and a cerebral concussion which I was under

the impression Dr. Owen was taking care of and I have not interfered with that.

Q. Well, the lacerations would be cuts that she got?

A. That is right.

Q. And the cerebral concussion was something she had if she was unconscious for any length of time?

A. That is right.

Q. When you were dealing with her she seemed to be perfectly normal and all right?

A. Yes, sir.

By Mr. Whitehead:

Q. When you say she was normal and all right do you mean she could carry on a conversation?

A. That is what I thought he was referring to.

page 14 } She knew who she was and where she was.

Mr. Rosenberger: That is right.

Mr. Whitehead: I believe that is all.

The witness stands aside.

H. L. NEWMAN, (State Trooper)
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are State Trooper H. L. Newman?

A. That is right.

Q. I believe you have been on the State Police force how long?

A. About nine years.

Q. And you have been stationed continuously in this county up to this date how long?

A. Since 1953.

Q. Now, on June 1, 1958 were you stationed in this County of Amherst and were you also on duty on that day?

A. I was.

page 15 } Q. Mr. Newman, were you called to investigate an accident between a car driven by Mr. Cooper and a car driven by Mr. Pickett on that date?

A. Yes, sir.

Q. Will you please tell us in your own way approximately what time you received the call and what time you reached

H. L. Newman. (*State Trooper*)

the scene of the accident where it had occurred and what you found?

A. The accident occurred on June 1, 1958, which was on a Sunday afternoon, approximately 6:30. I received the call at approximately 6:35 and arrived at the scene approximately twenty minutes later. The accident occurred on Route 29 approximately a mile and a half north of the center of town here, or just to the north of Buffalo River bridge up here. When I arrived at the scene, of course, there were the two vehicles involved. One was a 1957 Ford Sedan being operated by Arthur Cooper and the other was a 1952 model Ford being operated by Mr. Frank Pickett. When I arrived at the scene Mr. Cooper's car was turned broadside in the highway just about half way up the hill on the far side, on the north side of Buffalo bridge. His car would have been facing to the west, broadside across the highway.

Q. That is Mr. Cooper's car?

A. Yes, sir.

Q. Where was that in relation to the highway?

page 16 } A. It would have been right straight across the highway, not completely blocking it but blocking the major portion of the highway. If a car went off on the shoulder it could go around either to the back or to the front.

Q. Let me ask you this: At that point where the accident occurred please tell us approximately what is the width of the hard surface of the highway.

A. The hard surface is about twenty feet wide. It is a standard two-lane black surface.

Q. How many lanes are there for traffic?

A. Two.

Q. One lane each way?

A. One each way.

Q. This road runs, I believe, in a general northerly and southerly direction, does it not?

A. Yes, sir, it does.

Q. Have you made a rough chart of this not to scale but a rough chart of this accident?

A. Yes, sir, I have.

Q. Would you please let us see that?

A. Yes, sir, here it is.

Q. Now will you please stand up here and explain to the court and jury what you have there?

A. This would represent Route 29 here running north and

H. L. Newman. (*State Trooper*)

south. This would be to the north and, of course,
page 17 } this would be to the south. This line here represents the shoulder of the highway, or from the edge of the hard surface over to the edge of the bank where it drops off from here down.

Now, vehicle number 2, as I have sketched it in the highway here—

Q. Which car was that?

A. Mr. Cooper's vehicle here, and number 1 would represent the Pickett vehicle.

Just about half way up the hill there is a white solid line which would prevent passing for northbound traffic. Now, when I reached the scene Mr. Cooper's car was sitting in the highway in this fashion. The right side of the car was right even with where this solid line starts and, of course, Mr. Pickett's vehicle was sitting completely off of the hard surface over on the shoulder of the highway, which would have been to his right.

Q. Would that be the west shoulder?

A. That would be on the west side, yes, sir.

Q. Now, as you have drawn this chart, the lanes of traffic are between these two solid lines here?

A. Yes, sir.

Q. That would be southbound and this would be the northbound lane?

A. That is right.

Q. Now, where was the damage done to the
page 18 } Cooper automobile?

A. The major portion of the damage on Mr. Cooper's car was this left side over here. The whole left side was completely ripped away—that would be from the door on the driver's side all the way back, this whole section back in here was completely ripped out.

Q. Where was the damage done to the Pickett automobile?

A. That was on the front. It would have been more or less to the left front corner. That would have been in this area here.

Q. Let me ask you this while we are right here. Where this accident occurred is it on a curve, a straight-away or what?

A. At that particular location the road is reasonably straight; however, it is a right steep incline. It would be upgrade as you are traveling north.

Q. In other words, if a car was going north it would be going upgrade?

H. L. Newman. (*State Trooper*)

A. Yes, sir.

Q. And a car going south, of course, would be going downgrade?

A. That is right.

Q. Now, on this occasion was it raining or what was the weather condition?

A. It was raining at that time.

page 19 } Q. Was the road wet?

A. Yes, sir.

Q. Now, I believe you say when you got there you found the Cooper car very near where the solid line begins for northbound traffic not to pass. Is that correct?

A. That is correct. The right side of the car was right even with the southern end of that solid line, right on it.

Q. Now, actually where the accident occurred is there any curve in the road there or is it straight?

A. It is reasonably straight. The only curve would be possibly two-tenths of a mile back up here at the top of the hill and that would be a right-hand curve if you were traveling north. That was approximately two-tenths of a mile north of where the accident happened.

Q. Did you find any scoured out places in the road at all?

A. No, because the road was wet and, of course, there was debris and glass and oil and what have you all over the road and it had been tracked through by other cars passing through there after it occurred and it was hard to distinguish any particular marks in the highway which would have been made by either car at the time of the collision.

Q. Now, was there any glass or dirt in the road at all in what would be the northbound lane?

page 20 } A. Yes, there was. It would have been scattered throughout this area, this whole area in here. It was littered and covered with small fragments of glass, pieces of chrome and other debris from the cars.

Q. When you got there you say you found the Pickett car where you have shown it on this diagram. Did you find anything to indicate that the Pickett car had ever been over in the northbound lane?

A. No, sir.

Q. And when you got there you say you found the Cooper car facing west as you have shown it on the diagram?

A. That is correct.

Q. Now then, after the accident did you talk with Mr. Cooper?

H. L. Newman. (State Trooper)

A. Yes, I talked with Mr. Cooper and also with Mr. Pickett and his wife, Mr. Pickett's wife.

Q. Now, when you talked with Mr. Cooper would you please tell us what he told you happened?

A. If I recall correctly everybody in the two vehicles were injured to some extent. There were six people in Mr. Cooper's car and I believe two in the Pickett car and at that time our main concern was to do what we could for them at the scene and see that they got on to the hospital as quickly as possible for proper attention and I do not recall talking to Mr. Cooper until after I got to the hospital, and page 21 } at that time he told me that to the best of his recollection that he was traveling along there at a moderate rate of speed, possibly between 30 and 40, he wasn't too sure about it, and that the left rear tire on his vehicle blew out and caused him to lose control of the car and, of course, when it skidded around he was struck broadside by this other car.

Q. Did he tell you where the accident took place, in what lane of travel it took place?

A. He was not too sure about whether he was on his side or on the other side. There was no positive answer to the questions I asked him but he stated that after the left rear tire of the car blew out that he tried his best to control it but he was unable to do so on account of the wet, slippery road.

Q. And he then said he was struck by the other car?

A. He was struck by the other car.

Q. Did he know about being knocked around in the road? Did he tell you about that?

A. No, he did not.

Q. Could you find any marks to indicate to you that the Cooper car had been turned around in the road?

A. Well, due to the damage inflicted to the car it was impossible for it to have happened any other way. It would have had to have had the left side turned back around or partially turned this way to have been struck and page 22 } damaged where it was.

Q. Did you also talk to Mr. Pickett?

A. Yes, sir.

Q. And what did he tell you?

By the Court:

Q. Was Mr. Cooper present when you talked to Mr. Pickett?

H. L. Newman. (*State Trooper*)

A. Both were at the hospital at the time I talked to them.

By Mr. Whitehead:

Q. They were all together there?

A. Mr. Cooper was in the hall just outside of the nurses' office in the emergency room and Mr. Pickett was standing at the counter there. The only obstruction between Mr. Cooper and Mr. Pickett and myself would have been an open doorway. What I mean by that is that we were in one room and he was in the hall just outside the door or doorway because there is no door there, just an archway between the two.

Q. Was Mrs. Pickett there also?

A. No, I believe she was over in one of the treatment rooms. I don't believe she was present at the time.

Q. Now, when you examined the vehicles did you find that the left rear tire on the Pickett automoble was flat after the accident?

Mr. Rosenberger: You mean the Cooper automobile.

page 23 } By Mr. Whitehead:

Q. Was the left rear tire on the Cooper automobile flat?

A. That tire was practically torn all to pieces. Of course, it could have been done beforehand or it could have been done in the accident or partially both.

Q. Where the impact took place was there indication that the Pickett car had hit along about that left rear tire?

The Court: Don't lead the witness.

Mr. Rosenberger: He couldn't tell what hit what. It is just a matter of opinion.

By Mr. Whitehead:

Q. You say you did talk to Mr. Pickett at the hospital?

A. Yes, sir.

Q. And what did Mr. Pickett tell you?

A. Mr. Pickett told me at the time that he and his wife were together and were traveling south on Route 29 and as they came around the curve and started down the hill that they noticed this car had turned around sideways in the highway and, of course, he immediately applied his brakes and tried to do the best he could to avoid hitting the car but was too close to it; that he did the best he could

under the circumstances but was just too close to it when it swung out in his lane of travel and there was nothing else to do but strike it.

page 24 } Mr. Whitehead: We would like to introduce this diagram if we may and call this Plaintiff's Exhibit No. 1.

The Court: Very well. I will initial it later.

By Mr. Whitehead:

Q. Now, Mr. Newman, I call this Plaintiff's Exhibit No. 1-A. Is that a picture with the photographer north of the scene of the accident looking in a southerly direction? Does that portray a true condition of the roadway as it looked at that time?

A. I would say it does, yes, sir.

Q. Now, as shown in this picture, with reference to the pine tree shown there where did that accident occur?

A. I can't quite make out from this picture exactly where that double line starts. It would be very near that tree.

Q. Now, I show you Plaintiff's Exhibit No. 2. That is where the photographer is standing down near the foot of the hill and looking in a northerly direction. Does that portray the true condition there at that time of the roadway?

A. Yes, sir.

Q. Then I show you Plaintiff's Exhibit No. 3, which is a close-up, going up to the scene of the accident. Does that portray a true condition?

A. Yes, sir.

page 25 } Q. Then I show you Plaintiff's Exhibit No. 4. Does that portray a true condition of the roadway as of that time?

A. Yes, sir.

Q. Of course, these last three pictures were taken with the photographer looking in a northerly direction and No. 1-A was looking in a southerly direction. Now, you see in Plaintiff's Exhibit No. 4—would you mind standing up here please—you see the line drawn there where it is broken and then where it becomes solid and double?

A. Yes, sir.

Q. Now, I will ask you this: Is that where this line becomes solid, is that where you have indicated that the Cooper car came to rest facing in a westerly direction?

A. That is right, right at the end of where this solid line

H. L. Newman. (State Trooper)

here starts. The right side of his car was right even with the end of that line facing across the highway.

Q. I now show you Plaintiff's Exhibits No. 5, No. 6, No. 7 and No. 8 and ask you if they portray the true condition of the Pickett automobile after the accident?

A. I would say they do, yes, sir.

Q. Now, Mr. Newman, would you please tell us whether or not at the time that you arrived there, and also at the hospital when you talked to Mr. Cooper, did he have anything on his arm or hand?

page 26 } A. Mr. Cooper had his left arm in a cast. I understand his arm had been broken and had not completely healed at that time and was still in a cast.

Q. And do you recall how far that cast went, from what point to what point?

A. I wouldn't want to definitely say. I am not sure about that. I know it extended to the wrist; that four fingers and the thumb were protruding from the end of the cast and I believe it went several inches above the elbow but I wouldn't want to be positive about that.

Q. And that was on his left hand and arm?

A. On his left wrist.

Q. As I understand, and as you have shown by the rough chart which you have made, the Pickett automobile, or at least most all of it, was off of the hard surface when you arrived there?

A. It was completely clear of the hard surface. His left rear bumper was about six inches clear of the hard surface and the car was sitting at an angle. The left rear end would have been about six inches from the hard surface and there was room enough if traffic could maneuver in front of Mr. Cooper's car and swing back around to make it by his car and come on by all right and if they were northbound they could have went partially off on the shoulder and went around Mr. Cooper's car to his rear going north.

page 27 } Q. Let me ask you this: From where you determined the point of impact to be when the Cooper car came to rest would it have been north or south of that point?

A. I don't believe I follow you there.

Q. You say you found on the Cooper car that the left rear and all of this side was damaged?

A. Yes, sir.

H. L. Newman. (*State Trooper*)

Q. Now, from where you determined that point of impact took place then after this car came to rest would it have been up the hill or down the hill from where the impact took place?

A. It would have been to the north of where the actual collision occurred.

Q. That would be up the hill?

A. Up the hill.

Q. Mr. Newman, do you recall from your investigation what tires, if any, were down on the Pickett automobile after the accident?

A. As well as I recall the left front tire was down.

Mr. Whitehead: All right, gentlemen.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Mr. Newman, you were describing the cast on Mr. Cooper's hand. You said you realized that his hand and his thumb were outside of the cast and it went up to his elbow and maybe went above the elbow but you wouldn't say?

page 28 } A. I don't recall whether it extended above the elbow or not. I believe it did but I wouldn't want to be positive.

Q. If he says it did not get up to his elbow and he could bend his elbow you wouldn't deny it?

A. No, sir, I couldn't deny it because I don't recall. I know the cast was into the palm of the hand but there was an opening for the thumb and openings for the four fingers outside of the cast but I couldn't definitely say whether it extended above the elbow or not.

Q. People often drive with that type of cast on, don't they?

A. Well, you don't see too many of them but it could be done very easily.

Q. Now, Mr. Whitehead spoke of the photographer being north and south of the point where these pictures were taken. Were you the photographer?

A. No, I was not.

Q. Was Mr. Whitehead the photographer?

A. I do not know.

Q. You do not know who took the pictures?

A. No, sir.

Q. I notice one looking south is rather dull and dim and

H. L. Newman. (*State Trooper*)

I can't see in it very well. That is the one I believe you couldn't tell much about the pine tree.

The Court: That must have been taken with page 29 } that old camera.

By Mr. Rosenberger:

Q. You don't take credit for this picture, do you?

A. No, sir.

Q. This one right here?

A. That would be looking from back here to the top of the hill. It would be already to the point at the top of the curve at the top of the hill. You can't tell very well here where the double line starts but it would be very near or just to the side possibly of this big pine tree here.

Q. This is looking toward Amherst Courthouse when you look at this picture?

A. Yes, this would be the Buffalo River bridge. The texture of the highway looks a little different. I think it is due to the fact from the bridge on north the pavement has been resurfaced.

Q. Now, looking at this picture which is Plaintiff's Exhibit No. 2, that is looking in the opposite direction, the long straight stretch looking up the hill looks longer than the straight stretch looking down the hill, doesn't it?

A. Yes, sir, it would be looking to the north.

Q. That is looking in the direction which Mr. Pickett was going. This, of course, is a clearer and better picture.

A. That would be the direction Mr. Cooper was going.

Q. That is going up the hill?

page 30 } A. That is going uphill.

Q. And that entire hill is about two-tenths of a mile long, isn't it?

A. I would say at least that and possibly a little more.

Q. Then the accident happened about half way up the hill?

A. Approximately, yes, sir.

Q. So then before the accident occurred both automobiles were in view of each other?

A. Definitely so.

Q. Now, Mr. Whitehead asked you the width of that road, the hard surface. The shoulder over to the west side where Mr. Pickett's car was—here is north and south—this is north up here and south down here—Mr. Pickett's automobile was off on the shoulder on its right-hand side?

H. L. Newman. (*State Trooper*)

A. Yes, sir.

Q. As a matter of fact, that shoulder is eighteen feet wide, isn't it?

A. It would be close to that, yes, sir. It is a good wide shoulder.

Q. So that shoulder, if the road is twenty feet, the shoulder admittedly is about the same width. You didn't make this diagram to scale. The shoulder being eighteen feet the shoulder is about as wide as the road, isn't it?

A. It would be close to it. That would be on
page 31 } the west side. On the east side there is hardly
any shoulder at all.

Q. Over where this car is the shoulder is about as wide as the highway and it is level with the highway so you can drive on it all right?

A. Yes, sir, you could pull off onto it.

Q. Now, an automobile averages about six feet wide, doesn't it?

A. Approximately that, yes, sir.

Q. As a matter of fact, in this picture right here you see only a very small part of the shoulder in Plaintiff's Exhibit No. 4. Is that right?

A. Well you can tell where the edge of the shoulder drops off down the bank.

Q. Here you see Plaintiff's Exhibit No. 2 which shows a good wide shoulder, looks like it is about the same width as the highway, doesn't it?

A. That is a very good picture of it.

Q. When you saw Mr. Cooper in the hospital there wasn't any question about the fact he told you his tire blew out and that caused him to lose control?

A. That is what he told me.

Q. And Mr. Pickett agreed to that, that his tire and blown out and that caused the car to turn sideways, didn't he?

A. Mr. Pickett did not say that the tire had blown out. He
said that it appeared that possibly the tire had
page 32 } blown out which caused him to turn around. He
said when he first observed the car that it was
turning sideways and, of course, before he could apply his brakes and stop the two cars collided.

Q. Mr. Pickett said that it appeared that the tire blew out and caused him to turn sideways in the road?

A. Yes, sir.

Q. Now, you say Mr. Pickett was close by Mr. Cooper

H. L. Newman. (*State Trooper*)

and he didn't deny Mr. Cooper's statement that his tire had blown out?

A. No, sir, not to my knowledge.

Q. From your investigation and talking to both of them you were satisfied from what you heard from both of them that the tire blew out and that caused him to lose control?

A. That was the information I received and, of course, there was no way I could disprove it. There were no criminal charges brought against either party.

Q. Now, about speed—Mr. Pickett didn't tell you that Mr. Cooper was going at any fast rate of speed but said he was going slowly, didn't he?

A. I believe they agreed that all the traffic at that particular location at that time was moving along at a very moderate rate of speed, possibly between 30 and 40 miles an hour.

Q. Said all of it was moving slowly, 30 to 40
page 33 } miles an hour?

A. Yes, sir.

Q. That is pretty slow for that highway, isn't it?

A. Well for the road conditions that wouldn't have been any too slow.

Q. What I was thinking is that generally 30 to 40 miles an hour along there is slow?

A. It would be under normal clear weather conditions but the way it was raining that day I wouldn't want to drive much faster than that.

Q. So neither Mr. Pickett nor Mr. Cooper complained to you of anybody's speed?

A. No, sir.

Q. No one said anyone else was attempting to pass, did they?

A. Not to my knowledge, no, sir.

Q. So, as a result of your investigation, you concluded the tire blew out and Mr. Cooper lost control and that caused him to go over in the southbound lane?

A. Yes, sir.

Q. Now, when he was in the southbound lane it was very obvious to you that he just got hit head-on right into this side?

A. No, sir. It wouldn't have been head-on.

Q. I mean like this (demonstrating with two
page 34 } toy automobiles).

A. Like this would represent the highway here and this would have been the car here, as Mr. Cooper would

have been traveling I would say the cars came in contact something like this fashion here.

Q. The green car is the Cooper car?

A. This represents Cooper's car and this represents Mr. Pickett's car. Mr. Pickett's car would have been traveling in a straight line and the Cooper vehicle would have been something in this fashion here.

Q. What I was getting at was that there was no question about Mr. Cooper being in the southbound lane some?

A. No, there was no question about that.

Q. And when the Pickett automobile hit it in the side, whether it hit it broadside or not—I think Mr. Cooper said it hit it broadside, but whether it hit him broadside or longside it hit him and this car spun around like that?

