202 VA 328

FILE COPY
Supreme Court of Appeals

Record No. 5141

In the Supreme Court of Appeals of Virginia at Richmond

E. H. ABERNATHY, T/A, ETC.,

v.

CHARLOTTE L. ROMACZYK

FROM THE CIRCUIT COURT PART TWO OF THE CITY OF NEWPORT NEWS

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. 5141

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 18th day of January, 1960.

E. H. ABERNATHY, T/A, ETC., Plaintiff in Error,

against

CHARLOTTE L. ROMACZYK, Defendant in Error.

From the Circuit Court Part Two of the City of Newport News

Upon the petition of E. H. Abernathy, t/a Abernathy's Food Company, a writ of error is awarded him to a judgment rendered by the Circuit Court Part Two of the City of Newport News on the 20th day of July, 1959, in a certain motion for judgment then therein depending wherein Charlotte L. Romaczyk was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for him, 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

* * * * *

MOTION FOR JUDGMENT.

1. On the 3rd day of October, 1958, the defendant E. H. Abernathy, t/a Abernathy's Food Company did possess certain delivery trucks bearing markings of Abernathy's Meals on Wheels, that were involved in the accident hereinafter referred to. The defendant James Allen and the defendant Harry R. Watkins were, during all times herein mentioned, the agent, servants, and employees, of the defendant E. H. Abernathy, t/a Abernathy's Food Company, and were acting within the scope of their employment.

2. On the 3rd day of October, 1958, at approximately 6:00 P. M., the plaintiff was riding as a guest in an automobile operated by her husband, K. C. Romaczyk, and was traveling in a westerly direction on the Military Highway near its intersection with Queen Street in the City of Hampton, Virginia, and was stopped at the traffic light at the said intersection waiting for the said traffic light to change to green for westbound traffic.

3. On the date, time, and place aforesaid, the defendant James Allen, operating a delivery truck as agent, servant and employee of the defendant, E. H. Abernathy, t/a Abernathy's Food Company, was proceeding in a westerly direction on Military Highway in a careless and reckless manner in disregard of the rights of the plaintiff and the safety of other persons on the highway contrary to the statutes of the State of Virginia and the ordinances of the City of Hampton, Virginia, and the rights of the plaintiff. By way of illustration, the defendant James Allen as aforesaid, was page 2 } operating his vehicle at an excessive rate of speed under the circumstances then obtaining; did not have his vehicle under control; did not have his vehicle equipped with proper brakes; failed to keep a proper lookout; failed to yield the right of way to the vehicle in which the plaintiff was riding and was unable to stop his vehicle so as to avoid collision with the vehicle in which the plaintiff was riding and was under the influence of intoxicants.

4. The defendant, Harry R. Watkins, on the date, time and place aforesaid, operating the vehicle of the defendant E. H. Abernathy, as aforesaid, in a careless and reckless manner in disregard of the rights of the plaintiff and the safety of

other persons on the highway contrary to the statutes of the State of Virginia and the ordinances of the City of Hampton, Virginia, and the rights of the plaintiff. By way of illustration, the defendant Harry R. Watkins was operating his vehicle, as aforesaid, at an excessive rate of speed under the circumstances then obtaining; followed too close to the vehicle immediately ahead of him; did not have his vehicle under control; did not have his vehicle equipped with proper brakes; was unable to stop his vehicle so as to avoid collision with the vehicle in which the plaintiff was riding as aforesaid; failed to keep a proper lookout and caused his vehicle to overtake and collide with the vehicle operated by the defendant James Allen, thereby slamming the vehicle operated by the said James Allen into the rear of the vehicle in which the plaintiff was riding as aforesaid, and was under the influence of intoxicants.