A. That is correct.

Q. And the Pickett car continued on down and stopped over on the shoulder?

A. Just a matter of a few feet, possibly eight feet further.

Q. It went eight feet down and stopped on the shoulder?

A. Right on the shoulder off the highway.

page 35 } Q. This is Pickett going down the road and this is Cooper coming up the road and his car got sideways in the highway and after the collision this vehicle landed up on the shoulder?

A. That is right.

Q. And nobody disagreed about that, did they?

A. No, sir.

Mr. Rosenberger: That is all, thank you very much.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Newman, as far as the speed of the Cooper car, do you recall whether or not you discussed the speed of that car with Mr. Pickett?

A. I asked Mr. Pickett at the time if he could estimate the speed of the car which he collided with and he said he did not know; that he didn't appear to be traveling any faster than he was and he said he was doing approximately between 35 and 40. He said the other vehicle didn't appear to be traveling any faster than he was.

Q. Where did he tell you that, at the hospital?

A. Yes, sir.

S. A. Motley.

page 36 } RE-CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Did you talk to Mrs. Pickett about it, Mr. Newman?

A. No, sir, I did not.

Q. Will you take a look at this tire, Mr. Newman, and see if this looks like the tire?

A. Yes, sir, that appears to be the left rear tire and wheel to Mr. Cooper's vehicle.

The Court: Do you want to offer it in evidence?

Mr. Rosenberger: No, sir, not right now. I just wanted him to identify it.

The witness stands aside.

S. A. MOTLEY,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Mr. S. A. Motley?

A. Yes, sir.

Q. What is your home address, Mr. Motley?

page 37 } A. Charlottesville, Virginia.

Q. Now, on the day that this accident occurred were you and your wife traveling on U. S. 29?

A. Yes, sir, we were going from our home in Rocky Mount to the place we are now living in Charlottesville.

Q. And you were going towards Charlottesville?

A. Yes, sir.

Q. And you had been proceeding in a northerly direction?

A. Yes, sir.

Q. Now, when you came upon the accident had the accident occurred at that time?

A. Yes, sir, the accident had occurred and it was about five or six cars there.

Q. Now, did you all stop? Did you and your wife stop and render what services you could?

A. We stopped and stood around a few minutes and an ambulance didn't come and I asked one of the policemen if it was anything I could do. He said "Well, you might take some of them to the hospital", and I sent my wife to the car and she went and turned it around and we took this

S. A. Motley.

Mr. Cooper said?
The Court: That is right.

By Mr. Whitehead:
Q. All right, I will ask you this: Then did you leave them there at the hospital and did you all later go on to Charlottesville?
A. We stayed around a few minutes and it looked like nothing was going to be done.
Q. I mean after you got them to the hospital did you then return to Charlottesville?
A. Yes, sir, we stayed around a few minutes in the hospital and then we left.
Q. And you all did go on to Charlottesville?
page 40 } A. Yes, sir.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Rosenberger:
Q. Mr. Motley, where do you live in Charlottesville?
A. My wife lives at 208 Wine Street and we used to live at 18 Grady Apartment. Since the accident I was away and out of the United States for some time and she moved to 208 Wine Street.
Q. Where do you live now?
A. I was called home because of my mother's illness and I have been in Rocky Mount most of the time where my mother is in the hospital since December 17th. My wife has an apartment with a lady on 208 Wine Street and I have been staying there a couple of nights with her. I spent the night there last night.
Q. Where do you work?
A. Since July 19th up until the time I was called home I was working for Victoria Carriers Company out of New York as chief officer of a ship.
Q. Well, you haven't been on board ship since July, have you?
A. I said since July 19th up to the time that I was called home, which was December 17th, I was with this
page 41 } steamship company.
Q. Now then, did you help get Mrs. Cooper out from under the automobile?
A. No.

S. A. Motley.

Mr. Cooper and his wife and one of the kids to the hospital.

Q. Did you carry them to Lynchburg General Hospital in Lynchburg?

A. Yes, sir.

page 38 } Q. Now, on your way, and while you were with Mr. Cooper, did you have any conversation with him or did he make any statement to you with reference to the cause of the accident?

A. Well, he talked to my wife and I. Everyone was talking in the car some. I didn't ask him any questions but he talked to them and made several statements about the accident.

Q. And what were those?

A. Some conversation about the tires and something about a blow-out and one thing he mentioned specifically was he said he was mighty sorry the accident happened; that it was all his fault.

Q. Now, did he make that statement once or more than once?

A. Oh, I think probably at least twice. I am sure he made that statement at least twice. He mentioned that he thought the accident was his fault and he was mighty sorry it happened.

Q. Now, you did take Mr. and Mrs. Cooper and one of the children to Lynchburg General Hospital, did you not?

A. Yes, sir.

Q. Now, you say something was said in the conversation about the tire blowing out. What was that, if you recall?

A. Well, Mrs. Cooper—I distinctly remember she said several times something about—

Mr. Rosenberger: The question was what Mr. Cooper said, not what Mrs. Cooper said.

page 39 } Mr. Whitehead: I asked what was the conversation in the car.

Mr. Rosenberger: What she said has nothing to do with it.

By Mr. Whitehead:

Q. Was there anything said? Was there any disagreement between them as to what had taken place?

Mr. Rosenberger: Anything Mr. Cooper said is all right.

The Court: He could testify as to what Mr. Cooper said in a statement against his interest.

Mr. Rosenberger: The only thing we can have is what

S. A. Motley.

Q. I asked you what he said.

A. All right, I can't answer your question.

page 43 } Q. You told Mr. Whitehead that Mr. Cooper said that the tire blew out. You sat right there and told us that a minute ago.

A. That the tire blew out? I said the tire, according to Mr. or Mrs. Cooper, blew out.

Q. You told Mr. Whitehead Mr. Cooper said that.

A. I am quite aware of what I said.

Q. Do you deny it?

A. No, I don't deny anything. One of the parties said that the tire blew out and that is so. I gathered that from what was said.

Q. All I ask you is what did Mr. Cooper say about the tire blowing out?

A. Mr. Cooper said the tire was blown out and whether or not it blew out before or after the accident I don't know.

Q. I know you don't.

A. Most of the talking, as I tried to tell you just now, about the tire was by Mrs. Cooper but you stopped me. I never did get to explain.

Q. If you would just listen to my question.

A. I am trying to.

Q. Mr. Whitehead asked you what Mr. Cooper said and you said Mr. Cooper said something about the tire blowing out. Now you are saying you don't know whether Mr. Cooper said it or Mrs. Cooper.

page 44 } A. I haven't changed my story and won't change my story. If you want to know what I said you can read it back.

Q. I don't want you to misunderstand me and I want to be perfectly fair with you.

A. Why wouldn't I be fair?

Q. I don't want to argue with you. I would like for the record to be read back.

Note: The portion of the testimony of this witness relating to the matter under discussion was read back by the court reporter.

The Witness: How did I contradict myself?

By Mr. Rosenberger:

Q. Mr. Whitehead was talking about what Mr. Cooper

S. A. Motley.

Q. Did you see her in the road?

A. No. She wasn't in the road when we got there. Mrs. Cooper was walking around.

Q. Did she seem to know what she was doing?

A. Well, she was talking and she was very excited. She was crying and talking and concerned about herself and the children and the accident but I can't say if she knew what she was doing. That is something a little hard for me to say. She was talking I thought coherently but she was excited about the accident, of course.

Q. If she would say she didn't remember anything about it until after she was in your car would you deny that?

A. I didn't understand the question.

Q. I say if she said she didn't remember anything about the collision or know where she was or anything until she had gotten into your car would you deny that?

A. How could I deny her own knowledge?

Q. I asked you what your opinion was of her condition.

A. You asked me if I would deny something. I don't understand your question.

page 42 } Q. You saw her out there in the road talking and my question is if she says she doesn't remember anything and didn't know anything until after she had gotten into your automobile would you say that that was wrong and that she knew what she was doing when she was walking around in the road?

A. I would say that would surprise me very much, in fact that was just what she told me in her talking and I was very much astounded. She said she was unconscious and my wife and I both were astounded by that because if she was unconscious she was walking around talking while she was unconscious.

Q. You never had any experience with people walking around talking and not knowing what they were saying?

A. No, but I am not connected with the medical profession.

Q. All right, you didn't know anything about how the collision occurred from your own observation?

A. I didn't see the collision happen. I saw how the cars were sitting and, as most anyone else, I could surmise and think.

Q. I just asked you what you saw.

A. I saw quite a bit. I saw how the cars were sitting and heard what was said while I was standing around.

Q. What did Mr. Cooper say about the tire blowing out?

A. One, Mr. Cooper or Mrs. Cooper—

Edithor Motley.

Q. You see that scar (indicating a place on the forehead of the defendant), was he cut there when he was in your car?

A. He probably was. I told you if he was cut or was not I do not remember any specific cuts about any of the people. The people were awfully roughed up and awfully dirty and they were bleeding. The child was crying and it looked like it had been rolled against a rock or something and had a lot of little bloody places on his face.

Mr. Rosenberger: That is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Motley, then as I understand from just what you have told us here that when you did get back in the car you did find blood in your car that had been left in your car?

A. Dirt and a small amount of blood too. Mrs. Cooper especially was awfully dirty, just as if she had been rolled in a mudhole, and she was dirty and scratched up and I believe we put newspapers down and they sat on the newspapers but even after that it was a considerable job cleaning up the car.

page 47 } Mr. Whitehead: That is all.

The witness stands aside.

EDITHOR MOTLEY,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Are you Mrs. Edithor Motley?

A. Yes.

Q. You are the wife of the gentleman who just testified Mr. S. A. Motley?

A. Yes.

Q. I believe you are working at the University of Virginia now?

A. Yes.

Q. Were you working there at the time when this accident happened in June?

S. A. Motley.

said. We have just read it and I don't want to argue with you.

The Court: The gentleman said there was some conversation about the tire.

The Witness: And I said Mrs. Cooper was doing the talking.

Mr. Rosenberger: In the first part of his testimony he said "He said". We were talking about what Mr. Cooper said.

The Court: Go ahead.

By Mr. Rosenberger:

Q. The children were also hurt. Did you have any of the children in the car?

page 45 } A. We had one child. It wasn't an infant but a small child probably about a year old, I believe a little boy.

Q. Mr. Cooper did say it was his fault, didn't he?

A. I just said that.

Q. I understood you correctly there. Now then, did he explain how it was his fault if the tire blew out?

A. No. I tried once before to explain.

Q. Now, you have answered my question. You say he didn't make that statement?

A. I didn't finish. I was going to explain that there was some conversation about the tire.

Q. I understand.

A. If you don't want me to tell it, all right.

Q. I have been over the conversation about the tire about five times. Now, was he disturbed about his children?

A. In my opinion, Mr. Cooper was quite disturbed about getting back to his camp and about his car and also about the children but I didn't see that he was as alarmed about the children as I believe I would have been.

Q. All right, I was just asking you about him not about you. Now, the next thing—was he bleeding? Was he cut on the head?

A. I don't remember as much about Mr. Cooper as I do Mrs. Cooper and the child. My general impression of Mr. Cooper was that he wasn't hurt too bad. Now if

page 46 } you told me his head was bleeding I wouldn't deny it or if you told me his leg was bleeding or whatever it was I wouldn't deny it. A lot of people there were bloody. My car got bloody.

bit and the husband was trying to comfort her and then I held the baby for awhile on the way to the hospital. Then Mr. Cooper said that he was awfully sorry that this had happened because the people seemed so nice and all that, you know, and he said he was terribly sorry it happened but he knew it was his fault. It was just a general conversation. We didn't ask them anything because we knew they were hurt and we just stopped to help.

Q. In other words, you were just accommodating them by taking them to the hospital?

page 50 } A. What I mean is this: If we had been told to take somebody else we would have done that. We would have taken just whoever it was.

Q. Then you have no interest in the matter whatsoever?

A. No.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Where do you live?

A. In Charlottesville.

Q. Where does Mr. Motley live?

A. Well, he lives with me when he is at home.

Q. When was he last at home?

A. He came in December 17th.

Q. Has he been there since December 17th?

A. No. We have been traveling since then, been taking trips.

Q. Now, you say your husband was acquainted with medicine. How did he get acquainted with medicine?

A. Just studied—just interested in it and he has helped a lot of people.

Q. Helped them how?

A. Helped them when they have been sick.

Q. How has he helped them when they have

page 51 } been sick? Is he a doctor?

A. No, he isn't a doctor. It is part of his job. He has been aboard ship and he is chief officer on the ship and it is part of his responsibility on the job. You have to know it or you don't get the job.

Q. He has to know something about medicine?

A. Yes.

Q. And you are a medical technician?

Edithor Motley.

A. Yes.

Q. Now, on the day of this accident were you riding with your husband on the way back to Charlottesville, Virginia?

page 48 } A. Yes.

Q. Now, will you please look at the jury and to the court and tell them when you all got there had the accident occurred?

A. Yes, it had already occurred.

Q. And you say you were going toward Charlottesville?

A. Yes.

Q. Now, when you got there did you all try to render any assistance you could or help in any way?

A. Well, yes. When we got there there were just a few cars in front of our car. My husband was driving so he knows quite a bit about medicine and I said "You better go up and help somebody" because we saw the cars had collided and thought maybe somebody was hurt, so he got out of the car.

Q. Then what did you do?

A. I then parked our car.

Q. Did you stay in your car?

A. I was in the line of traffic and I just parked our car just past the accident. They were waving the traffic on.

Q. You drove your car north of where the accident was?

A. Just a few feet beyond it.

Q. But north of it?

A. Yes, north.

Q. Now then, did you stay in your car until the Coopers got in your car or what did you do?

page 49 } A. I got out and went down to see if I could help because I am also a technician.

Q. Now then, did you and your husband take any of them to the hospital?

A. We took Mr. and Mrs. Cooper and a child about a year old.

Q. Then when you were all together there in your car would you please tell us whether or not there was any conversation with reference to the accident?

A. There was quite a bit. They were talking among themselves and we didn't ask them anything but they were just talking and they were telling about where they were from and everything like that and then they were talking about a tire they thought could have blown out and they were talking about what the officer said. The wife was crying quite a

Frank W. Pickett.

A. Yes, sir.

Q. Now, on the day of this accident was she riding in the car with you?

A. That is right.

Q. Where were you going to at that time?

A. I was going back to Lynchburg from my home up in the country about thirty-five miles this side of Washington where my mother and daddy have a farm up there.

Q. You and Mrs. Pickett were on your way back home?

A. That is right.

Q. Who was driving the car?

A. I was driving.

Q. Where was she riding?

A. In the front seat by me.

Q. Now, Mr. Pickett, would you please tell us at the time, or just before, and at the time of this accident was it raining then?

A. Yes, it was raining a little and the road were wet. It was just raining enough to have the windshield wipers on. It wasn't raining hard. It had been raining hard.

Q. Would you please tell us, sir, in your own words do you know when you would come into view when you page 54 } come around that curve and start down the hill?

A. Yes.

Q. Will you please tell us in your own words what happened just before and at the time of the accident?

A. Well, we were coming along the turn there and had come all around the turn and were headed straight down the hill. It was a few cars, two or three cars, coming up on the opposite side of the road meeting us.

Q. Do you know how many cars there were? Could you say definitely?

A. I would say three or possibly four.

Q. Was there any car directly in front of you?

A. No, there was nothing in front of me.

Q. All right, tell us what took place.

A. After we got on the straight-away down there I saw this car pull out from behind the line of cars and it looked like he was going to pass or something and I said to my wife "I wonder what that fool is trying to do?" Then he saw me and he tried to pull back in and when he pulled back in his car just swerved around and hit me right in the front.

Q. When you saw him pull out would you tell us approximately what speed you were going?

A. I was going about 40 or 45 miles an hour, I would say.

Frank W. Pickett.

A. X-ray technician, graduate of Medical College of Virginia.

Q. Did Mr. Cooper say that he heard the noise like the backfire of a car when the tire blew out?

A. I don't know. They were just talking about the tire.

Q. Talking about the tire blowing out?

A. They were talking about the tire. I don't know what they said about it. I really wasn't paying too much attention. The wife kept asking him if he had had the car checked. I don't know whether that has anything to do with it but he said he had .

Q. He said he had had it checked?

A. Yes, before they left.

Q. Talking about the tire—Now, don't you know that they were talking about the tire blowing out?

A. Yes, they said they thought it did but they weren't sure. Sometime during the accident maybe the tire blew out.

page 52 } Mr. Rosenberger: All right, that is all.

The witness stands aside.

FRANK W. PICKETT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Now, will you please look at the court and jury when you are talking? Your name is Mr. Frank W. Pickett?

A. That is right.

Q. What is your age, Mr. Pickett?

A. Fifty-three.

Q. And I believe you live in Lynchburg, Virginia, do you not?

A. Yes, sir.

Q. Where do you work?

A. Edwards, Incorporated.

Q. What is that?

A. A man's and boy's store.

Q. A clothing store?

page 53 } A. A clothing store.

Q. Now, you are the husband of Mrs. Edith Sweet Pickett, the plaintiff in this suit, are you not?

Frank W. Pickett.

A. I was coming down the hill and Cooper was coming up the hill. Well, I first saw him pull out like this and then he switched around and when he switched around he come right into my car just like this. Then his car swerved around here like this and mine veered over there. That is the way they were when they came to a dead stop, just like that.

Q. What part of the Cooper car, if any, was in your lane when it came to rest?

page 57 } A. The front part of it was like this.

Q. Now, those cars in front of the Cooper car, what speed would you estimate they were going as you were approaching them?

A. I would say approximately the same speed I was going. I mean they were not driving too fast.

Q. What about the Cooper car?

A. Well, it looked like he was trying to pass them, trying to get around, so he must have been going much faster.

Q. Did you see him long enough to estimate what you thought maybe his speed was?

A. I would say around 60 maybe, or approximately that.

Q. Now then, when the cars came together what damage was done to your car?

A. Well, my car was a total loss.

Q. I will ask you this: Was any tire or wheel on your car injured?

A. My front tire was cut all to pieces.

Q. Does that picture, Plaintiff's Exhibit No. 6, and this picture, Plaintiff's Exhibit No. 7, show that?

A. Yes, sir. This tire was cut.

Q. You have got to show the jury what you are talking about. Point out to them which tire on your car was cut.

A. The left front tire.

Q. What about the wheel on it?

page 58 } A. Well, the wheel was bent some.

Q. Is that a true picture of the condition of your car the way it was after the accident?

A. Yes, sir.

Q. Now, take Plaintiff's Exhibit No. 5 and tell us if that is a hole in your windshield.

A. That is right.

Q. What made that hole?

A. My wife's head.

Q. Did any part of your body hit the windshield?

A. No. I didn't hit the windshield.

Q. What caught you?

Frank W. Pickett.

Q. Which lane of travel were you in?

page 55 } A. I was in the southbound lane coming to Lynchburg.

Q. Were you entirely within your lane?

A. Yes, sir.

Q. These cars approaching you would be the ones ahead of Mr. Cooper. What lane were they in?

A. They were in the lane going north.

Q. Then when you first saw the Cooper car pull out of the northbound lane could you tell us approximately how far you were from the Cooper car at that time?

A. Maybe 150 or maybe 200 feet, I don't know exactly, but along about that distance.

Q. Then you say you saw it pull out and then what did you see after you saw it pull out into your lane?

A. Well, it looked like he was pulling back, trying to get back into his lane.

Q. Then when you saw that what did you do?

A. Well, he was right on me almost about that time.

Q. Did you have time to do anything?

A. I didn't have time to do anything because he was right on top of me almost at that time.

Q. What part of your car hit what part of the Cooper car?

A. The left front side of my car hit the left side of Mr. Cooper's car.

Q. Then after the cars came together what hap-

page 56 } pened to your car?

A. My car was off of the highway on my side of the road.

Q. Did it come to stop on the hard surface?

A. No. Half of it was off the hard surface.

Q. That would have been the west shoulder?

A. Yes, sir.

Q. Then what happened to the Cooper car?

A. When it hit me he swung around and was headed sort of to the back of my car, across the road.

Q. When he came to rest was he in the opposite position or the same position he was when you hit him?

A. No, his car was turned half-way around, switched half-way around.

Q. Take these cars right here and suppose this car, the red car is yours going toward Lynchburg and suppose this green car is Mr. Cooper's car going toward Charlottesville, and tell us the best you can how those cars came in contact.

Frank W. Pickett.

A. The steering wheel.

Q. I will ask you this: How many times did you see the Cooper car over in your lane of travel?

A. How many times?

Q. Yes, sir.

A. Well, I guess it was twice, when he headed out and then when he swung around and hit me.

Q. Was it two different transactions? Was it long enough to count them as two different movements or all as one transaction?

A. I would say it was all one movement. I mean it was all in the same operation, I would call it.

Q. Then, when you first saw the Cooper car
page 59 } pull over into your lane what did you do?

A. I slowed up—I tried to slow up.

Q. Then what happened?

A. Then he was right on me. I didn't have time to do anything.

Q. Were you at any time ever in Cooper's lane of travel?

A. No, sir.

Q. Now, I show you here Plaintiff's Exhibit No. 4. Do you see the markings there on the road?

A. Yes, sir.

Q. Do you see where the solid line starts going for northbound traffic?

A. Yes, sir.

Q. Now, where did that accident happen with reference to that line?

A. Just below this double line, about the end of this double line, to the best of my knowledge.

Q. Just below that line?

A. Yes, sir.

Q. That would be just south of that line. Is that correct?

A. Yes, sir.

Q. Then after the impact where did you find your wife?

A. She was down in the floor of the car.

Q. And were you able to get out of the car?
page 60 } A. Momentarily I couldn't move.

Q. Why?

A. I had the breath knocked out of me from the steering wheel. Then when I could I tried to open my door and I couldn't open my door because it was jammed together. Then I tried to get out over her and help her out or something. I got out over her. I was trying to help her up off the floor too.

Frank W. Pickett.

Q. Did you all stay there until the state troopers came?
A. Yes, sir.
Q. Now, from the time that the cars came to rest after the accident had either one of them been moved until the state trooper got there?
A. No, sir.
Q. Now then, did you all go to the hospital?
A. Yes, sir.
Q. How did you all get there?
A. A friend of mine came by, Mr. Harry Cox, and wanted to know if he could take us to the hospital or do something for us and I told him I didn't know but I would see the officer and see if it was all right to go. I went around and asked the officer if it would be all right for this friend of mine to take us to the hospital. He said "Yes, go ahead."

page 61 } Q. Then you were taken to the hospital. I believe you were released from the hospital that night?

A. That is right.
Q. Then I believe your wife was left at Lynchburg General Hospital until the next day?
A. That is right.
Q. Then later did she go to any other hospital?
A. Yes, sir, she went to the Memorial Hospital.
Q. What happened to her when she came home?
A. She came home Monday but was so nervous and torn all to pieces and was suffering so that my daughter-in-law called the doctor and he told her to send her back to the hospital right away.
Q. Now then, she was in Memorial Hospital I believe for four days. Has she been in the hospital since that time?
A. No, sir, she hasn't been in the hospital since then.
Q. What has been her condition since this accident?
A. She has been awfully nervous and upset and suffering with headaches. She gets awfully nervous. If she goes out in a car she is expecting every car to run right into us. She is just in an upset condition.
Q. What is the condition of her finger?
A. Well, she suffers and complains all the time with that and it is crooked and painful.

page 62 } Q. Did you have any conversation yourself with Mr. Cooper?

A. No. When he was in the hospital I went to his door one day and spoke to him and that was all.
Q. When the trooper told you it was all right for you to

Frank W. Pickett.

Is that your recollection? Were you there when they were taken?

A. I wasn't there when they were taken.

page 64 } Q. Who took them?

A. I don't know who took those pictures.

Q. Who took the pictures of your car?

A. Mr. Reams took the pictures of my car.

Q. All of them?

A. Yes.

Q. You don't know who took the pictures of the road?

A. No, sir.

Q. I understood you to say you came around this turn in the road. That is up at the top of the hill?

A. Yes, sir.

Q. As you came around that turn you saw the cars coming up the hill?

A. No, I was down the hill further from the turn.

Q. After you straightened out on the road did you see any cars?

A. Yes.

Q. Was it after you straightened out and the road was straight that you could see Mr. Cooper's car?

A. I saw his car pull out from behind the other cars that were in the line.

Q. You saw him pull out of the line of other cars as soon as you straightened out?

A. No, we were down the hill a ways.

Q. All right, what did he do?

page 65 } A. He pulled out, saw me and tried to pull back it looked like.

Q. I understood you to tell Mr. Whitehead you were 150 to 200 feet away from him when he did that?

A. Well, I guess it was approximately that far.

Q. And you said to your wife "I wonder what that fool is going to do"?

A. Yes, sir.

Q. What did you do?

A. I tried to stop but by that time he was right on me.

Q. When you were 150 or 200 feet away from him did you try to stop?

A. I tried to stop as soon as I saw him.

Q. You told me you saw him when you were some 200 feet away?

A. I don't know exactly the distance.

Q. You never did put your foot on your brakes did you?

leave from there then you and your wife were taken to the hospital by Mr. Cox?

A. Yes, sir.

Q. What was the condition of your wife prior to this accident? Had she been in good health or not?

A. Perfect health, as far as I know.

Q. Now, what has been the normal marital life between you all? Has this accident upset it or not?

A. Well, she has been awfully nervous and irritable and when we go anywhere in the car she is nervous, just thinking every car you pass is going to run into us or something like that.

Q. Was she like that before the accident?

A. No, she never was bothered about that at all.

Mr. Whitehead: That is all.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. You had driven up to Washington or in that area on that occasion and you have driven up there several times since, haven't you?

A. Yes, sir.

page 63 } Q. When was the first time you went up there after this accident?

A. I guess it was July.

Q. You had the accident in June and went back in July?

A. August—I believe it was August.

Q. Weren't you there in July and in August again?

A. It was some time after the accident because I didn't have a car for awhile after the accident.

Q. You were there in July and then when did you go back?

A. I was there in August, not in July.

Q. You weren't there in July?

A. No, sir.

Q. You were there in August. Then when was the next time?

A. September.

Q. Then the next time?

A. I was there some time in October.

Q. You were driving and Mrs. Pickett was with you each time?

A. Yes, sir.

Q. Now, these pictures show this road all right like it is.

Frank W. Pickett.

A. No, because I didn't know the man's speed.

Q. You just told us 60 miles an hour?

A. I said approximately that.

Q. Did you tell the police officer he was going approximately 60?

A. I don't think I did. I don't know if he asked me that.

Q. If you had a collision with an automobile on your side of the road going 60 miles an hour don't you think you would tell the officer?

A. I don't know whether I would.

Q. You gave us the impression that because of the 60 miles an hour he skidded and his rear end couldn't get

page 68 } back in?

A. No, I think his rear end skidded around on the wet road.

Q. You told the officer it looked like he was out of control, didn't you? Didn't you tell him it looked like he was out of control?

A. Yes, sir, I thought the car was out of control.

Q. Didn't you tell the officer it appeared that the tire blew out and caused the car to turn sideways?

A. No, I didn't know anything about the tire blowing out.

Q. Now do you want to look at this and refresh your memory? Did you sign that statement?

A. Yes. sir. I signed it. That was at the hospital that night. That is my signature there. yes. sir.

Q. Right above your signature you say "Left rear tire of car approaching me blew out, car swerved to the right and then left into my front and left side."

A. Yes.

Q. That is what you thought that night, isn't it?

A. That is what I thought that night.

Q. But that is not what you have testified here today, is it? Will you look back at that paper and see if you dated that June 1 or June 2?

A. That is June 2.

page 69 } Q. Sunday night you didn't have that form to sign, did you?

A. I don't know. The officer was there at the hospital.

Q. So it is dated June 2nd, which was a Monday

A. That is dated June 2nd.

Q. Didn't you go into Mr. Cooper's room the next day and didn't you say to Mr. Cooper "I saw your car was out of control and I thought you were going to get back all right and then you came back on my side of the road and if I had known

Frank W. Pickett.

A. Yes, I am sure I put on my brakes.
Q. How far before you hit him?
A. I wouldn't know.
Q. Did you actually get your foot on the brake before you hit him?
A. I am pretty sure I did.
Q. You are not certain?
A. I mean it is just natural that you would when
page 66 } you see something like that coming up in front of you.
Q. I am not going on what your reasoning is back of it. I want to know if you can tell the gentlemen of the jury you know you put your foot on the brake?
A. I am positive I did.
Q. How far away from him were you when you put your foot on the brake?
A. I expect he was already almost right on me then, switching back and forth coming around to hit me.
Q. Switching back and forth, you say?
A. Well, coming out and going back and then his car came around and hit me.
Q. You say it was switching back and forth. Did he go back and forth or just one time?
A. Just that one operation.
Q. So when you did put your brake on you were right on him?
A. Yes.
Q. Why didn't you put your brake on when you said to your wife "I wonder what that fool is going to do?"
A. I thought he was going to get back in line, and possibly he did. I am pretty sure I had my brake on.
Q. You hit him full force and when you hit him his car spun right around in the road, didn't it?
A. That is right.
page 67 } Q. You talked to him at the hospital, didn't you?
A. I spoke to him at the door at the hospital.
Q. Did you speak to Mrs. Cooper at the hospital?
A. Yes, I was in there twice, I believe.
Q. Did you talk to the police officer in the hospital?
A. Yes, sir.
Q. Didn't you tell the police officer in the hospital that he did not seem to be going fast; that he was going about the same speed as the other cars were going along there?
A. I don't recall telling him the speed at all.
Q. You don't recall telling the trooper the man's speed?

Frank W. Pickett.

pulled out. You didn't know whether it was going to pass or not but that is the way it appeared to you?
A. That is the way it appeared to me.

The Court: I think this is a good time to take a break for lunch. I have ten minutes after twelve and we will adjourn until ten minutes after one. Gentlemen, you are not to discuss this case with anyone nor permit anyone to talk to you about it and be back at ten minutes after one.

(Recess)

The Court: Mr. Whitehead, have you finished examining the witness?
Mr. Whitehead: No, sir.
The Court: Go ahead.

By Mr. Whitehead:
Q. Mr. Pickett, what was the condition of the tires on the automobile you were driving?
A. They were practically new tires.
Q. Did any of your tires go flat prior to the impact?
A. No, sir.
page 72 } Q. And I believe you testified that one went flat during the accident?
A. That is right.

Mr. Whitehead: That is all.

RE-CROSS EXAMINATION.

By Mr. Rosenberger:
Q. You were driving a 1952 Ford, weren't you?
A. Yes, sir.
Q. When did you buy your tires?
A. That was about the fourth set I had on that car.
Q. I asked you when you bought them.
A. I don't know the date exactly.
Q. How far had you driven them?
A. About two thousand miles.
Q. About two thousand miles?
A. Yes, sir.
Q. Did you actually have a record of the mileage?
A. It was an estimate I gave you.
Q. You are just guessing it was two thousand miles?
A. I said it was approximately that.

you weren't going to stay on your side I could have stopped.''?

A. No, sir, I did not.

Q. Now didn't you go in and have approximately the same conversation with Mrs. Cooper?

A. No, sir, I did not.

Q. Didn't you tell the state trooper it appeared to you that the tire blew out?

A. I don't recall telling him that.

Q. You never did tell him this man was trying to pass another automobile and that is when he slid the back end up into you, did you?

A. I don't know if I did that or not.

Q. If he says that no one told him that anyone was attempting to pass at the time the collision occurred would you deny that?

A. Beg pardon?

page 70 } Q. If the state trooper testified here that no one claimed that Cooper was trying to pass when the collision occurred would you deny that statement?

A. No, I couldn't deny it if he is telling that for the truth. I couldn't deny it. I don't know what people told him.

Q. You know what you told him, don't you?

A. Yes, sir.

Q. You didn't complain to him of the speed and you didn't complain to him and tell him the man was attempting to pass and didn't you say it appeared to you that the tire blew out?

A. No, sir, I didn't know anything about the tire blowing out.

Q. Where did you get the information that you wrote that the tire blew out.

A. That isn't my writing.

Q. You signed it?

A. I signed it but that isn't my writing.

Q. Where did you get that information which you signed your name to as being correct?

A. I don't know that I even read it when I signed it.

Mr. Rosenberger: That is all.

page 71 } RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Pickett, let me ask you this: As I understand from what you have testified and what you say now that the car

Edith Sweet Pickett.

us coming toward him and it looked like to me he tried to get back in line and he couldn't get back and the car swerved around and it was right in front of us. My husband said when he pulled out the first time "What is that fool trying to do" and when he apparently saw we were coming to him he tried to get back in line. He couldn't get in line and he swerved across the road and at that time we were right on page 75 } him, the two cars were right together.

Q. When something swerved across the road was that the rear of the Cooper car or the front of the Cooper car?

A. The rear of the car. When he attempted to come in the car slid back across, right across the road.

Q. Let me ask you this: How many times did the front of the Cooper car go out of its lane of travel into your lane of travel?

A. Well, he pulled out of the line and then he attempted to pull back into the line and as he did that the rear of the car shot across in front of us.

Q. Now, after you saw him pull out into your lane, from that time until the impact took place, do you know how long it was?

A. Well, it was a very short time because the distance was short. We were almost on him when he first pulled out of the line of traffic and by the time he tried to pull back in the second time and didn't make it we were right together then so the distance was short. I can't judge in feet or yards but I know it was a short distance because we were approximately on him then.

Q. Now, you see the distance of this courthouse from one end to the other?

A. Yes, sir.

Q. Now, the first time that you saw Cooper's car page 76 } pull into your lane of travel was it as far as the distance of this courtroom or further?

A. Well, probably a little bit further but not much.

Q. Now, how fast would you estimate you all were going?

A. Well, we certainly weren't going over 40 or 45 miles an hour.

Q. What about the cars in front of the Cooper car, what was their speed?

A. They seemed to be coming along about the same speed we were. They certainly weren't speeding. They seemed to be going at a very moderate rate of speed.

Q. What about the car Mr. Cooper was driving?

Edith Sweet Pickett.

Q. Mrs. Pickett was asleep when this thing happened, wasn't she?

A. Asleep?

page 73 } Q. Yes, sir.

A. No, sir, she was not.

Q. She wasn't asleep in the car?

A. No, sir.

The witness stands aside.

EDITH SWEET PICKETT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Mrs. Edith Sweet Pickett?

A. Yes, sir.

Q. Now, will you look at those gentlemen there and talk loud enough so they can hear you and if you don't mind, speak out and don't nod your head because this gentleman can't get that in the record. Now, what is your age?

A. Fifty-three.

Q. And you are the wife of the gentleman who just testified, Mr. Frank Pickett?

A. That is right.

page 74 } Q. Where do you live?

A. I live in Lynchburg, on Main Street in Lynchburg.

Q. Now, on the day of this accident on June 1st, 1958 and prior to that time had you been in good health?

A. Yes indeed.

Q. I believe you have some grown children, do you not?

A. I do. I have a grandchild.

Q. Now, on the day of this accident were you riding in the car with your husband?

A. Yes, sir.

Q. And where were you sitting in the car?

A. On the front seat next to the driver.

Q. And will you please tell us in your own words what happened just prior to and at the time of the accident?

A. Well, we had come around the turn and we were on the downgrade and there were a few cars, three or four or possibly five, I didn't count the cars, and this car pulled out from behind like he was attempting to pass and he apparently saw

Edith Sweet Pickett.

Q. Then did you ever get out of the car until you were moved to the car you got to Lynchburg in?

A. I tried to get up and tried to stand on the outside of the car and I couldn't stand. Then I sat back on the seat of the car and I was in such pain I thought if I could lie down on the seat I would feel better and I did try to lie down but my neck and shoulder hurt me so very badly I couldn't lie down and I couldn't raise up when my husband came back to the car I asked him to raise me up and sit me up in a sitting position in the car and I was sitting there when the state trooper came over to talk to me.

Q. Now, did any of the troopers do anything for you?

A. Yes, sir. One of them came to me and gave me some ammonia. I told him I was allergic to ammonia, couldn't drink it, and he gave me some to smell. He felt my arm and said he couldn't tell whether it was broken or not but he wanted to be sure I didn't use it and he put it in a sling and it stayed in the sling until I got to the hospital.

page 79 } Q. Then how did you get from your husband's car to the car you went to Lynchburg in?

A. Well, these friends came by and they stopped, of course, and they asked if they could take us to the hospital, so my husband asked the trooper and the trooper came to the car and they assisted me into his car and they drove me to the hospital.

Q. Who assisted you to the car?

A. Two of the troopers.

Q. Now, what injuries did you receive in this accident?

A. Well, the whole left side of me was in great pain, sort of twisted, and my neck and, of course, my head was just full of lacerations and glass and my right knee and, of course, my finger.

Q. Which finger?

A. This ring finger.

Q. Is that your left ring finger?

A. My left ring finger.

Q. Let me ask you this: Before the accident and at the time of the accident and after the accident was the car you were riding in ever in Mr. Cooper's lane of travel?

A. Never.

Q. Some question has been asked your husband about whether you were asleep before the accident.

A. No indeed I was not. I saw the car. I heard page 80 } my husband remark "What is that fool going to do" and I saw the car when it pulled out of the lane of traffic into our lane. I hadn't even dozed.

Edith Sweet Pickett.

A. Well, he seemed to be going faster because he apparently tried to pass and it seemed that he saw we were so near he couldn't pass and he tried to get back in line. He evidently couldn't get in line because the car swerved again and at that time we were right on him, we were right together.

Q. Then, as I understand, you first saw the car pull out?

A. Yes, sir.

Q. Then you saw it cut back?

Mr. Rosenberger: Your Honor, she has told this twice and Mr. Whitehead has repeated it three times.

Mr. Whitehead: If you object I will let it go.

Mr. Rosenberger: I think it is a proper objec-
page 77 } tion, Your Honor.

The Court: Yes.

By Mr. Whitehead:

Q. Then when the impact took place what happened to you, Mrs. Pickett?

A. Well, it threw me at a side angle and my head hit the windshield and sort of twisted my side and, of course, after it was all over I was knocked out temporarily and I was in the floor of the car. When I tried to get up I was in such pain and misery I couldn't stand up. I couldn't sit up and my finger was paining me. I tried to get out of the car but never could.

Q. I show you Plaintiff's Exhibit No. 8. Now what caused the hole in the windshield?

A. My head.

Q. And how did your head hit the windshield?

A. It hit right here.

Q. Did you have a hat on?

A. No, I was bareheaded.

Q. Would that be somewhere along about the top of your head?

A. Yes.

Q. Then you say the next thing you knew after that then you were in the floor?

A. I was in the floor of the car. I was trying to
page 78 } get out of the floor of the car. My shoes were off
and I was in such pain I tried to get up and stand up, tried to get out of the car and stand up but I couldn't.

Q. The first thing you realized was when you were in the floor of the car. Where was Mr. Pickett then?

A. The first thing I remembered was him trying to climb over me to get out of the car.

Edith Sweet Pickett.

A. Well, it hurt practically all the time and if I
page 82 } sit still for any length of time when I get up it is
very painful. I can't put any weight on my knees. I can't get down on my knees at all and while I walk if I walk or stand it is all right but when I sit and then try to walk it hurts.

Q. Can you tell us if you know—if you don't know tell us—whether you were knocked unconscious for any period of time?

A. Yes, I was.

Q. Do you know how long?

A. No, I don't know how long because I remember the car almost on us and then I felt the impact and then the next thing I was trying to get myself from the floor of the car.