5. Immediately following the accidents, as set forth in the preceding paragraphs, the defendant James Allen, as aforesaid, the defendant Tucker F. Stepp, as aforesaid, and the defendant Harry R. Watkins, as aforesaid, acting jointly and severally did then and there wilfully, maliciously and wrongfully assault, strike, beat, and bruise the plaintiff in and upon the body of the plaintiff, and did maliciously and wantonly cause the plaintiff personal injuries all without cause or provocation on the part of the plaintiff.

page 3 } 6. That as a direct and proximate result of the aforesaid wilful and wanton acts by the defendants and each of them, the plaintiff was made sick, sore, lame and now and in the future will suffer great bodily pain and discomfort from wounds, bruises, contusions, including injury to her arm and infections resulting therefrom caused by the defendant and each of them striking the plaintiff's previously injured arm, along with humiliation.

7. That as a direct and proximate result of the negligent acts and the wilful and wanton negligent acts of the defendant and each of them, as aforesaid, the plaintiff has incurred medical expenses and believes and therefore alleges that it will be necessary for her to incur additional medical expenses in sum or sums now unknown to her and that by the aggravation of the previously existing injury to her arm she will be incapacitated in the future.

WHEREFORE, the plaintiff moves for judgment against the defendants, and each of them, in the sum of Fifty Thousand Dollars ($50,000.00) for compensatory and exemplary or

punitive damages together with her cost on this behalf expended.

CHARLOTTE L. ROMACZYK
By FRED W. BATEMAN
Of Counsel.

Filed in the Clerk's Office the 17th day of November, 1958.

Teste:

GEO. S. DeSHAZOR, JR., Clerk
EDNA APPLETON, D. C.

• • • • •

page 12 }

• • • • •

Filed December 29, 1958.

GEO. S. DeSHAZOR, JR., Clerk
By EDNA APPLETON, D. C.

ANSWER AND GROUNDS OF DEFENSE OF THE DEFENDANT E. H. ABERNATHY, T/A ABERNATHY'S FOOD COMPANY.

For answer and grounds of defense the defendant, E. H. Abernathy, t/a Abernathy's Food Company, by his attorney, now comes and says that he will rely on the following:

First: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, particularly and specifically denies each and every allegation of negligence charged to him, as set forth in the plaintiff's Motion for Judgment.

Second: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, was not guilty of any negligence, as alleged in the plaintiff's Motion for Judgment.

Third: That the plaintiff has not sustained injuries and damages as alleged in the plaintiff's Motion for Judgment.

Fourth: That the plaintiff herself was guilty of negligence which was the sole proximate cause of the accident, injuries and damages complained of in the plaintiff's Motion for Judgment.

Fifth: That even if the defendant was guilty of any negligence, as charged against him in the plaintiff's Motion for Judgment, which allegations of negligence are specifically denied, the plaintiff was guilty of negligence which proximately caused or efficiently contributed to the accident, injuries and damages complained of, and therefore the plaintiff is barred from recovery.

page 13 } *Sixth*: That even if the defendant was guilty of any negligence, as alleged in the plaintiff's Motion for Judgment, which allegations of negligence are specifically denied, such negligence, if any, was not a proximate cause of the accident, injuries and damages complained of, but was a remote cause.

Seventh: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, states that at the time of the alleged accident and injuries complained of in the plaintiff's Motion for Judgment, K. C. Romaczyk, the operator of the automobile in which the plaintiff was riding, was acting as the agent, servant and employee of the plaintiff and in the scope of his agency; and that the said K. C. Romaczyk was guilty of negligence which proximately caused or efficiently contributed to the accident and injuries complained of, and that the said negligence of the said K. C. Romaczyk is imputable to the plaintiff, and therefore the plaintiff is barred from recovery.

Eighth: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, states that at the time of the alleged accident and injuries complained of in the plaintiff's Motion for Judgment, K. C. Romaczyk, the driver of the automobile in which the plaintiff was riding, and the plaintiff herself, were engaged in a joint enterprise or endeavor, and that the said K. C. Romaczyk was guilty of negligence which proximately caused or efficiently contributed to the accident and injuries complained of in the plaintiff's Motion for Judgment, and that the negligence of the said K. C. Romaczyk is imputable to the plaintiff, and therefore the plaintiff is barred from recovery.