Q. I believe you say then your husband was trying to get out?

A. Trying to get out and trying to get over me.

Q. So it couldn't have been but a short time?

A. No, it was just a short time.

Q. Then with reference to your head and the glass, was there any glass in your head?

A. My head was full of glass because I picked it out and I noticed it in my bed. There would be small fragments of glass in my bed. For approximately three weeks or a month after the accident I had my hair shampooed a couple of times and found glass in my scalp each time.

Q. Did you have any glass anywhere else except
page 83 } in your scalp?

A. It was all over my face and forehead. I had scratches all over my face but they weren't deep. I had glass embedded in my forehead and the biggest cut was on my neck.

Q. Will you please turn around so the court and jury can see the place on your neck? Is that the place shown there on your neck?

A. Yes, sir.

Q. Were any stitches taken in that?

A. No, sir.

Q. Is that giving you any trouble now?

A. No, not now.

Q. Now, are you having any trouble with glass still coming out of your scalp?

A. No, I haven't found any glass recently.

Q. Now, with reference to your condition since this accident, what has been your condition with reference to your nerves?

A. Extremely nervous—I am very nervous and things seem

Edith Sweet Pickett.

Q. Now then, what happened to your finger on your left hand?

A. Well, the doctor said it was broken. It was x-rayed the night they took me to the hospital.

Q. Does that still give you trouble?

A. It certainly does.

Q. Hold it up and show the court and jury how it is now. Can you straighten it out?

A. I can't straighten it any more than it is now. I have very little use of the hand. I have no grip. I can't hold anything heavy in the hand.

Q. If you have any pressure against that finger does it hurt?

A. It certainly does.

Q. Does it still hurt?

A. Yes, sir.

Q. Now, Dr. Mundy has treated that finger, I believe?

A. Yes, sir.

Q. Have you been back to see him recently about the finger?

A. I haven't been to see him about the finger since he took the splint off. He would look at my finger each time

page 81 } I went to him to have the stretching on my neck.

Q. Can you bend your hand and ball up your fist?

A. I can bend it but I don't have the use of it and this finger most of the time has no feeling in the end of it and I have no use of it. I can't grip anything with it. I can't hold anything in this hand.

Q. Turn your hand over. Now does that knot stay up there all the time on the joint nearest the end?

A. Yes.

Q. Was it like that before the accident?

A. No, sir.

Q. Now, with reference to your legs, which of your knees or legs was hurt?

A. My left knee—my right knee, this right knee.

Q. Was that cut?

A. Yes, sir.

Q. Would you mind showing us where that was cut?

Note: The witness displays the injured knee to the jury.

Q. Now, that scar notice on your knee was that from this accident?

A. Yes, sir.

Q. Now, what trouble, if any, did your knee give you after the accident?

to irritate me and I don't sleep and I am just in a very nervous condition most of the time.

Q. Do you have any trouble with headaches?

A. Yes, I do. I have had severe headaches, especially in the beginning, and now I don't have them as often but I do have them.

page 84 } Q. Then, I believe you were in Lynchburg General Hospital for one night. Is that correct?

A. Yes, sir.

Q. And I believe Dr. Earl Owen saw you at the hospital on Sunday which was June 1st, did he not?

A. Yes, sir.

Q. Now, then, is this bill of $46.00 from Lynchburg Hospital?

A. Yes, sir.

Mr. Whitehead: Now we want to mark this, if your Honor please, Plaintiff's Exhibit No. 9.

The Court: Why don't you put all of those accounts clipped together as one exhibit?

Mr. Whitehead: I will mark these Exhibit No. 9.

The Court: I will initial them later.

By Mr. Whitehead:

Q. Now, where did you go when you left the hospital which would have been June 2nd?

A. I went home.

Q. Now then, where did you go thereafter?

A. I went to Memorial Hospital.

Q. Why did you go to Memorial Hospital?

A. Well, I thought I was able to go home Monday afternoon. I did go home and Monday night I suffered intensely and I was extremely nervous. I was in such condition

page 85 } that my daughter-in-law called Dr. Owen and told him the condition I was in and he told her to take me to the hospital at once.

Q. Now, is this bill of $54.00 the bill you received for your stay at Memorial Hospital which is in Lynchburg?

A. Yes, sir.

Q. And you were there in that hospital how long?

A. I went over Tuesday morning and stayed until Saturday afternoon late.

Q. I believe this bill shows four days. Is that correct?

A. It shows four days on the bill but I went over on Tuesday morning and I left Saturday afternoon late.

Edith Sweet Pickett.

Q. Then after you were released from that hospital have you gone to any hospital for any of these injuries since that time?

A. No, I haven't been back to any hospital.

Q. How much was Dr. E. P. Owen's bill?

A. Fifteen dollars.

Q. Now then, did you have any trouble with any of your teeth in this accident?

A. Yes, this front tooth is on a pivot and that was knocked out and when that was knocked out, of course, I bit my tongue right badly and I have had to have that tooth replaced.

Q. How much was that?

page 86 } A. Ten dollars.

Q. That was Dr. Robert Stickley?

A. That is right.

Q. Then after you were released from Memorial Hospital since that time what doctors have you been under the care of?

A. Dr. D. P. Scott.

Q. And what other doctor?

A. Dr. Mundy.

Q. Do you know approximately what date you first went to see Dr. D. P. Scott?

A. I believe it was in June.

Q. Why did you go to see him?

A. I came to see you and talked to you and I told you I was in an extremely nervous condition, upset so I couldn't sleep at night, and you asked me about seeing a doctor and I asked you if you could recommend one that I should go to that would help me in my condition and you told me that you thought Dr. Scott would be a good doctor for a nervous condition.

Q. Have you been going to see him continuously since that time?

A. Yes, I have.

Q. Are you still under his care?

A. I am still under his care.

Q. And have you improved any under his care?

A. Yes, I have.

page 87 } Q. Now then, with reference to Dr. Mundy, I believe he took care of your sprained knee and your neck?

A. Yes, sir.

Q. Now, you heard him testify this morning about stretching your neck on four different occasions, I believe three times on each occasion?

Edith Sweet Pickett.

Q. Now then, with reference to your knee, your right knee, does that give you any trouble?

page 89 } A. It does. If I sit for awhile and get up and try to walk my knee pains me and I can't put any pressure on that knee. I mean if I attempt to get down on my knees I can't put any weight on that knee.

Q. Do you work part time?

A. Yes.

Q. Where?

A. Leggett's Department Store as a salesperson.

Q. Have you worked some since that accident?

A. Yes, I have.

Q. Now, if you are on your feet all day what reaction, if any, do you have?

A. Well, later in the day I begin to tire and feel some discomfort from it.

Q. From what?

A. From my knee, from standing on it too long.

Q. Do you work there regular?

A. No, I am considered a regular extra. I work always on Fridays and Saturdays and then I work other times during the week for people who are on vacations or for other busy seasons when they need me.

Q. Now, how much time did you lose on account of this injury?

A. Well, I lost two weeks continuously and then I lost approximately two or three Saturdays.

page 90 } Q. And you would estimate that to be approximately how much?

A. One hundred dollars.

Q. And you got how much a week when you worked?

A. Forty-five dollars.

Q. Now, the doctor fixed your tooth and that is not giving you any trouble, is it?

A. No.

Q. Has your tongue gotten all right?

A. Yes, sir.

Q. Now, what about your chest? Did you have any trouble with that?

A. Yes, sir, through my chest right here. I had right much discomfort and pain.

Q. On what side is that?

A. That is on my left side.

Q. You are not having any trouble with that now?

Edith Sweet Pickett.

A. Yes, sir.

Q. Now, what happened to you when he stretched your neck?

A. Well, it was very painful. He put this halter on my head and I sat on a chair and he put that weight on there and that lifted my whole body off of the chair completely. I was just sort of suspended off of the chair and I was held up with just my cheek bones and it was very painful. After he took it out of this pulley contraption he would twist it first one side and then the other.

By the Court:

Q. You mean that that lifted you clear off of the seat?

A. It did.

Q. He said he used thirty-five pounds of weight?

A. Well, it lifted me off of the chair slightly. I mean I couldn't feel my weight on the chair.

By Mr. Whitehead:

Q. While you were in that traction, or whatever you want to call it, were you in pain then?

page 88 } A. Yes, it hurt when that pulled my neck and stretched it. It hurt it then and after that he would take it out of the contraption and my neck would burn severely for awhile and then after that it felt better.

Q. And those treatments he gave you did help your neck?

A. Yes, sir.

Q. Now then, I don't believe you have been back to see Dr. Mundy since September. Is that correct?

A. Yes.

Q. What did he tell you with reference to coming back to see him?

A. Well, he told me if I had a severe crick in my neck or severe pain I should come back to him. He said the pain that was in there it would take time for it to completely leave but he thought time would do that. He told me if I had a severe crick in my neck I should come to him at once.

Q. Have you had a severe crick in your neck?

A. No, and I haven't been back to him.

Q. And is your neck better now?

A. It is better, yes, sir.

Q. Does it give you some trouble?

A. Sometimes it does. Certain ways I lie down on my neck or twist it it hurts but it doesn't hurt all the time.

Edith Sweet Pickett.

Q. Have these injuries you have received in any way interfered with your normal married life?

A. I think so because I have become more irritable.

Mr. Whitehead: All right, sir.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Mrs. Pickett, I understood you to tell Mr. Whitehead you were in perfect health before this accident?

A. I was.

Q. Did you forget about the fact you had some arthritis before this accident?

A. Well, I haven't had any trouble with arthritis for some time and that certainly wasn't in my shoulder or in my neck.

page 93 } Q. You had it in your back?

A. In the lower part of my spine.

Q. You have it in your fingers, don't you?

A. No, I never had arthritis in my fingers.

Q. Will you hold your hands out sideways so the jury can see them? Don't you have little nodules on the end of your joints?

A. If they are there they certainly haven't given me any trouble. I never had any trouble with my hands.

Q. How did you happen to tell Dr. Scott you had some arthritis?

A. I didn't tell him I had it in my fingers. I told him I had it in the lower part of my back.

Q. He found some in your fingers, didn't he?

A. If he did he didn't tell me.

Q. Now, about this weight—you weigh 130 pounds, don't you?

A. Well, between 125 and 130.

Q. And Dr. Mundy said this morning that he used thirty-five pound weights to stretch the muscles in your neck. You don't think that thirty-five pounds took your 130 pounds off of the chair, do you?

A. I didn't say it took me up in the air. I said it lifted me slightly off the chair.

Q. I understood you to say it lifted you off the chair?

A. It took my weight slightly off the chair but

page 94 } I wasn't suspended in the air.

Q. You are a grandmother like I am a grand-

Edith Sweet Pickett.

A. No.

Q. Now, how were you able to sleep before this accident?

A. I have always been able to sleep very well.

Q. And how have you been sleeping since the accident?

A. Very little. Many nights I don't sleep until early morning and many nights I just don't sleep at all.

Q. Has the doctor given you any medicine for that?

A. Yes, sir, he gave me a prescription.

page 91 } Q. What doctor was that?

A. Dr. Scott.

Q. Do you take that medicine?

A. Yes, and when I take that medicine I sleep better and feel more comfortable.

Q. What about your headaches?

A. I still have headaches.

Q. Do you have them as often as you did?

A. Not as often as I did. They don't occur quite as often but I still have severe headaches.

Q. Where do you have these headaches?

A. They start in the back of my head and come all up through my entire head.

Q. Did you have any trouble after this accident with being sore?

A. I was very sore for two or three days and they kept ice bags completely around my shoulders trying to ease the pain, Dr. Owen instructed the nurse to keep ice bags on my shoulders, side and on my arm.

Q. Now, Mrs. Pickett, before this accident did you drive an automobile?

A. Yes, I did.

Q. Now, since this accident have you tried to go back to driving?

A. Yes, I have driven some since the accident

page 92 } but only recently.

Q. Do you have any trouble doing that or not?

A. I don't feel as secure as I did before the accident. I drive more reluctantly now than I did before the accident.

Q. Are you having any trouble now when riding along in the car and meeting other cars?

A. Yes, I do. When I meet another car, especially if I see a car attempting to pass another one, I get panicky wondering if they are going to make it and get back in line or are going to meet us head-on.

Edith Sweet Pickett.

Q. Your husband said "What is that fool going to do?"

A. Yes, and I probably made some remark to
page 96 } him about it.

Q. It wasn't so close to you that you grabbed him and yelled?

A. I never yelled or screamed for anything. I don't get too excited.

Q. When you saw him pull out of line and the back end of it was over in the road there was nothing to bother you at first, was it?

A. Well, I thought if he didn't get the car straightened back out it would certainly bother us. We were almost on him then.

Q. But it didn't disturb you any at first?

A. It certainly disturbed me. I thought we were going to run together.

Q. When you first saw him?

A. When he pulled out of line and my husband made the remark then I saw him trying to get back in line but he didn't make it back in the line.

Q. Why didn't your husband put on his brakes right away instead of saying what he did?

A. I don't know what he tried to do with his foot.

Q. You don't remember any change in the speed of your car, do you?

A. I don't know as I noticed any difference in
page 97 } speed. I was more concerned about the car in front of us.

Q. I notice you can bend your hand all right?

A. Yes, I can bend it.

Q. Dr. Owen is the one that treated you from the date you went into the hospital, when you came home and then when you were in Memorial Hospital. Did he go to Memorial Hospital to see you over there?

A. Yes, sir, he did.

Q. Did Dr. Scott see you over there?

A. No, I hadn't been to Dr. Scott then.

Q. Is Dr. Owen over here today?

A. I don't know.

Q. You haven't seen him here, have you?

A. No.

Q. You never had been to Dr. Scott before, had you?

A. No, I never had. I had been to doctors very little in my lifetime. I prided myself on that.

Q. The last time you saw him was December 4th, wasn't it?

A. Yes.

Edith Sweet Pickett.

father. I understood you to say you are a grandmother?

A. Yes, sir.

Q. You have been irritable before this accident, have you not?

A. I didn't notice it if I had been. Probably someone else noticed it but I didn't notice it.

Q. Didn't you have trouble sleeping when you had arthritis in your back?

A. Certainly not for the last two years.

Q. You had the arthritis when?

A. Two years before the accident.

Q. Didn't that keep you awake when you had it in your back?

A. No, it didn't because it never hurt me until early morning when I would get up.

Q. How about your fingers, did your fingers ever hurt you?

A. My fingers never hurt.

Q. And the arthritis never bothered you in your knees?

A. No, sir.

Q. You have had headaches before, haven't you?

A. I have had headaches but not headaches like I
page 95 } have had since this accident.

Q. And you were nervous before this accident?

A. I never noticed being nervous. I always prided myself that I wasn't the nervous type.

Q. You had been through a change in '46, about seven or eight years before this?

A. Yes.

Q. Weren't you nervous then?

A. I never was.

Q. How did you know you went through the change?

A. Like any normal person would know.

Q. You were not nervous at all?

A. No.

Q. You didn't stay awake then?

A. No, I did not. It didn't affect me at all.

Q. Now then, about driving—When you came around the turn you saw the car pull out of line?

A. Yes, sir.

Q. You didn't say anything?

A. What should I say? My husband said "What is that fool going to do?"

Q. I don't want to argue with you. I am asking you if you said anything.

A. There was nothing for me to say.

Dr. D. P. Scott.

Q. What do you specialize in?
A. Internal medicine.
Q. Anything else?
A. Well, that covers a lot of territory.
Q. Does that cover treating people for nervous disorders and upset conditions?
A. Yes, it does.
Q. And do you more or less specialize in that branch of internal medicine?
A. Well, it just happens that constitutes a large part of things that happen to any people anyway and I do see a lot of them.
Q. Doctor, when was the first time you saw Mrs. Pickett as a patient?
A. June 25th, 1958.
Q. Now, from that time up to the present time
page 100 } has she been under your care and your observation?
A. Yes, she has.
Q. Is she still under your care and observation?
A. Yes, she still is.
Q. Now, will you please tell us, sir, the time you saw her concerning the accident of June 1st and what you found out from her and what treatment you have given her and what you have found to be the matter with her?
A. I saw Mrs. Pickett first on June 25th, 1958. At that time she gave me the history of having been in an automobile accident on the 1st of June 1958 at which time she sustained in the accident injury to the fourth finger of the left hand, a laceration on the inner surface of the right knee and a cut, large bruise over the knee and also a large bruise over the left shoulder. Her head was injured, had scratches all over her head, and she said her head struck the windshield shattering the windshield. She told me that she remembered the impact and the collision when it occurred and her head struck the windshield and she remembers getting up from the floor of the car. She was right nauseated at the time, was taken to the hospital; that she was seen by Dr. Owen who put the temporary splint on her finger and that Dr. Kyle Mundy, an orthopedic surgeon, saw her then the following day, or Monday morning; that she was x-rayed at that time and that she
left the hospital Monday afternoon but Dr. Owen
page 101 } put her back in the hospital on Tuesday where
she stayed until Saturday.
She was extremely nervous and was very stiff and sore

Dr. D. P. Scott.

Q. What did he give you?
A. He gave me a prescription. I don't know what it was. It was a prescription for some tablets.
Q. Is this all he has given you?
A. Yes.
page 98 } Q. You have been to him on June 25th, July 18th, July 25th, September 11th, December 4th and all you had was that one prescription?
A. I had two prescriptions.
Q. What was the other one for?
A. He told me to try to take it. I told him after I had tried that it didn't seem to agree with me. Then he gave me this prescription and this one helped me. This one would calm me and I could sleep better and rest better.
Q. Both prescriptions were for the same thing?
A. He said it was for my nervous condition to help me relax and sleep.
Q. Have you had anything else from him?
A. No.
Q. Any other treatment except those two prescriptions?
A. That is all.

Mr. Rosenberger: That is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:
Q. I believe I overlooked asking you this: Are you still under the care of Dr. Scott?
A. Yes, sir.

Mr. Whitehead: All right, that is all.

The witness stands aside.

page 99 } DR. D. P. SCOTT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:
Q. Your name is Dr. D. P. Scott?
A. It is.
Q. Doctor, where is your office?
A. In Lynchburg, Virginia.

Dr. D. P. Scott.

day as a saleslady, and she works at Leggett's, her neck would be painful at night and she would usually have to take aspirin under my instructions when she would go to bed and she would get a fair night's sleep and she still
page 103 } takes sedation in reference to her sleeping. The finger looks about the same and she still complains to me when I see her about her knee. She tells me the headaches have been a little worse in the last month or so.

Q. Do you think she is making a normal recovery, Doctor?

A. Yes, I think she is.

Q. Now, with reference to the injuries that she has sustained, in your opinion, will she enjoy, not including the finger and knee, but with reference to her nerves and headaches, will she enjoy complete recovery or not?

A. In reference to her nerves—you say including the finger and knee?

Q. Excluding the finger and knee because the other doctors have testified about those.

A. I think she will. I can't tell you how long it is going to take and can't tell you it will be so many months because it could easily go on for a long long time before she would be completely back to normal. I have seen it continue for a long period of time many times in accidents which were much milder accidents than this one.

Mr. Rosenberger: If your Honor please, I object to all the things the doctor has seen. I know he has seen a lot of them that would horrify me but we are interested in just what the situation is here.

page 104 } By Mr. Whitehead:

Q. Tell us with reference to her recovery.

A. I think she will make a recovery. I don't know how long it will take.

Q. What about her recovery with respect to the injury which she received to her neck and the injury to those muscles and nerves in her neck?

A. I think if she got enough of a sprain to require traction and to continue since June of last year I don't believe that she will get a full recovery. I think it will return back near enough so maybe you wouldn't notice it but I don't think it will be the same as the neck was before the accident. A lot of structures in an accident are damaged and while they make a good recovery it is not quite as good as it was before.