Ninth: That the defendant, James Allen, was not guilty of any negligence, as alleged in the plaintiff's Motion for Judgment.

Tenth: That the defendant, Harry R. Watkins, was not guilty of any negligence, as alleged in the plaintiff's Motion for Judgment.

page 14 } *Eleventh*: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, denies that James Allen was acting as his agent, servant or employee, or in the scope of his employment, at the time of the alleged assault upon the plaintiff.

Twelfth: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, denies that the defendant, Harry R. Watkins, was acting as his agent, servant or employee, or in the scope of his employment, at the time of the alleged assault upon the plaintiff.

Thirteenth: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, denies that the defendant, Harry R. Watkins, did wilfully, maliciously and wrongfully strike, beat and bruise the plaintiff, as alleged in the plaintiff's Motion for Judgment, but affirmatively states that the plaintiff provoked any altercation that might have taken place between the plaintiff and the said Harry R. Watkins.

Fourteenth: That the defendant, E. H. Abernathy, t/a Abernathy's Food Company, denies that the defendant, James Allen, did wilfully, maliciously and wrongfully strike, beat and bruise the plaintiff, as alleged in the plaintiff's Motion for Judgment, but affirmatively states that the plaintiff provoked any altercation that might have taken place between the plaintiff and the said James Allen.

Fifteenth: The defendant denies that Harry R. Watkins or James Allen were under the influence of intoxicants, as alleged in the plaintiff's Motion for Judgment.

Sixteenth: And any and all defenses which may develop upon trial, and any and all defenses which may be assigned at or before trial, or be justified by the evidence upon trial.

E. H. ABERNATHY, T/A
ABERNATHY'S FOOD COMPANY
By A. WORTH MARTIN
His Attorney.

• • • • •

page 21 }

• • • • •

AFFIDAVIT DENYING AGENCY.

Now comes E. H. Abernathy, and after being duly sworn, deposes and states that he is one of the defendants in the above captioned cause, which is presently pending in the Circuit Court Part II for the City of Newport News, Virginia; and that he denies that James Allen, one of the defendants in the above captioned cause, or Harry R. Watkins, one of the defendants in the above captioned cause, was acting as the agent, servant or employee of the said defendant, E. H. Abernathy, or was acting in the scope of his employment by said E. H. Abernathy, at the time of the alleged assault upon the plaintiff, as alleged in the plaintiff's Motion for Judgment.

And of this your deponent is ready to verify.

E. H. ABERNATHY, t/a
Abernathy's Food Company.

State of Virginia,
City of Newport News, to-wit:

This day personally appeared before me, Sara Allen, a Notary Public in and for the City and State aforesaid, E. H. Abernathy, who made oath and says that he believes the several statements set forth in the foregoing Affidavit Denying Agency to be true.

Given under my hand this 22nd day of December, 1958.
My Commission expires on the 6th day of June, 1962.

SARA ALLEN
Notary Public.

MARTIN & SMITH, p. d.
506 Law Building
Newport News, Virginia.

Filed December 29, 1958.

GEO. S. DeSHAZOR, JR., Clerk
By EDNA APPLETON, D. C.

• • • • •

page 30 } INSTRUCTION NO. 1.

The Court instructs the jury that the court has stricken

the evidence against the defendant Watkins and the defendant Abernathy insofar as the second accident is concerned; therefore there is no evidence against these two defendants with reference to the said second accident. But the court tells the jury this action, on its part, should not influence your verdict as to the other defendants in any respect nor should it influence your verdict with reference to the defendant Abernathy insofar as the first accident and subsequent assault and battery, by defendant Allen or others in consort, if any, is concerned, nor should it influence your verdict with reference to the defendant Watkins insofar as the assault and battery, if any, is concerned.

page 31 } INSTRUCTION IA.

The Court instructs the Jury that a Judgment for default has been entered by the Court against the Defendant, Tucker F. Stepp, for the reason that he has not complied with the rules of Court. Therefore, you are not to consider the said defendant Tucker F. Stepp, in your deliberations in this case.

The Court further tells you that this action should not influence your verdict as to the other defendants in any respect.

• • • • •

page 41 } INSTRUCTION NO. 7.

The Court instructs the jury that if you believe the plaintiff Charlotte L. Romanczyk is entitled to recover, you may, in ascertaining the damages to which she is entitled, both from the automobile accident and assault, take into consideration the following:

1. The nature and extent of bodily injury she sustained.
2. The physical pain she has suffered, if any.
3. The cost of all medical expeuses incurred by her in an effort to be cured and relieved of the injuries sustained in the accident.
5. The change in her physical condition, if any.
7. Her annoyance, worry, inconvenience, mental suffering, emotional disturbances and humiliation, if any, resulting from the accident and/or assault and battery and injuries sustained.

And you may award her such damages as you may think will fairly compensate her not to exceed the amount sued for.

* * * * *

page 50 }

* * * * *

ORDER.

The plaintiff having filed a motion for judgment by default against the defendant Tucker F. Stepp, under Rule 3:19 of the court, and it appearing to the court that the said defendant Tucker F. Stepp was duly served with a copy of the plaintiff's motion for judgment and has failed to answer the said motion as provided in Rule 3:5 of the court, the court doth ADJUDGE, ORDER and DECREE that the said Tucker F. Stepp is in default and doth award judgment in favor of the plaintiff Charlotte L. Romanczyk against the defendant Tucker F. Stepp.

It further appearing that the damage demanded by plaintiff is unliquidated, the court doth set this matter for trial on the 10th day of April, 1959, solely for the purpose of hearing evidence to fix the quantum of damages.

Enter this 4/9/59.

C. H. SHEILD, JR., Judge.

* * * * *

page 51 } Virginia:

Circuit Court, Part Two, of the City of Newport News, the 9th day of April, 1959.

* * * * *

ORDER.

This day came the parties in person, and by their attorneys, and thereupon came a jury, to-wit: Willie Atkins Spencer, Julian B. Kitchen, Jr., George R. Cooper, Robert Ellenson, W. P. Hayes, W. Wilroy Sammons and Percy C. Hunter, who were sworn to try the issue joined, and the evidence of the plaintiff being fully heard the defendant, E. H. Abernathy, t/a Abernathy's Food Company, by his attorney, moved the Court to strike the evidence of the plaintiff as to any injuries sustained by the plaintiff from the alleged assault, which

motion the Court doth overrule in part and doth sustain in part, in that the Court doth grant so much of said motion as to the defendant E. H. Abernathy, t/a Abernathy's Food Company, as to any injuries sustained by the plaintiff as the result of any assault committed by the defendant, Harry R. Watkins, to which the plaintiff, by her attorney, excepted, and the Court doth further overrule that portion of said motion to strike the evidence as to E. H. Abernathy, t/a Abernathy's Food Company as to any injuries sustained by the plaintiff as to any alleged assault committed by the defendant, James Allen, to which the defendant, by his attorney, excepted. And James Allen, by his attorney, moved the Court to strike the evidence of the plaintiff, as to any injuries sustained as the result of an alleged assault by him, which motion the Court doth overrule, to which ruling of the Court the defendant, by his attorney, excepted. And Harry R. Watkins, by his attorney, moved the Court to strike the evidence as to
page 52 } any injuries received by the plaintiff in the automobile accident as to him, which motion the Court doth sustain and the evidence as to the said Harry R. Watkins as to any injuries received by the plaintiff received in the automobile accident is stricken, to which ruling of the Court the plaintiff, by her attorney, excepted. And E. H. Abernathy, t/a Abernathy's Food Company moved the Court to strike the evidence as to him for any injuries sustained by the plaintiff as the result of the automobile accident through any agency of Harry R. Watkins, which motion the Court doth sustain and the evidence is accordingly stricken as outlined in the motion, to which ruling of the Court, the plaintiff, by her attorneys, excepted. And this cause is continued until tomorrow morning at 10:00 o'clock A. M.