Dr. D. P. Scott.

all over and she told me since the accident—and this was about twenty-four days—that she had been very emotional; that she slept poorly; cried easily and was having persistent and constant headaches. She thought possibly one reaon for her sleeping so poorly was her right knee was hurting her a great deal. One pivot tooth was knocked aloose and the others seemed to be all right but she bit her tongue right badly in the accident.

On examination the examination relating to her blood pressure, her heart, lungs and abdomen and chest were all negative. The fourth finger on the left hand evidently had been fractured and showed a partial ankylosis—that is, she could not extend and contract it to its full normal degree. She had a healed scar one and a half inches long on the inner surface of the right knee.

The neurological examination was essentially negative except she had rather marked tremor of extended fingers and talked with some difficulty about the situation she had been through and the way she was feeling.

When I saw Mrs. Pickett from time to time after that it was my opinion that she had in the accident, apart from injury to her right knee and finger on her left hand, sustained a concussion of the brain and the group of symp-
page 102 } toms that followed and continued to follow the occurrence of the accident was due to what we call a post-traumatic—I mean a post-concussion syndrome. A concussion means that at the time the individual has lost, temporarily at least, all function of the brain and when we say "post-concussion" we mean the series of symptoms that they complain of after a concussion. "Post" means after and that name has been given to this clinical entity which we see not in just one individual but in so many individuals because it follows so often the same pattern but it has been identified by that name.

Mrs. Pickett subsequently told me that also at the time of the accident that she had wrenched or sprained her neck and that Dr. Mundy had been treating her for that and her condition has followed along those lines. Is that about what you want?

Q. What is her condition at the present time? Is she improving or not?

A. I think Mrs. Pickett is better than she was in the beginning. She tries extremely hard to be better but she is sleeping very badly. She is still very easily upset. She still complains of her neck, enough so that after working a

Dr. D. P. Scott.

Mr. Rosenberger: The doctor is good but he is not a mind reader.

By Mr. Whitehead:

Q. Doctor, if I do something, or if a person does something without really thinking about what they are doing, what do you call it?

The Court: There is no evidence this woman did anything without thinking.

Mr. Whitehead: What I am trying to show, your Honor, is the reactions of a person when another person pulls in front of them if they have time to react.

The Court: That depends upon the degree of mentality of the individual and so many other things.

By Mr. Whitehead:

Q. Now, Doctor, with reference to this lady, I believe she testified that she is fifty-three years of age. Is a
page 107 } person at that age able to take care of the complaints and suffering that she has as well as a younger person, say a person in her twenties?

Mr. Rosenberger: I object to that question.

By Mr. Whitehead:

Q. Now, you have told us about this lady's headaches and about the concussion. Tell us about that one more time.

Mr. Rosenberger: I object to him repeating.

The Court: He has been over all that.

Mr. Whitehead: All right, I just want to be sure he didn't leave it out.

The Court: He hasn't missed a thing I don't believe.

CROSS EXAMINATION.

By Mr. Rosenberger:

Q. Dr.Scott, you first saw Mrs. Pickett on June 25th and examined her after she had been referred to you by Mr. Whitehead?

A. I don't know who referred her. Miss Kyle made the appointment. I don't see anything here about who referred her but I did see her first on June 25th, 1958.

Dr. D. P. Scott.

Q. Have you prescribed medicine for her?

A. Well, only sedatives when she was right nervous, and something to sleep, and aspirin for relief of pain.

Q. In addition to that is there anything you can do for a person in the condition she is in, Doctor?

A. Well, the thing that is generally necessary is observation to follow close along to see if any complicating factors develop and explanations as to why this or that symptom arises, explanations and reassurances where truthful reassurance can be given and, as I say, symptomatic relief for any symptoms that may arise.

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Q. Doctor, from your observations of her at the times you have treated her I will ask you if in your opinion this lady is malingering or putting on or are her complaints genuine?

A. Her complaints are genuine. I am sure she is not making an attempt to exaggerate them or to add anything to them. I think she is entirely honest about it.

Q. Doctor, what is your bill, not including coming over here, for your services?

A. Fifty-eight dollars.

Q. Is it $58.00 or $68.00? I have a bill here for $68.00.

A. My secretary gave me this figure of $58.00 so it stands as $58.00.

Q. She gave me this one as $68.00. Now, let me ask you this, Doctor: What is the medical term you use when you are faced with a sudden situation and what your reaction is?

The Court: Mr. Whitehead, that is a very vague question. I can't see it has anything to do with this matter.

By Mr. Whitehead:

Q. Doctor, I will ask you this from a medical standpoint, if a person was in an automobile going down the road and another car would pull out into that person's lane of travel what would that person do, even without thinking, if anything?

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Mr. Rosenberger: I object. I don't know if the doctor knows what a person would do.

The Court: I don't know if he is qualified to answer that, Mr. Whitehead. Maybe a psychologist could answer that but you are getting pretty far afield.

Dr. D. P. Scott.

Q. Now, this thing happened on June 1st, 1958, didn't it?

A. That is what she told me.

page 108 } Q. Did she tell you Dr. Owen had been treating her?

A. She told me Dr. Owen saw her the day she was hurt and referred her to Dr. Mundy evidently on the following day with special reference to the finger that was fractured and that then he put her back in the hospital again on Tuesday and she stayed there until Saturday.

Q. She was under Dr. Owen's care at Memorial Hospital, wasn't she?

A. Yes, she was then I am sure.

Q. You haven't talked to either Dr. Owen or Dr. Mundy about this patient, have you?

A. No.

Q. Dr. Mundy testified this morning about her neck, finger and knee. Those are specialties in the orthopedic field?

A. Yes, sir.

Q. And if he thinks her neck is all right and the soreness clears up do you deny that?

A. You mean do I deny it will happen?

Q. Yes, sir.

A. I don't think he is infallible. I tell you the reason I say this. They are excellent men, both of them, but so often you will see a patient at the time of an injury and you don't see them afterwards because the patient goes to someone else and what they are seeking help about is not what

page 109 } was primarily wrong with them at first but with reference to these other disturbing things that happens to them emotionally.

Q. Doctor, I wasn't talking about the emotions. That is your specialty. I was talking about the neck and that is his specialty and if he thinks that is going to be all right my question is do you agree with him?

A. No, not necessarily, because I think differently.

Q. If he told her to come back if she had any more trouble with the neck you would have thought she would have gone on back to him?

A. Yes.

Q. And if she didn't go back you would conclude she didn't have any more trouble about that?

A. I don't know. She didn't tell me about the neck until some time after I first saw her.

Q. You examined her partially on June 25th?

Dr. D. P. Scott.

A. Yes.

Q. What did you give her on June 25th?

A. I saw her two or three days in a row because it took right much time talking to her and I gave her nothing except something to sleep.

Q. You didn't make any record of seeing her except on June 25th. You didn't make a record for the 26th or 27th, did you?

page 110 } A. No, because you see here is why I don't—For instance, when I make a complete physical I put that date down and maybe that would take several hours and rather than take up so much time in one day I would divide it up over several days but no record is made except for the one examination.

Q. That is what I am getting at. If you will look at your notes you start your examination on June 25th and you didn't finish that examination until July the 18th?

A. That may seem that way.

Q. You did the examination again on July 18th. You finished it up, didn't you?

A. I finished it up before that and when I saw her on July 18th if I did anything I just talked to her and asked her about her headaches and asked her about her knee as far as it related to her general condition.

Q. Doctor, won't you look at your file and see if you don't find the date July 18th when you were recording her blood pressure, her pulse, her respiration, her weight, her head, her eyes, and her ears?

A. What are you looking at?

Q. You have a long sheet there. Look at that date on the top.

A. That is June 25th.

Q. Look at the next one.

page 111 } A. The next one I see is July 12th.

Q. Look at the next page the other way.

A. That is the physical there.

Q. That is what I am talking about, the physical of July 18th. Isn't that July 18th?

A. Yes, sir, but she has dated that wrong.

Q. She has?

A. Yes.

Q. All right, that is the date you have got here and have her weight down as 130 pounds "Ideal weight."

A. Yes.

Q. This was from June 1st to July 18th, about six or eight

Dr. D. P. Scott.

concussion syndrome in her case was nervousness, headaches and could not sleep—those things she told you?

A. That is correct.

Q. They are just a pattern of symptoms?

A. Yes, sir.

Q. You see lots of people who have the same pattern of symptoms who haven't been in an automobile accident?

A. That is true.

Mr. Rosenberger: That is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. He asked you about Dr. Owen. What is Dr. Owen's specialty?

A. Dr. Owen is a general surgeon.

Mr. Whitehead: That is all.

The witness stands aside.

page 114 } Mr. Whitehead: We rest, if your Honor please.

Mr. Rosenberger: If your Honor please, we have a motion to make out of the presence of the jury.

The Court: Very well.

(In Chambers).

Mr. Rosenberger: The defendant, by counsel, moves the court to strike the evidence on the ground that as a matter of law it does not show that the defendant was guilty of negligence but on the other hand the driver of the plaintiff's automobile testified that he wasn't saying positively that the car attempted to pass but it looked like it attempted to pass and he was not certain of the speed of the automobile and then when questioned about his signing of the paper he admitted that he signed the report that the left rear tire of this automobile had blown out causing the man to lose control. Now, under the circumstances, they have failed to prove that the man was on the wrong side of the road when it was practical to drive on the right side.

The Court: What have you to say, Mr. Whitehead?

Dr. D. P. Scott.

weeks, and her weight was perfect so staying awake or worrying with headaches hadn't affected her weight any, had it?

A. No.

Q. Her color and expression was good that day?

A. Yes.

Q. Her eyes were round and equal in size and reacted normally to light and distance?

A. That is correct.

Q. So when you told the jury that neurological examination was essentially negative during all of the examinations that you do to find out if they have got anything wrong with their head you found them all right, didn't you?

page 112 } A. That is correct.

Q. You said there was some tremor in her hand but if you look at that paper you find there was no tremor. Look on July 18th.

A. I am looking at that but I am looking at some other notes at a subsequent date. There was no tremor on that date.

Q. No tremor on July 18th. Now, while reading there you found she had some osteoarthritic nodules on her fingers, did you not?

A. Yes, sir.

Q. Will you point out on Mrs. Pickett's fingers those nodules?

A. There (indicating on plaintiff's hand) is one on her hand and here is one on mine. It is an overproduction of bone.

Q. Now, that arthritic condition makes her fingers look a little bit out of joint. That arthritic condition obtained in her hands before this accident on June 1st, didn't it?

A. Yes, sir.

Q. Because the change in bones takes place over a period of years, don't it?

A. A long time.

Q. So she had this arthritis for some time, hadn't she?

A. Yes, sir.

page 113 } Q. What you found in the way of headaches and nervousness and sleeplessness are things that she told you?

A. They are subjective symptoms.

Q. And as far as you were concerned your examination did not show anything wrong but the arthritis?

A. That is correct. Of course, I could see the finger and I saw where she had the lacerations.

Q. Now then, Doctor, these symptoms you call a post-

Mrs. A. L. Cooper.

A. Yes, sir.

Q. And you are the wife of this gentleman sitting here by me?

A. I am.

Q. And you are the mother of three children?

A. That is right.

Q. Before we get to this afternoon that this accident occurred I will ask you where had you gone from and to on the Friday before this collision?

A. We had gone to Jolo, West Virginia, which is approximately thirty miles from a larger town.

Q. Where were you living at the time?

A. We were living in Manassas, Virginia.

Q. And you had gone to Jolo, West Virginia to visit whom?

A. My mother-in-law.

Q. Who went out there with you?

page 118 } A. My mother, Mrs. Sparks, and my three children and my husband and myself.

Q. Will you tell us the ages of your three children?

A. Victoria at the time was two years old, James was one and Angela was twenty-three days old.

Q. Now, as you were driving along from West Virginia—When had you started from West Virginia going back north to Manassas?

A. Well, to the best of my knowledge it was about 8:00 or 9:00 o'clock that morning.

Q. Where was your husband working?

A. He is in the Air Force.

Q. And you were living at Manassas?

A. Yes, sir.

Q. Where do you work?

A. I work in Washington, D. C.

Q. What kind of work do you do?

A. I am a robot typist. You type on a roll and then you push a botton and it gives you as many copies as you want.

Q. Who do you work for?

A. Senator Keefauver.

Q. And you answer the senator's mail?

A. Yes, sir, his correspondence.

The Court: Mr. Rosenberger, I suppose you understand all about that?

page 119 } The Witness: It is really simple, you just push a button. You insert the name "Dear John"

Mrs. A. L. Cooper.

Mr. Whitehead: Judge, the first thing the tes-
page 115 } timony here by the plaintiff herself and by other witnesses is that this car pulled out as though it was going to attempt to pass and then cut back in and when it cut back in it flew right around into this car. The evidence shows that all of the accident took place over on the plaintiff's side of the road. The plaintiff never was anywhere except where she should have been.

The Court: No question about that but what about the fact he saw the man and said "What is that fool trying to do?"

Mr. Whitehead: And about that time the impact took place. The law is if you see a car coming to its left side you have a right to assume it is going to get back on its right side until you see it is not.

The Court: When you see it over on your side and you have an opportunity to avoid it you ought to avoid it.

Mr. Whitehead: That is what their testimony is. They did all they could. He said he is not sure but he thinks he got his foot on the brake but he is not sure about that.

Mr. Rosenberger: He testified the other car was 150 to 200 feet away when he said "What is the damn
page 116 } fool trying to do?"

The Court: Of course, the wife isn't bound by that.

Mr. Rosenberger: What I am driving at is the lack of negligence because the left tire blowing out is consistent with the front of the car coming around.

The Court: It is a question whether you believe the tire blew out.

Mr. Rosenberger: There is no evidence to the contrary.

The Court: I think I will have to overrule the motion.

Mr. Rosenberger: And the defendant, by counsel, excepts to the action of the court in overruling the motion to strike the evidence.

page 117 } EVIDENCE FOR THE DEFENDANT.

MRS. A. L. COOPER,

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. You are Mrs. Arthur Leonard Cooper?

Mrs. A. L. Cooper.

Q. What kind of tires were on the automobile when you bought it?

A. They were new tires, to my knowledge.

Q. New tires?

A. Yes, sir.

Q. All right now, you had stopped, you say, about fifteen minutes before the accident?

page 121 } A. That is right.

Q. Tell me what the weather was after you stopped and as you were driving along.

A. It was raining. It was raining in sheets. The rain would come in sheets and then it would hold up a little bit and then it would come in big sheets again.

Q. Now, what happened to call this situation to your attention? What was the first thing you knew something was wrong?

A. Well, I was in the back playing with the children and I heard a slight noise similar to a firecracker or the backfire of a motorcycle when you are cranking a motorcycle and the car skidded and as the car skidded it went back to its normal side of the road and then it skidded out again and as I looked up Mr. Pickett's car appeared to me was coming through the window.

Q. What side of the automobile were you sitting on?

A. I was sitting on the right-hand side of the automobile.

Q. Now, how many times would you say it skidded?

A. Well, it skidded out after it backfired. It seemed to float right on out and then it came back and skidded out the second time and that second time it ran into the Pickett car.

Q. Then what happened?

page 122 } A. Well, that is the last thing I remember until I was sitting in Mr. Motley's car.

Q. This gentleman here?

A. Yes, I was sitting in the back seat.

Q. Do you remember where they picked you up from off the road?

A. No, I do not remember that.

Q. Do you remember where they picked the child, James, up from the road?

A. No, I do not.

Q. How about Victoria?

A. No, the only thing I remember is when I was in our car and then the next thing I knew I thought I was still in our car but it turned out I was not in our car but was in Mr. Motley's car.

or "Dear Joe" and you push a button and it will go on from there with the previously inscribed message on the roll.

By Mr. Rosenberger:
Q. You send many people the same message?
A. I didn't say that.

The Court: She has a right to plead the fifth amendment.

By Mr. Rosenberger:
Q. As you were driving along north that day had you all stopped any before you had the collision?
A. Yes, we stopped to get sandwiches and refreshments and then we stopped about ten or fifteen minutes prior to the accident for me to change places with my mother and get in the back seat. I had planned on taking a nap but then I got involved with playing with the children.
Q. Where were the children?
A. Well, Victoria was standing beside me, James was in my lap and Angela was in a small little place at the bottom of my feet.
Q. Angela is the twenty-three day old baby?
A. That is correct.
Q. You were holding James?
page 120 } A. I was.
Q. Then Victoria was sitting beside you on the seat?
A. She was.
Q. Your mother was on the right front and your husband was driving?
A. That is correct.
Q. What model automobile was this you were riding in?
A. A 1957 Fairlane Ford.
Q. Two or four doors?
A. Two doors.
Q. Had you people bought it brand new?
A. No, sir, it was a used car.
Q. When did you buy it?
A. We bought it in August or September. I think we got it the middle of August and it went through the bank somewhere about the 10th or 11th of September.
Q. The September before this accident in June?
A. That is correct.

Mrs. A. L. Cooper.

Q. Was there?

A. No, there was not.

Q. It is your version of the accident there were no cars in front of you going north?

A. No, there were not.

Q. Now, you say you were going 30 to 35 miles an hour?

A. Yes, that would be right.

Q. And you heard something that sounded like a firecracker?

A. It sounded like a firecracker, yes.

Q. Then when you heard the thing that sounded like a firecracker what did you say the car did?

A. It skidded out in the road similar to hitting ice or something like that, just sort of went over and then it came back.

Q. Then it came back in its proper lane of travel?

A. Yes, my husband brought it back under control.

Q. Then did it stay in its proper lane of travel?

A. No, it skidded back over again and that time page 125 } is when Mr. Pickett's car was in front of us.

Q. You mean to tell us you heard something that sounded like a firecracker and then the rear of the car skidded around to your left?

A. Yes.

Q. Then the car pulled back in its northbound lane?

A. That is right.

Q. It got back in its proper lane?

A. That is right.

Q. Then after it got properly back in the lane then it again skidded to the left and when it did that is when it looked like the Pickett car was coming to you?

A. That is correct.

Q. In other words, as I understand it, you tell us you heard the firecracker and the car skidded to the left, then your husband guided it so the car got completely back in its proper lane?

A. Well, it wasn't completely back because the car was zigzagging.

Q. You just told us it got back in its proper lane. Which is correct?

A. The car was zigzagging and it went out into the lane, came back and then went out again.

Q. In other words, the rear of the car went out in the southbound lane or in Mr. Pickett's lane?

Mrs. A. L. Cooper.

Q. Now, was your husband attempting to pass anybody going up that hill?

A. No, sir, my husband had slowed down because of the rain. We had been traveling about between 50 and 55 and when it started raining bad my husband slowed down to between 30 and 35, somewhere along there. I couldn't say the exact speed but that would be my estimation.

Q. He had slowed down?

A. He had slowed down.

Q. And he wasn't attempting to pass anybody?

page 123 } A. No, there was nobody to pass.

Q. Did you talk to Mr. Pickett at the hospital after this collision that day or the next day?

A. Yes.

Q. What did Mr. Pickett tell you?

A. It was the next day. Well, when he first came in the room we were naturally worried about each other, how bad he and his wife were hurt and how bad we were hurt, and he said that he had seen us when he was at the top of the hill, he had seen our car go out of control and go over to the other side of the road, and also saw my husband straighten the car up. He said had he known the car was going out of control the second time he would have stopped and gotten out of our way but since he had no idea or no way of knowing that he just proceeded on at his normal rate of speed.

Q. In other words, he didn't even put on his brakes?

A. Well, I couldn't say whether he did or not but from my opinion he just kept on going.

Q. That is from what he told you?

A. Yes, sir.

Mr. Rosenberger: You may examine her.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. You were sitting on the right rear of the

page 124 } car?

A. That is right.

Q. And you say there were no cars in front of you?

A. None that I remember.

Q. Do you know whether any were in front of you?

A. I would certainly know if there was one directly in front of us.

Mrs. A. L. Cooper.

A. That is correct.

Q. Is that when you were then on the way to the hospital?

A. Well, things were kind of fuzzy right immediately after the accident but to the best of my knowledge

page 128 } the car was not moving.

Q. I see then, that was before you left the scene of the accident?

A. I believe that is correct, yes, sir.

Q. Then from that time on you remember everything, do you not?

A. It is pretty clear. I couldn't swear to every little detail but most of it is clear. I remember getting to the hospital and the attendants taking care of the children.

Q. Do you recall on the way from the scene to the hospital, and also at the hospital, that your husband made the remark that he was very sorry about it but it was all his fault?

A. No.

Q. Did you make such a statement?

A. I never made such a remark.

Q. Do you recall any such remark as that being made?

Mr. Rosenberger: I move that that be stricken. Nobody has said she made such a statement.

Mr. Whitehead: I can prove it.

Mr. Rosenberger: There was no question of that this morning.

Mr. Whitehead: I tried to get it in and the court ruled we couldn't.

The Court: She wasn't driving and she can't

page 129 } give anything but a conclusion.

By Mr. Whitehead:

Q. These people took you on to the hospital, is that correct?

A. Yes.

Q. What was the speedometer mileage on this car when you bought it?

A. I am afraid I couldn't tell you that.

Q. How do you know there were new tires on the car?

A. They had these little black points on them that are usually on new tires.

Q. Is that the way you know they were new tires?

A. That would be my assumption of a new tire.

Q. You don't know they were new tires except for the little black points. Is that correct?

Mrs. A. L. Cooper.

page 126 } A. Yes, sir.

Q. Then it came back into your lane and then later went out again?

A. Well, it was almost a complete S. The car went out, came in and went out again.

Q. When it went out the first time did it come back in the right lane?

A. Yes, it did.

Q. Now, you know where this accident occurred?

A. Yes, sir.

Q. You have been to the scene recently, haven't you?

A. Yes, I have.

Q. And you know you all were going up a very steep grade?

A. It was a grade, yes, sir.

Q. And you tell us when you heard the thing that sounded like a firecracker you then weren't going but 30 or 35 miles an hour?

A. It was raining. That is the speed we were going.

Q. You tell us there were no cars ahead of you going north?

A. That is correct.

Q. And you tell us that going at that slow speed then the left of your car pulled out, then pulled back in and then went out again?

page 127 } A. That is correct.

By the Court:

Q. Mrs. Cooper, are you sure there were no cars immediately ahead of you as you started up the hill?

A. None to my knowledge, your Honor.

Q. Do you have any independent recollection that you were looking ahead at the road?

A. I was looking at the road and playing with the children and talking with my mother and husband, just driving along.

Q. If there had been two, three or four cars in a line ahead of you would you have known that?

A. I would have noticed that.

Q. You were paying that much attention to the road?

A. Yes, I was.

By Mr. Whitehead:

Q. Then, I believe you say that the next thing that you recall you were in an automobile and you thought it was your automobile but it turned out to be Mr. Motley's automobile?

Arthur Leonard Cooper.

Q. How far had the tires been driven?

A. Well there were new tires on the car when I bought it. The car had been on the lot about a month before I traded for it and I told the guy I wanted new tires and he put four new white sidewall tires on it before I took it.

Q. Was anything on there to show you they were new tires?

A. I didn't get any guarantee, which I should have, but to my knowledge they were new at the time.

Q. Did you examine the tires yourself to see that they were new?

A. To the best of my knowledge they were new tires.

By the Court:

Q. They had all the appearance of new tires?

A. Yes, new treads and all the markings of a page 132 } new tire. Some of them still had the numbers on them I guess wrote in chalk.

By Mr. Rosenberger:

Q. What are the little black things your wife was talking about?

A. Usually on a new tire they have little black rubber teats I call them that stick out on the tire. They are on there when they make the tire and maybe that is the manufacturer's trade mark or something.

Q. And these tires had those?

A. Yes, sir.

Q. How far did you drive the tires before the collision in June?

A. Well, the car had about 23,000 and some miles on it. I don't know the exact mileage but it was something over 23,000 miles.

Q. So you had driven it around 8,000 miles?

A. Yes, sir.

Q. Your wife testified about your trip down and back. You had your mother-in-law and wife and three children in the car beside your baggage. Did you have anything else in there?

A. Well, we had some fruit and some strawberries my mother gave us while we were up there.

Q. Now then, where did you stop and get page 133 } something to eat?

A. Well, it was pretty close to Lynchburg where we stopped at a drive-in restaurant and had milk

Arthur Leonard Cooper.

A. That is right.
Q. You don't know what mileage was on the car when you bought it?
A. I believe it was somewhere around 1500 or 1600 or 15,000 or 16,000 miles on the car.
Q. What do you mean by that?
A. It was either 15 or 1600 miles or 15 or 16,000 miles. I am not too familiar with it.
Q. What was the mileage on the speedometer when you had the accident?
page 130 } A. I don't know.
Q. Now, who was sitting on the rear seat with you?
A. Victoria and James.

Mr. Whitehead: All right, that is all.

The witness stands aside.

ARTHUR LEONARD COOPER,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:
Q. You are Arthur Leonard Cooper?
A. Yes, sir.
Q. Do you hear all right?
A. Yes, sir.
Q. And you are in the Army, as your wife testified?
A. I am in the Air Force.
Q. Mr. Cooper, when did you buy this automobile?
A. I made the trade for it around the 1st of September and when I carried it through the bank I think it was around the 15th of September.
page 131 } Q. September of 1957?
A. Yes, sir.
Q. And the accident happened on June 1st, 1958?
A. Yes, sir.
Q. Now, Mr. Whitehead is going to want to know how much mileage was on that automobile. Was it a used car?
A. Yes, sir, and it had about 15,500 miles on it when I bought the car.
Q. Fifteen thousand five hundred miles?
A. Yes, sir.

shakes and sandwiches and stretched and smoked. I guess we spent fifteen or twenty minutes at the place.

Q. As you were approaching the scene of this collision what was the weather?

A. Well, it started raining real hard, got kind of dark and cloudy and then started pouring right on down.

Q. Now, as you started up the hill did you see any car coming toward you?

A. Well, I was about, I guess, almost half way up the hill and to the best of my knowledge this car was coming over the hill, had turned the curve and started down the hill and at that instant my rear tire blew and the front end went this way and I was fighting it back and then the second time it went and this car was coming straight at me and instead of hitting him head-on I jerked my front end back and that is when he hit my left rear.

Q. Hit your left rear?

Q. Your left rear was on his side of the road when he hit you?

A. Yes, sir. I don't know how far it was but it was somewhere along there.

page 134 } Q. Now, Arthur, were you trying to pass anybody?

A. No, sir. The closest car to me that was going north was about, I would say, three to four hundred feet or maybe farther up the hill.

Q. That was the closest car and that car was up the hill?

A. Yes, sir.

Q. No question you were trying to pass anybody?

A. No, sir, not in that rain.

Q. Did Mr. Pickett or Mrs. Pickett ever say to you at the hospital you were trying to pass anybody?

A. No, sir.

Q. What was your speed as you were driving along?

A. I would say between 30 and 35 miles an hour.

Q. Of course, you have a claim against Mr. Pickett, a case pending here in court, don't you?

A. Yes, sir.

Q. Now, after the collision occurred tell the court and jury where your automobile was.

A. Well, my car was sitting straight across the highway, about half of it on one side of the line and half of it on the other and the left side of it from about the middle of the door back was clean tore out and part of the luggage and

Arthur Leonard Cooper.

stuff was all the way across the road and in the ditch and my kids and my wife were all out on the road.

page 135 } Q. Where was your wife?

A. She was laying almost right under the car where the gas tank is and the gas tank had busted and gas was running right under her.

Q. Where was Victoria?

A. Victoria was laying pretty close to her mother but Jimmy was about five or ten feet down the road laying right out on his face.

Q. What did you do?

A. Well, I couldn't get the door open, the left door, because it had got hit and was bent in and my mother-in-law was sitting to my right and she was hollering and going on so I pushed myself back up over the seat and then I didn't have no difficulty getting out because the rest of the car was pushed back.

Q. You could get out on what side, right or left?

A. I got out on the left side of the car after I pushed myself up over the seat.

Q. The left side was pushed back so you could get out without opening the door?

A. Wasn't any door there. It was a two door car but it took the door, fender and everything on back.

Q. Took it right on back?

A. Yes, sir.

Q. What did you do after you got out on the

page 136 } ground?

A. Well, the little boy was the first one that caught my eye and I picked him up and as I picked him up I could see he had a few places on his face and someone took him out of my arms. I then turned around and picked up my wife. She was laying face down and I started to pick her up and people come down and helped her up and the little girl. I don't know who picked her up, and laid her on the back seat of someone's car and her face was just matted with blood and they wouldn't let us move her because they were afraid her back was broke.

Q. What did they make you do while she was there?

A. Well, I had a pretty bad cut over my eye and one of the state troopers—well, there was four or five of them there, and they were giving first aid and he put something on my head and wiped my head and asked if I was hurt. I said I was not hurt too seriously, that my leg was hurt. It was bleeding so he pulled my pants leg up and said "You better

Arthur Leonard Cooper.

I pulled my car around and that is when he caught my left side. I thought maybe I could get it by him.

Q. After the tire blew out did you have any more control over it?

A. Yes, sir. I was going to say I had but I won't say I had it under control. What I mean is I was able to take the front end back the first time and when it started out the second time this car was coming head-on and I pulled it back again to avoid a head-on collision.

Q. What I am getting at is could you steer it where you wanted it to go?

A. Oh yes.

Q. You turned it back to the right?

A. I pulled it back to the right.

Q. You couldn't keep it to the right?

A. No, sir, that rear end was jumping and going back and forth.

Q. What do you do in the Army?

page 139 } A. Well, I am a supply man and truck driver combined. We are on radar site about fourteen miles from Quantico Marine Station, and we get all of our supplies through the Marines and I go down there maybe twice, sometimes three times a week and pick up supplies.

Q. Now, had you had any trouble with your arm before this thing happened?

A. Well, I fractured my arm the first of April and the doctor put a cast on it and then I went back before I went to West Virginia and he put another cast on which came from along here at the knuckles on my hand up to here, not quite to the elbow. All he wanted to do was to keep this wrist straight and my fingers and thumb were out and so was my elbow.

Q. You could move your arm and hand?

A. Yes, sir. I had been driving my car back and forth to work and I also drove military vehicles.

Q. How long had you been driving the trucks since the arm was fractured?

A. Well, he told me not to use it too much until the cast got good and set so I guess it was three or four days after the fracture before I started driving again and went back on regular duty.

Q. You went on regular duty within three or four days after April 1st?

A. Yes, sir.

stay off of that leg as much as you can. It might be fractured or broken."

Q. Did you leave the child there when they sent you to the hospital?

A. I got in this man's car, I don't recall his name, and my wife and my son—I had my son in my lap, and my wife was in there and she was crying and I was trying to comfort her on the way to the hospital.

Q. Where was the little twenty-three day old

page 137 } baby?

A. Well, I heard my mother-in-law scream "Where is the baby?" She had been laying in the floor but during the impact the baby was pushed up under the front seat and they couldn't get the baby out. Some guy there had a piece of pipe or a crowbar and he lifted up the front seat and they pulled the baby out from under it.

By the Court:

Q. Was the baby in a box or something?

A. I don't know if you know how a '57 Ford is in the back seat. It has got a square about this big (indicating) and she had the baby in that little place rolled up in blankets between her feet and in the collision it slid right up under the back of the front seat.

By Mr. Rosenberger:

Q. As you were going into the hospital holding one child and trying to comfort your wife did you tell these people about your tire blowing out?

A. We were talking about it and I was talking to my wife telling her and she was more worried about the little girl, the two and a half year old girl, because we didn't know what condition she was in at that time and the little boy in my arms was crying and its mother was crying and I was trying to comfort them on the way to the hospital.

Q. Did you tell Mr. Motley that it was all your fault?

A. No, sir, I didn't.

page 138 } Q. Did you have any consciousness that you could have done anything about it to prevent it?

A. No, sir. I think I did all I could do. I wanted to get my car off the edge of the road but I was afraid to hit the brakes, afraid it would cause it to slip and roll, and when his car was coming on me I didn't want a head-on collision and

Arthur Leonard Cooper.

Mr. Rosenberger: I am impeaching him. I laid the foundation for this.

Mr. Whitehead: I attempted to lay the foundation with her but the court ruled against me.

The Court: It is a different proposition.

Mr. Whitehead: All right, all right.

By Mr. Rosenberger:

Q. What did he say?

A. He came in and he said "I saw your car out
page 142 } of control. I thought you were going to get your
car under control and I think I could have stopped to avoid the accident if I had thought you were not going to get it under control." I said "Yes, I thought I could get it under control too."

Q. Did he say where he was when he saw your car out of control?

A. No, sir.

Mr. Rosenberger: You may examine him.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Cooper, as I understand it, you say Mr. Pickett told you the next day that he saw your car out of control and if he had known you weren't going to get it under control he could have stopped it or done something to prevent the accident?

A. He thought so, yes, sir.

Q. He thought so and you then told him you thought you would be able to get it back under control?

A. Yes, sir, I thought when I cut my car back I could miss him and avoid the accident.

Q. Now, this accident occurred, the impact took place over in Mr. Pickett's lane of travel, didn't it?

A. Yes, sir, somewhere along the middle or
page 143 } center of the road.

Q. Mr. Pickett was at all times in his lane of travel, wasn't he?

A. Yes, sir.

Q. As I understand it, you tell us you were driving along 30 or 35 miles an hour. You have been back to the scene recently, haven't you?

A. Yes, sir, I passed by it yesterday.

Arthur Leonard Cooper.

Q. And you continued to drive for the Army?
page 140 } A. For the Air Force, yes, sir.
Q. Then who drove to West Virginia?

A. Going to West Virginia I drove most of the way. My mother-in-law drove some and my wife drove a small amount but at that time she wasn't in too good a condition to do much driving. The baby was only twenty-three days old and she got tired after we let her drive a little bit.

Q. Could you drive all right with the cast on?

A. Yes, sir.

Q. That had nothing to do with you losing control?

A. No, sir.

By the Court:

Q. Did this car have an automatic shift?

A. Yes, sir.

By Mr. Rosenberger:

Q. How about the trucks you drove, were they automatic?

A. No, sir. I drove a half ton truck which had a gear shift on the steering wheel but the ton and a half had gears in the floor-board.

Q. You drove that all right with the cast on your hand?

A. Yes, sir.

Q. Did anybody have on any lights at the time of the accident?

A. Yes, sir, I had my parking lights on and
page 141 } Mr. Pickett had his on, I am almost positive.
Q. That was because of what?

A. Well, the weather, and it was getting dark at the time. It was a real dark heavy cloud hanging over.

Q. Now, did you talk to Mr. Pickett in the hospital after this accident?

A. The morning after the accident he came by.

Q. Did he talk to you in your wife's presence or by yourself?

A. My wife was not present. I was in a ward and my wife was on the same floor but on a different ward.

Q. What did Mr. Pickett say?

A. Well, he came in and talked and he said "Your car got out of control."

Mr. Whitehead: I object to that on the grounds that Mr. Pickett is not a party.

Arthur Leonard Cooper.

A. Yes, sir, it slowed some.

Q. You had a great big load on there?

A. Well, not too much, three small kids and three grown people.

Q. And in addition to that how many groceries did you have?

A. Not too many. My mother lives on a farm and she gave us some canned fruit and some vegetables she had canned and some fresh strawberries we had picked while up there.

Q. And then you had the luggage?

A. Yes, sir.

Q. Then, if I understand what you tell us, you were going up the hill and when your left rear tire blew out it pulled you like that?

A. Yes, sir.

Q. Then you did pull it back. Is that correct?

A. I never did get it straight. I got it back this way and then it went that way again on me.

Q. The front or rear?

page 146 } A. The front and rear were both zigzagging and the front end started back the second time and this car was coming pretty close and to keep from hitting the car head-on I pulled my car back and that is when he caught my rear end.

Q. You mean to tell us when you were going up the hill then when you felt the blow-out that didn't pull the rear but pulled the front over?

A. It pulled the front over, yes, sir.

Q. Then you say you cut the front back to your side of the road?

A. I got it back toward the right-hand side of the road, yes, sir.

Q. Then the front again went to the left?

A. Yes, sir.

Q. Then when it went to the left that time that is when you cut it sharp?

A. I jerked it back sharp because if I hadn't I would have hit Mr. Pickett's car head-on.

Q. Mr. Cooper, do you know if your left rear tire blew out that wouldn't pull your front to the left?

A. Well, it did, sir.

Mr. Rosenberger: Do you have any evidence that it wouldn't?

Arthur Leonard Cooper.

Q. And proceeding in a northerly direction it is a pretty steep grade there?

A. Yes, sir, there is a grade.

Q. And you were going uphill?

A. Yes, sir, up a slight grade.

Q. It is more than a slight grade, isn't it?

A. Well, I am not an engineer but I would say it was a pretty fair grade.

Q. Then you say that your left rear tire blew out?

A. Yes, sir.

Q. Had you had any trouble with that tire before that time?

A. No, sir, not at all.

Q. Did you hit any rocks in the road or any stumps or anything?

A. No, sir.

Q. In other words, just driving along just all
page 144 } of a sudden the left tire blows out on you?

A. Yes, sir.

Q. Did it go down gradually or just go down all at once?

A. Well, I heard this noise and at the same instant I could feel the rear end feel like it squatted right down and when it did that it pulled the front end around to the other side.

Q. You mean when the left rear tire went down that then pulled the front of the car over?

A. Yes, sir.

Q. You tell us that you were able to guide the front of your car all right. Those front tires weren't flat, were they?

A. No, sir.

Q. Then if the front pulled back to the left you did the cutting. You did the cutting, didn't you?

A. No, sir, it happened so fast it jerked the car to the left and I pulled it back.

Q. You mean the left rear tire blew out and that pulled the front of the car to the left?

A. Yes, sir.

Q. What happened to the rear of the car?

A. Well, the rear of the car was just jumping because every time it rolled that flat tire was making it
page 145 } jump up and down.

Q. Would that happen if you took your foot off the accelerator?

A. Yes, sir.

Q. At the time it blew out you took your foot off the accelerator and were going uphill so you had to slow up?

Arthur Leonard Cooper.

A. Yes, sir.
Q. That is a complete straight stretch there?
A. Yes, sir.
Q. In other words, you can see both ways, can you not?
A. Yes.
Q. Then the rear part of your car went over in the southbound lane the last time and that is when the
page 149 } impact took place?
A. My front end was headed toward Mr. Pickett's car and I brought the front end back to avoid a head-on and that is when he hit my rear end.
Q. You tell us that was really the second time you cut the front of your car back?
A. That was the second time.
Q. In other words, when the tire blew out the front was pulled over, then you cut back and then you cut back again. Is that correct?
A. That is right.
Q. Did you apply your brakes?
A. No, sir.
Q. But you took your foot off the gas?
A. Yes, sir.
Q. Now, what time did you leave West Virginia that morning?
A. We left around 8:00 or 8:30 that morning.
Q. And how many miles is that from where you were to Jolo, West Virginia?
A. That would be somewhere about 200 miles.
Q. What town is it near, Charleston?
A. No, sir, it is up around Welch, West Virginia.
Q. Then where were you going to that night?
A. I was going to Manassas, Virginia.
page 150 } Q. So then you had driven at that time you estimate 200 miles and you still had to drive a distance from here of 120 or 130 miles?
A. About 150 miles, I think, from here to Manassas.
Q. Did you or your wife in your presence, or did either one of you all, make a statement to Mr. and Mrs. Motley that you were sorry the accident happened; that it was all your fault?
A. No, sir.
Q. Neither one of you made that statement?
A. I know, sir, I didn't make it and if my wife made it I did not hear it.
Q. You all were sitting on the back seat together on the way to Lynchburg, were you not?

Arthur Leonard Cooper.

Mr. Whitehead: I am just asking him.

Mr. Rosenberger: I move that the question be stricken out.

page 147 }

The Court: He can ask the question.

Mr. Whitehead: The jury has got common sense.

Mr. Rosenberger: I move that it be stricken.

The Court: I will ask the jury to disregard it.

By Mr. Whitehead:

Q. Then you tell us that then you cut your car to the right. Then when you cut it to the right then did you pull all of it back in your lane?

A. I don't know, sir, because the rear end was still zigzagging.

Q. You mean to tell us while not going over 30 or 35 miles an hour and the rear end zigzagging up the road you don't know whether you pulled it altogether back in your lane of travel or not?

A. That is right because the black top was pretty slick from that rain.

Q. And you tell us furthermore that the only car in front of you was a car three or four hundred feet up the road from you?

A. Yes, sir, according to my best estimation it was three or four hundred feet beyond me going north.

Q. As a matter of fact, weren't you going about 60 miles an hour and that is the reason the rear end got over there in front of that man?

page 148 }

A. No, sir, I was doing between 25 and 35 miles an hour.

Q. How fast were you going at the time of the impact?

A. I don't know.

Q. Faster or slower than 35?

A. I figure I had slowed down some because I had took my foot off the accelerator and the car had probably checked its speed.

Q. Then if you were going less than 30 and 35 you were going somewhere between zero and 30?

A. That is right.

Q. And you tell us then even going at that speed that the front of your car even then pulled to the left on the second go round?

A. Yes, sir.

Q. You recall approximately where this accident occurred, do you not?

the front end under control to get it over to the edge of the road.

Q. You say you were trying to get the front under control to get it over to the edge of the road?

A. Over to my right to get off the highway.

Q. I understood you to tell us a moment ago you cut to your right and then cut to your left?

Mr. Rosenberger: He didn't say he cut to the left.

By Mr. Whitehead:

Q. You cut your car to the right, didn't you?

A. Yes, sir.

Q. Didn't you tell us you cut to the left?

A. No, sir, it pulled to the left.

Q. If you had been holding the steering wheel and neither tire had been flat it couldn't have pulled to the left. If neither of the front tires were flat it couldn't have pulled

page 153 } to the left?

A. Well, it did, sir.

Q. Well, the reason it did was because you weren't trying to steer it?

A. I was doing my best.

Q. Then thereafter when you cut it back again then the impact took place?

A. Yes, sir.

Q. I will ask you this, Mr. Cooper: Do you have the other tires that were on your car?

A. No, sir, just that one. We might have them but that is the only one I have seen.

Mr. Rosenberger: That is the only one we have got.

The Court: Did you offer that tire in evidence?

Mr. Rosenberger: I don't want to put it in evidence because I don't want to put it in the record.

The Court: And we don't want it in the record.

RE-DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. Mr. Cooper, I neglected to ask you about this tire. Is that the tire off your car?

A. Yes, sir, it looks exactly like that tire and we

page 154 } have some pictures we made on the Saturday after the accident and from those pictures that is the tire.

Arthur Leonard Cooper.

A. Yes, sir, but most of the time she was crying.

Q. And if she made that statement loud enough for the people on the front seat to hear it you certainly could have heard it?

A. Yes, sir.

Q. Now, there wasn't but one tire blown out on your automobile, was it?

A. That is all.

Q. And there wasn't but one tire blown out on the Pickett automobile, was it?

page 151 } A. I didn't check his car too much because at that time I had three kids and my wife injured and I was more or less very upset and worried over them.

Q. But the only tire blown out on your car was the left rear?

A. Yes, sir.

Q. And that was the same tire that came in contact with the Pickett automobile, wasn't it?

A. It was on that side, the left side.

Q. When you say you felt the jar and the front of your car pulled to the left when you cut back to your right how far did you cut back?

A. I wouldn't know as to the distance but I brought the front end back because it was headed that way and I brought it back and the rear end was more or less zigzagging.

Q. In other words, there was a ditch then over to your right, wasn't it, after you left the road?

A. Yes, sir, a ditch and a bank.

Q. Now then, with reference to this cast, you did have a cast on which came down over the palm of your hand?

A. No, sir, the back of it came down to here and then it had a little V shape and it came around here.

Q. Of course, in holding the steering wheel you had to have some part of the cast between your hand and the wheel?

A. It had a small piece of plaster through there but I could grip my hand tight.

page 152 } Q. You tell us though that that didn't interfere with your guiding the car?

A. No, sir, not at all.

Q. Why was it then, Mr. Cooper, when you cut your car to the right you tell us at that time something happened to the rear of your car?

A. Well, the rear after the blow-out it never did quit zigzagging. It was backward and forward and I was trying to get

see whether or not you see any broken places at all on the inside of the tire?

A. No, sir, I don't see any.

Q. In other words, all the damage to the tire would be where it would be struck by the other car which would

page 156 } be the outside?

A. Yes, sir.

Mr. Whitehead: I believe that is all.

The witness stands aside.

JOSEPH COLEMAN,

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. You are Mr. Joseph Coleman?

A. That is correct.

Q. Where do you live?

A. Lynchburg, Virginia.

Q. And where do you work?

A. Lynchburg Garage, Lynchburg, Virginia.

Q. What is your title or position at the Lynchburg Garage?

A. I am manager of the tire and recapping sales and service.

Q. How long have you been in the tire business?

page 157 } A. Since 1936.

Q. Since 1936, which is about twenty-two years, have you had occasion to examine tires and determine what causes breaks in them?

A. Many times.

Q. When the customer brings a tire back to you do you have any reason to examine it to determine what causes the damage to it?

A. From time to time, of course, tires are damaged or faulty and, of course, adjustments are made based on what we find wrong with the tires.

Q. Will you look at that tire and see if you have examined that tire and rim?

A. I have examined this tire.

Arthur Leonard Cooper.

The Court: I believe the trooper identified it as the tire.
Mr. Rosenberger: Yes, sir, he identified it.
Mr. Whitehead: Where are the pictures?

Note: Mr. Smith produces some photographs.

By Mr. Rosenberger:
Q. Is this one of the pictures you took?
A. Yes, sir, my wife took them. That is a picture of the left rear end of the car.
Q. This picture No. 11 shows the left rear wheel and back of the automobile?
A. Yes, sir.
Q. That shows how it was knocked aloose at the back?
A. Yes, sir.
Q. This exhibit 10 shows what?
A. Shows the back end.
Q. All of these pictures which are marked Exhibits 10 through 17 are pictures of your automobile?
A. Yes, sir.

The Court: These are all pictures of the Cooper car?
Mr. Rosenberger: Yes, sir, and we would like to introduce them and pass them to the jury.

page 155 } RE-CROSS EXAMINATION.

By Mr. Whitehead:
Q. I will ask you this: Now, there is no broken place at all on the inside of this tire, is it?
A. I can't see any.

The Court: What do you mean by the inside of the wheel?
Mr. Whitehead: The side that is next to the automobile has no broken place in the tire at all.
The Court: I see what you are talking about now.

By Mr. Whitehead:
Q. The broken place in the tire is on the outside, is it not?
A. Yes, sir.
Q. And also the rim on the outside is bent, is it not?
A. Yes, sir.
Q. And also the hubcap is bent and knocked aloose, is it not?
A. Yes, sir.
Q. Now, I will ask you if you will look again at this tire and

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By the Court:

Q. Do you actually made the adjustments for your company?

A. About 95% of the adjustments that are made I pass on them.

Q. You examine the tires personally?

A. I examine the tires.

Q. And you settle with the owner?

A. Yes, sir.

Q. And you have been doing that for about twenty-two years?

page 158 } A. Yes, sir. I went to work as an adjuster for the B. F. Goodrich Company in 1936. That was my first job as adjuster.

Q. And that was the same type of thing?

A. The same thing.

By Mr. Rosenberger:

Q. What kind of tires do you handle?

A. We handle General tires.

Q. When you examined this tire what did you find wrong?

A. If it is permissible I would like to tell what, in my opinion, actually happened to the tire and show you as I go along on what I base my conclusions. To begin with, this is a tubeless tire.

Q. The tire on the rim is a tubeless tire?

A. That is true. It has no tube in it. One of the peculiarities of tubeless tires is that they are sealed right here and right at the base of the rim. We call it the bead. The seal is on the outside, of course, based upon the pressure on the inside of the tire.

Q. Hold that up so the jury can see it.

A. This is the way the tire sits on the rim like this and this flange up here is seated right in here on both sides. One of the peculiarities of a tubeless tire is that the air pressure at all points from twenty-four to thirty pounds pressure has a tendency to find a way to escape. That is a nor-

page 159 } mal situation and a peculiarity of the tubeless tire. The air in trying to escape goes down underneath this bead right here and, of course, it is sealed at the flange and at this point so the air can't get out there. The extreme pressure is put on at this point and the air, as a rule, when it does occur it comes right up by the cord stock into the tire

and goes up to the hinge point. Now, the hinge point is where the flexing area on the tire is as it turns over. The air can't get out at this point and it builds up heat inside and it continues to build up heat until it finally blows. Now, to offset that most companies put out this tool I have in my hand here for the purpose of entering this tire at this point to let the trapped air escape. They take this tool and run it around the point of the tire. You notice each one of these awls is exactly the depth of the side wall rubber casing.

By the Court:

Q. You mean the outside coating of rubber?

A. That is right. This is to let that trapped air get out because we know from experience this air does go through here. Now, when I examined this tire I found this cut. You will notice that this has got more of a straight cut but right at this point you will notice right at the point where it started you have this protected area separation. This is where the trapped air was originally and in my opinion what happened was this—

page 160 } Mr. Whitehead: I object to him giving his opinion.

The Court: I think he is qualified as an expert.

Mr. Rosenberger: Let him go ahead. He can tell from looking at the tire.

The Court: He is explaining how the air gets trapped in there.

By Mr. Rosenberger:

Q. Go ahead.

A. Due to the fact there was no vent point or the vent points didn't function properly this trapped air came up into this hinged joint here which is the flexing point of the tire. Of course, that created a friction area. The friction caused heat and that heat expanded and expanded and you can see in here where the tread rubber is away from the cord body of the tire and at this point it blew. Well, of course, when it blew the rest of the tire was torn up for some other reason or another because it continued on, didn't stop immediately, and either the rim or some other outside object tore this part up and tore this part up. The blow-out actually occurred in this area here due to the heat build up.

Q. How can you distinguish and point out to the jury the

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went out of control, would you be in a position to tell us whether the tire blew out at that time or not?

A. Well, it is reasonable to assume that if they heard a noise like a firecracker and the car did go out of control, with the situation as it is right here on this tire, that it did blow out.

Q. Blew out before the collision?

A. Oh yes.

Q. And you think these sharp marks were caused by something cutting the tire?

page 163 } A. Some outside object cut this and this but this right here definitely is a blow-out. You can see where this trapped air has been here and here and the heat became so intense and so great that it just couldn't hold the air any longer, just had to let go.

Q. Do you use this instrument here on all tubeless tires?

A. We use that on every tubeless tire we install on a car right around on both sides of the tire.

Q. You mean on a brand new tire you make holes in it?

A. We do, even though they do that at the factory too. They put vent holes in the tires at the factory but during the course of getting the tires in the trade area they paint it and sometimes the paint stops up the vent holes and in order to be doubly sure that this doesn't happen in our tires we use this venter to vent the tire to release the trapped air that might occur in there.

Q. Will you show us on that tire what you do?

A. We install the tire first on the rim and push this down like this and go around like this and it makes minute holes in there all the way around on both sides.

Q. And that is as deep as this outside casing?

A. Right in this area right below what we call the bumper guard this is all of the same thickness as the rubber right here and that is done to release the trapped air.

page 164 } Q. So you have gained that knowledge from experience over a number of years and know the air will accumulate and cause the tire to blow out?

A. That is true. Ninety per cent of all of the adjustments we make on tubeless tires are made for this very reason here, trapped air in the tire.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. You mean, Mr. Coleman, that tire was not proper, didn't have the holes in it?

difference between a blow from a defect in the tire and the other injury to the tire?

page 161 } A. Well, of course, this is a straight injury here more or less and it definitely shows that it is a cut.

By the Court:

Q. Obviously both of those openings appear to have been cut?

A. I think this part down in here was cut but up in here is the critical area.

Q. Let me ask you this: Assume these two cuts were made by the impact of the two cars running together wouldn't that let the air out?

A. Yes, sir, it would.

Q. And this wheel continued to revolve for a certain distance?

A. Yes, sir.

Q. Would a continuation of that wheel revolving on that car rip this thing open like that?

A. No. This is definitely a blow-out in this area in here. It is a blow-out from the way the rubber is separated. See it didn't separate in this area where it was cut like this at all. It is just in this particular point where it is separated. It is just one of the peculiarities of a tubeless tire. Of course, many things can cause the tread to separate on the tire but the basic reason for it in a tubeless tire is the trapped air that seeks its way out and finally gets up to this point where there is no egress whatsoever and heat is built up due to the

page 162 } thickness of the rubber at this point of the shoulder of the tire. There is no way for the air to get out and it builds up pressure until it blows.

By Mr. Rosenberger:

Q. Now, are you still of that opinion even though you see nothing to indicate any bubbles or anything on the outside of the tire?

A. That is correct. It does not necessarily have to go all around. Sometimes they do. I have seen them start from this point and, as a matter of fact, I have seen the whole tread peel off but as a rule it will blow before the tread peels off. It just depends on what type of tire it is, whether a puncture sealer and so forth.

Q. Assuming this tire was on the car and the people in the car heard a noise which sounded like a backfire and the car

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this tire hard enough like that that will cause some pressure in the rest of the tire?

A. You would break the tire by hitting it a lick but you wouldn't separate the tread.

Q. I am asking you this: If you hit against the tire doesn't that cause a pressure on the air inside of the tire?

A. Oh yes, any road shock or any kind of lick on it would cause the pressure from the inside. They build these tires with a seven to one safety factor to take care of that.

Q. So with that pressure against the tire of course the air is going to seek the weakest point and may blow out. Is that correct?

A. No, it wouldn't seek the weakest point. It would blow at this point here.

Q. If you were putting pressure somewhere else like this wouldn't it blow out if that was the weakest point?

A. No, I think it would blow at the point of impact. You have to remember the tire is built of four plies and they are laminated together and subsequently vulcanized together to form a complete unit. Then rubber is put on for a
page 167 } wearing surface and a protective surface. You have a safety factor there built into your tire and the safety factor is about seven to one in that particular tire, which means it would absorb road shocks seven times more than the normal road capacity and if you hit something eight times greater than the load capacity the chances are it will break up and blow out but when it blows it won't separate the rubber from the carcass of the tire, it will have a clean break. Now, on the other hand, this air pressure building up inside due to the constantly rolling of the tire and the flexion and the heat builds up until it gets to its maximum and then it bursts and that, of course, could be eight times greater than the normal load capacity.

Q. Here the evidence shows a car ran into the side of this wheel, as you can see there. Now when that pressure comes against that tire if there is so much pressure built up in the tire wouldn't that pressure itself be enough to make the explosion that took place?

A. No, I think it would have a cut right here. I think that is where the point of impact was.

Q. I know you would have that cut place but before that blew out wouldn't the pressure be enough to blow it out here?

A. No. I don't think it would for the simple reason you have two distinct factors to cause this thing to happen.
page 168 } One is heat at one point and a sudden blow at another point. For instance, the fact that this

Joseph Coleman.

A. I don't know. I know that this air was not released before it got to the cushion here.

Q. Can you look at that tire and tell if it had those holes in there?

A. I am sure at the factory they were originally vented, had vent holes in them at that time.

Q. Can you look at it and tell?

A. No, I can't tell whether that one did or not because the tire is dirty. You would have to examine it under a microscope.

Q. You have been examining that tire and you have seen it before today?

A. Yes, sir. I think under a microscopic examination you could find out whether or not that tire has been serrated.

page 165 } Q. If you were examining it to find out these things why didn't you examine it to determine that?

A. I didn't see any particular reason for me doing that. I could determine without that that what caused this to happen was trapped air.

Q. How long does it cause air to get trapped in there?

A. That depends on how far you have driven, what speed you have driven, the load that you have in the car and many other factors which contribute to the length of time it takes the trapped air to get to the bursting point. The trapped air possibly started two or three months before the thing actually blew out but under sustained driving, say a hundred miles, you can imagine how many revolutions the tire makes and how many times this thing has flexed and how much chafing has been going on under the tread here, how much heat is built up, and finally it gets to the point where it can't hold it any more so it bursts.

Q. I see. Now, couldn't that also arise from the fact of pressure on the tire?

A. What do you mean, a separation caused by pressure? Actually what caused it was air pressure.

Q. But if anything hits up on the side of the tire and causes a pressure there?

page 166 } A. There is no way in the world for that tire to separate that way. You couldn't take two horses and pull these plies apart to save your soul.

Q. I am saying if you hit something against that tire wouldn't that be pressure on it?

A. Yes, and it would cut like this.

Q. I am talking about the blow-out. If you hit the side of

Joseph Coleman.

A. If it gets enough pressure to make the tire blow it is going to blow here.

page 170 } Q. Suppose this is strong though and this is weak, won't it blow here with the air pressure against it?

A. I don't see what you are trying to get at. The fact is that this heat caused this and this other is from a foreign object. Now the fact that this was cut here has absolutely nothing to do with this.

Q. Isn't it just as likely and just as probable that this blew out at the time the tire was hit here at that time?

A. I don't think it could possibly have happened.

Q. It couldn't have happened at the same time?

A. No, because this had to happen before this other happened.

Q. Couldn't this happen the same second?

A. It could have happened some time prior to this lick.

Q. Some time prior to that lick it could have happened and whether it was some minutes before or one second or one flash of a second it could have happened before this?

A. It had to happen before that.

By Mr. Rosenberger:

Q. What had to happen before?

A. The blow-out had to happen before the cut.

By Mr. Whitehead:

Q. But as to what time you can't tell?

A. No, sir.

The Court: I think it is pretty self-evident

page 171 } if it was cut there couldn't be any air in the tire to blow.

By Mr. Whitehead:

Q. Have you been told that after the impact took place that then this car was knocked entirely around in the road and come to rest in an opposite direction from which it was before the impact?

A. No, sir. I just examined the tire and that is all.

Q. You did not know that after the impact this car had been hit something like on that angle and then turned around to that angle?

A. No, sir.

Joseph Coleman.

hit right here would not affect this part of the tire whatsoever for the simple reason that the outside perimeter of the tire adds nothing to its strength. This rubber adds nothing to the strength of the tire.

Q. Wouldn't it do so if this right here was at the point where with a little added pressure it would cause it to blow out?

A. If it hit at that immediate point right there at the proper time it would blow out, certainly it would.

Q. And if it hit somewhere else?

A. It would not blow out.

Q. If it was built up at this point wouldn't that lick be enough to make it blow out here?

A. You mean if it hit at the bursting point at the same time of impact. When this gets to the bursting point it is going to burst, no question about that, regardless of what may happen to this point here.

Q. Whether this burst when the impact took place or before you don't know, do you?

A. Well, I would say, based on the experience I have had, that this tire blew out before it was cut.

Q. Why do you say that?

A. Well, particularly from the way this rim is
page 169 } torn it burst. Assuming the rim was only hit
one time on the other car—of course, I don't know that, but you have two points of the rim bent here. In my opinion this point right here was at this point and this is where the accident happened but this had blown out prior to that. You don't see any point on the wheel here or here where this was blown right here so this, of course, was where the car hit but it hit, in my opinion, after this had blown out for the simple reason that this is a definite blow right here and it wouldn't blow after the tire had been cut here.

Q. With the lick here causing pressure and if this was at the point of nearly blowing couldn't it blow right then?

A. No, I don't think so. The fact you have got pressure here has nothing to do with the fact you have presure here The tire dissipates all of the blows over a smaller area. You wouldn't dissipate a lick here. It wouldn't dissipate it over there. It would dissipate it in this given area.

Q. Isn't it a fact with pressure against this tire at any time, enough pressure, then it is going to reach the weakest point and if it is about to blow out here then it will blow out if enough pressure is against it?

Frank W. Pickett.

Q. Mr. Coleman, you notice this rim is bent in there, do you not?

A. Yes, sir.

Q. Would the rim being bent there be caused by some outside object?

A. Yes, sir. The tire itself could not bend the rim.

Mr. Whitehead: That is all, thank you.

RE-DIRECT EXAMINATION.

By Mr. Rosenberger:

Q. Mr. Coleman, Mr. Whitehead asked you if you had been told the car when hit had been knocked around in the road. Now, assume that this car has been knocked around in the road would it change your opinion any as to the cause of that blow-out or when it happened?

A. No, I am firmly convinced that that tire blew out before any impact on any other spot because the evidence is sitting right there. It just separated, that is all, and when you separate a tire by golly it has to blow or you have to catch it before it blows. If this was the first one I had
page 174 } looked at you might give me some argument but I have seen many, many of them exactly in that same situation. Some of them don't separate much before they blow, some of them blow the tread wall off, some blow a big area, just depending on the circumstances at the time whether the heat is built up to the bursting point here or here.

Mr. Rosenberger: That is all.

The witness stands aside.

Mr. Rosenberger: We rest.

The Court: Any rebuttal?

Mr. Whitehead: Yes, sir.

FRANK W. PICKETT,
recalled in rebuttal, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Pickett, as I understand, Mrs. Cooper and Mr.

Joseph Coleman.

Q. Now, you say you are not able to tell us whether or not this tire had those ridges in it for safety?

A. No, I couldn't tell without getting it under a microscope to see.

Q. And you haven't done that?

A. No, sir.

Q. Now, let me ask you this: With reference to the tire itself, as I understand it, this is what you call a tubeless tire?

A. That is correct.

Q. And what you tell us is if these ridges are not put in it to let off the pressure the pressure will build up?

A. No, sir, I didn't say that. I said a peculi-
page 172 } arity of a tubeless tire is that it is constantly seeking to release air from the inside. Due to this peculiarity of a tubeless tire we find that when there is a failure about 90% of the time the failure is due to the fact that this trapped air comes down through here and can't get out at the rim flange so in seeking to get out somewhere it works its way up around the cord body of the tire until it comes to this hinge joint. When it comes to the hinge joint, of course, with the continual flexion it starts a separation, the built up air pressure does, and it continues to separate and continues to build up air pressure, depending on the speed at which the car is driven and so forth—

The Court: I think we have been all over that.

The Witness: We have.

By Mr. Whitehead:

Q. Can you tell from your experience with tires whether that is a worn tire or not?

A. Sure it is worn. Whenever you put a tire on and drive it out of the garage it is a worn tire.

Q. Has it the ordinary tread on there or not?

A. This tire comes originally with eleven thirty-seconds of an inch tread depth. This tire at one point has three-thirty seconds trend depth. At this point over here it has two thirty-seconds and over here again it has three thirty-sec-
onds tread depth, so the tire is wearing more or
page 173 } less constant around.

Q. In other words a new tire has a tread eleven thirty-seconds of an inch and this has in some places only two thirty-seconds of an inch?

A. I said a new tire has eleven thirty-seconds.

into consideration any of the following items or elements of damage that the preponderance of the evidence shows was suffered by Edith Sweet Pickett as the proximate cause of the collision sued for:

A. Any bodily injury, or disability, the character and duration thereof;

b. Any physical pain, suffering and mental anguish she has already been caused to suffer and endure or that she will likely and probably, with reasonable certainty, hereafter be caused to suffer;

page 177 } c. Any expenses for medical treatment that she has incurred or will likely and probably, with reasonable certainty, hereafter incur in a proper effort to be cured of her injuries, or to alleviate the effects thereof;

d. Any inconvenience and discomfort that she has already sustained or will likely and probably, with reasonable certainty, hereafter sustain;

e. Any loss she has already sustained by reason of her inability to earn wages."

Plaintiff's Instruction No. 2 (Refused, as offered):

"The Court instructs you that at the time and place this accident occurred it was the duty of the defendant, Arthur Leonard Cooper, to use reasonable care to perform and comply with each and all of the following duties:

a. To drive the Ford automobile under proper control;

b. To drive the Ford automobile at a speed or in a manner so as not to endanger the life, limb or property of any person;

c. To drive the Ford automobile so as not to exceed a reasonable speed under the circumstances and condistions existing at the time, and under no circumstances in excess of 55 miles per hour; page 178 }

d. To keep a proper lookout;

e. To drive the Ford automobile to the right of the center of the main traveled portion of the roadway.

That these were continuing duties to be exercised when they would be reasonably effective, and that if the defendant, Arthur Leonard Cooper, failed in any one or more of said duties as above set forth, and such failure was a proximate cause of the accident, then you shall find for the plaintiff, Edith Sweet Pickett, against the defendant, Arthur Leonard Cooper."

Frank W. Pickett.

Cooper both testified a few moments ago that you came into their room there at the hospital and saw them that day or the next day—

page 175 } Mr. Rosenberger: Your Honor, I asked him about going in there and he denied going in there so this is not rebuttal.

The Court: That is right.

Mr. Whitehead: All right. I wanted to be sure it was in the record.

The witness stands aside.

Mr. Whitehead. We rest, if your Honor please.

End of all testimony.

(In Chambers)

Mr. Rosenberger: If your Honor please, the defendant, by counsel, renews his motion to strike the plaintiff's evidence and we have the additional uncontradicted evidence right now that the defendant lost control of his automobile through no fault of his own but due to the blow-out of the tire and the evidence is uncontradicted that he was not guilty of any negligence as a matter of law.

The Court: I will have to submit it to the jury.

Mr. Rosenberger: The defendant, by counsel, objects and excepts to the ruling of the court for the reasons stated.

page 176 } INSTRUCTIONS

AND OBJECTIONS AND EXCEPTIONS THERETO

Plaintiff's Instruction No. 1 (Granted):

"The Court instructs you that should you find for the plaintiff, Edith Sweet Pickett, it is your duty to determine the amount of damages to be awarded her and in determining the same you should be guided solely by the evidence and should fix the amount at such sum as from a preponderance of the evidence to you seems a fair and just compensation for the injuries and resulting damages sustained by her as the proximate cause of the collision, but not to exceed the amount sued for, and in arriving at the amount of damages, you may take

fendant had been driving in a lawful manner he would not have been in the plaintiff's lane of travel.

Mr. Rosenberger: The defendant, by counsel, objects to the action of the Court in giving Instruction No. 2 on the ground that it does not take into consideration the theory of the defense that the collision was caused by a page 181 } blowout, and the defendant, by counsel, excepts for the reasons stated.

Plaintiff's Instruction No. 3 (Granted):

"The Court instructs you that where the defendant is required by law to keep a reasonable lookout for the plaintiff, or for the automobile in which the plaintiff is riding, the test is not whether he actuaclly saw the plaintiff, or the automobile in which the plaintiff was riding, in time to have saved her from injury, but whether he could have seen her or said automobile in time to have avoided the injury by exercising ordinary care and failed to do so."

Mr. Rosenberger: The defendant, by counsel, objects to the action of the Court in giving Instruction No. 3 on the ground that reasonable lookout is covered in Instruction No. 2 and it emphasizes that duty and it is prejudicial error for that reason, and the defendant, by counsel, excepts for the reasons stated.

page 182 } *Plaintiff's Instruction No. 4 (Refused)*:

"The Court instructs you that if you believe from the evidence that Frank W. Pickett, the driver of the automobile the plaintiff was riding in, proceeding in a southerly direction along U. S. Highway 29, in Amherst County, Virginia, saw the defendant's automobile approaching on the wrong side of the road, the said Frank W. Pickett had the right to assume that the defendant would observe the law and *seasonably* move over to his right side so as to pass safely, and the said Frank W. Pickett had a right to this presumption until he saw that the defendant was not going to turn to his right side. It then became the duty of Frank W. Pickett to exercise ordinary care to avoid a collision."

Mr. Whitehead: The plaintiff, by counsel, objects and excepts to the action of the court in refusing to give Instruction No. 4 on the ground that it is a proper statement of the law and that under any circumstances the defendant being in the plaintiff's lane of travel that the driver of the car the plaintiff

Plaintiff's Instruction No. 2 (Granted, as amended):

"The Court instructs you that the time and place this accident occurred it was the duty of the defendant, Arthur Leonard Cooper, to use reasonable care to perform and comply with each and all of the following duties:

a. To drive the Ford automobile under proper control;
b. To drive the Ford automobile at a speed or in a manner so as not to endanger the life, limb or property of any person;
page 179 } c. To drive the Ford automobile so as not to exceed a reasonable speed under the circumstances and conditions existing at the time, and in excess of 55 miles per hour;
d. To keep a proper lookout;
e. To drive the Ford automobile to the right of the center of the main traveled portion of the roadway.

"That these were continuing duties to be exercised when they would be reasonably effective, and that if the defendant, Arthur Leonard Cooper, failed in any one or more of said duties as above set forth, and such failure was a proximate cause of the accident, then you shall find for the plaintiff, Edith Sweet Pickett, against the defendant, Arthur Leonard Cooper, unless you believe from the evidence that the defendant, Cooper was confronted by a sudden emergency as described in Instruction B."

Mr. Whitehead: The plaintiff, by her attorney, objects and excepts to the action of the Court in refusing to grant Instruction No. 2 as offered and giving in lieu thereof Instruction No. 2, as amended by the Court, by adding to Plaintiff's Instruction No. 2 the phrase "unless you believe that the
page 180 } defendant was confronted with a sudden emergency as set out in Instruction B," on the ground that the instruction as offered without this amendment was a proper statement of the law and the plaintiff was entitled to this instruction in accordance with her theory of the case. There was no evidence in this case whereby the defendant was confronted with a sudden emergency as defined by law so as to exonerate him from liability and the said amendment was erroneous, for it has the jury being compelled to refer to another instruction to complete the reading of Instruction B and further the evidence shows, as a matter of law, that if the de-

was riding in had a right to assume that the de-
page 183 } fendant would drive upon his right and proper
side of the road until he saw the defendant was not going to turn to his right. This instruction is a correct statement of the law applicable to the facts of this case and it is prejudicial error not to give this instruction in view of the fact that the evidence was not contradicted that the defendant after he drove into the southbound lane then cut his car to the right and the front of said car re-entered the northbound lane or the defendant's lane of travel.

Defendant's Instruction A (Granted):

"The Court instructs the jury that the burden is on the plaintiff, Edith Sweet Pickett, to prove her case by a preponderance of the evidence and such proof must show more than the probability of a negligent act and that the injury would not have occurred except for such negligence of the defendant. If, after hearing all of the evidence, you are uncertain as to whether Arthur Leonard Cooper was guilty of negligence and if it appears as equally probable that he was not as that he was, then you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

page 184 } Mr. Whitehead: The plaintiff, by counsel, ob-
jects and excepts to the action of the court in giving any instructions offered by the defendant on the ground that the evidence shows as a matter of law that the defendant was guilty of negligence and that his negligence was either the sole proximate cause or a proximate cause of the accident and therefore the plaintiff is entitled to a verdict.

The plaintiff, by counsel, objects and excepts to the action of the court in giving Instruction A on the ground that the evidence shows unquestionably that the defendant, Arthur Leonard Cooper, was guilty of negligence which was a proximate contributing cause of the accident.

Defendant's Instruction B (Granted):

"The Court instructs the jury that when a person is suddenly confronted with an emergency, through no fault of his own, such person is not required to act instantly, but is allowed
a reasonable time to comprehend the situation be-
page 185 } fore being required to act, and if you believe from
the evidence that Arthur Leonard Cooper, while operating his motor vehicle north on U. S. Highway No. 29, in a lawful manner and without fault on his part, was suddenly

confronted with an emergency caused by a blowout of the left rear tire of the motor vehicle, then you must allow Arthur Leonard Cooper a reasonable time to react to the situation and if you find that he acted as promptly and in a manner such as a reasonable person would have under the same or similar circumstances, then you cannot return a verdict in favor of the plaintiff, Edith Sweet Pickett, but you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Whitehead: The plaintiff, by counsel, objects and excepts to the action of the court in giving Instruction B on the ground that the rule of sudden emergency is not applicable in this case as the evidence shows that the defendant was guilty of negligence, and furthermore his own testimony shows that he was not without fault in the operation of his automobile and therefore the doctrine of sudden emergency, from the evidence, is not applicable.

page 186 } Note: (Instructions C and D were withdrawn)

Defendant's Instruction E (Granted):

"The Court instructs the jury that the defendant, Arthur Leonard Cooper, is not the insurer of the safety of the plaintiff, but on the contrary, the defendant is liable only for the negligence which proximately caused the collision, and if you believe from the evidence that the defendant operated his automobile in a lawful manner and used the degree of care that a reasonable and prudent person would have used under the same or similar circumstances, then the defendant, Arthur Leonard Cooper, was not guilty of negligence and the plaintiff cannot recover and you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Whitehead: The plaintiff, by counsel, objects and excepts to the action of the court in giving Instruction E on the ground that the evidence shows in this case, as a matter of law, that the defendant was guilty of negligence which was a proximate cause of the accident.

page 187 } *Defendant's Instruction F (Granted)*:

"The Court instructs the jury at the time and place that this collision occurred it was the duty of Frank W. Pickett to use reasonable care to operate his motor vehicle in a reasonable and proper manner and to keep a reasonable lookout for other motor vehicles using the highway so as to avoid colliding with

choice and you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Whitehead: The plaintiff, by her attorney, objects and excepts to the action of the Court in giving Instruction G on the ground heretofore stated that the doctrine of sudden emergency is not applicable in this case, for the evidence shows, as a matter of law, that the defendant was not without fault on his part and, as a matter of law, he was guilty of page 190 } negligence in the operation of his automobile, in causing it to collide with the automobile the plaintiff was riding in, in the plaintiff's lane of travel. The plaintiff, by her attorney, further objects and excepts to the action of the Court in giving Instruction G, on the ground that the phrase "it is as likely as not" is an incorrect statement of the law and is misleading to the jury. This instruction in the form given is erroneous, for it has the Court telling the Jury that if from the evidence they are uncertain about certain facts, they must resolve such uncertainty in favor of the defendant and find for the defendant, although the law requires that the jury must believe from the evidence those facts in order to find for the defendant.

Note: (Instruction H was withdrawn.)

Defendant's Instruction I (Refused):

"The Court instructs the jury that if you believe from the evidence that the collision occurred under such circumstances that ordinary care and diligence could not have page 191 } prevented it, then it was unavoidable and you cannot return a verdict in favor of the plaintiff, Edith Sweet Pickett, but you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Rosenberger: The defendant, by counsel, objects to the refusal of the court to give Instruction I on the ground that the evidence was sufficient to show that this was an unavoidable accident due to the blowout of the left rear tire of the defendant's automobile, and the defendant, by counsel, excepts for the reasons stated.

Defendant's Instruction J (Granted):

"The Court instructs the jury that you cannot infer that the injuries alleged by the plaintiff were caused in the collision, but the burden of proof is on the plaintiff to show by a prepon-

the same, and if you believe from the evidence that it is as likely as not that Frank W. Pickett failed to perform this duty and such failure was the sole proximate cause of the collision, then you cannot return a verdict in favor of the plaintiff, Edith Sweet Pickett, but you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Whitehead: The plaintiff, by her attorney, objects and excepts to the ruling of the Court in giving Instruction F on the ground that the evidence shows, as a matter of law, that the defendant was guilty of negligence which was a proximate cause of the accident, and under no condition could the negligence of Frank W. Pickett be the sole cause of the accident.

This instruction is further objected and excepted
page 188 } to on the grounds that the expression "it is as likely as not" is an incorrect statement of law and is misleading to the jury. This expression should under no circumstances be used in any instruction, for under no circumstances if there was evidence to base the instruction on, which we deny, the expression "it is as likely as not" should never be used and the jury should be told that they must believe from the evidence, etc. In other words, the way this instruction is given, the Court is telling the jury if they are uncertain whether Frank W. Pickett failed to perform his duties, or either of them, then you shall find for the defendant.

"It is as likely as not" certainly is not the same expression or meaning as "believe from the evidence."

Defendant's Instruction G (Granted):

"The Court instructs the jury that if you believe from the evidence that it is as likely as not that the left rear tire blew out and caused Arthur Leonard Cooper to lose control of the motor vehicle and to suddenly veer to the left of
page 189 } the highway and that Arthur Leonard Cooper was confronted with a sudden emergency, without fault on his part, and used all of his effort to steer the motor vehicle to the right and in so doing failed to apply the brakes of the motor vehicle, and that Arthur Leonard Cooper was compelled to act immediately in an effort to avoid a collision and in so doing he operated the motor vehicle in such a manner as a reasonable person would have under the same or similar circumstances, then you cannot return a verdict in favor of Edith Sweet Pickett against the defendant, Arthur Leonard Cooper even though you may believe that Arthur Leonard Cooper did not take the wisest course or make the wisest

derance of the evidence the injuries sustained in the collission and the duration and the extent thereof, and if you believe from the evidence that it is just as probable that some of the injuries complained of resulted from causes for which the defendant is not responsible as for some causes for which he is responsible, then you cannot return a verdict for the plaintiff for such injuries."

page 192 } *Defendant's Instruction K (Granted)*:

"The Court instructs the jury that the mere happening of an accident places no responsibility on anyone and raises no presumption of negligence. The basis of this action is negligence which the jury cannot infer from the mere fact that the two motor vehicles collided. You may not return a verdict in favor of the plaintiff which is based on conjecture, surmise or speculation as to what you think may have happened to cause the collision and if the plaintiff fails to prove by a preponderance of the evidence that the defendant was guilty of negligence, or if it appears from the evidence that it is as likely that the defendant was not guilty of negligence as that he was, or that it is as likely that such negligence did not proximately cause the collision as that it did, then the plaintiff, Edith Sweet Pickett, cannot recover and you must return a verdict for the defendant, Arthur Leonard Cooper."

Mr. Whitehead: The plaintiff, by counsel, objects and excepts to the action of the court in giving Instruction K on the ground that the evidence shows, as a matter of law, that the defendant was guilty of negligence which was a proximate contributing cause of the accident.

page 193 } Note: (Instruction L was withdrawn.)

Defendant's Instruction M (Refused):

"The Court instructs the jury that if it appears from the evidence that it is as likely that the blowout of the left rear tire and the wet highway caused Arthur Leonard Cooper to lose control of the motor vehicle, which entered the southbound lane and collided with the motor vehicle operated by Frank W. Pickett, as that the collision was proximately caused by the negligence of Arthur Leonard Cooper, then Edith Sweet Pickett has failed to carry the burden of proof and she cannot recover and you must return a verdict in favor of the defendant, Arthur Leonard Cooper."

Mr. Rosenberger: The defendant, by counsel, objects to the action of the court in refusing Instruction M because it covers the defendant's theory of the case that the accident was caused by the blowout of the left rear tire and that there was no other evidence of negligence for the jury to
page 194 } pass on, and by refusing this instruction the court denies the defendant his theory of the case, and the defendant excepts for the reasons stated.

Note: The jury having returned its verdict in favor of the defendant the following motion was made:

Mr. Whitehead: If your Honor please, we would like to make a motion to set the verdict aside on the grounds that the verdict is contrary to the law and the evidence; that the court erred in refusing instructions offered by the plaintiff and also the court erred in giving any instructions for the defendant, and furthermore that from the evidence in this case, as a matter of law, the defendant was guilty of negligence which was the proximate cause of the accident.
page 195 } The Court: Well, I think I am going to rule against you but I will think about it and sleep on it, Mr. Whitehead. The jury was probably right. They are most of the time.

(Motion taken under advisement.)

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A Copy—Teste:

H. G. TURNER, Clerk.

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