• • • • •

page 53 } Virginia:

Circuit Court, Part Two, of the City of Newport News, the 10th day of April, 1959.

• • • • •

ORDER.

This day again came the parties in person, and by their attorneys, and the jury heretofore impanelled in this cause again took their seats in the jury box, and the evidence, instructions of the Court and arguments of counsel being fully

heard, retired to their room to consider of their verdict, and after sometime returned into Court and found the following verdict: "(1) We, the Jury award to the Plaintiff, Mrs. Charlotte Romaczyk, the sum of $100.00 damages incurred from the accident through negligence of Mr. James Allen as agent for Mr. E. H. Abernathy. Robert Ellenson, Foreman." "(2) We, the Jury find a verdict against Harry R. Watkins, James Allen and E. H. Abernathy for assault and battery and award to Mrs. Charlotte Romaczyk the sum of Three Thousand Dollars ($3,000.00) damages. Robert Ellenson, Foreman."

Whereupon the defendants, E. H. Abernathy, James Allen and Harry R. Watkins moved the Court to set aside the verdict of the jury as being contrary to the law and evidence (various other reasons assigned at the bar and urged for leave to argue same) and grant the defendant a new trial. Which motion to set aside the Court takes under advisement, and this cause is continued until April 21, 1959 at 11:00 o'clock A. M.

page 54 } Therefore, it is considered by the Court that the plaintiff recover against the said E. H. Abernathy and James Allen the sum of One Hundred ($100.00) Dollars, together with interest thereon after the rate of six per centum per annum from the 10th day of April, 1959, until paid, and her costs herein expended.

* * * * *

page 55 }

* * * * *

ORDER.

This case came on to be heard as to damages after a default judgment was entered against the defendant, Tucker F. Stepp.

Whereupon, the plaintiff presented her evidence as to damages and upon consideration whereof the court doth ADJUDGE, ORDER and DECREE that the plaintiff Charlotte L. Romanczyk, recover the sum of Five Hundred Forty Dollars ($540.00) from the defendant Tucker F. Stepp together with her costs on this behalf expended.

Enter this April 10, '59.

C. H. SHEILD, JR., Judge.

• • • • •

page 56 }

• • • • •

ORDER.

This cause came on this day to be heard on the motion of the defendants, E. H. Abernathy, t/a Abernathy's Food Company, James Allen, and Harry R. Watkins, to set verdict No. 2 of the jury aside, as being excessive and as contrary to the law and evidence, and to grant the said defendants a new trial; and the further motion of the defendant, E. H. Abernathy, t/a Abernathy's Food Company, to set the verdict No. 2 aside and enter up final judgment for the defendant, E. H. Abernathy, t/a Abernathy's Food Company, on the grounds that the verdict was contrary to the law and evidence, for misdirection of the jury by the Court, for the granting of instructions of the plaintiff over the objections and exception of the defendant, and for refusal to grant certain instructions of the defendant, to which action exception was taken, and for failure of the Court to strike the evidence as to E. H. Abernathy, t/a Abernathy's Food Company, in regard to the action for damages resulting from the assault.

After hearing argument of counsel on each side, and authorities cited, the Court took the matter under advisement and then put the plaintiff on terms to either remit $750.00 of the amount of verdict No. 2, or be granted a new trial, limited solely to the issue of damages as to the action for assault, to which action of the Court the plaintiff, by counsel, duly excepted, on the grounds that the verdict was not so excessive as to shock the conscience of the Court; and as to which action of the Court the defendants excepted, by counsel, on the ground that the amount of $2,250.00, as allowed by the Court, was so excessive as to shock the conscience page 57 } of the Court; the Court also overruled the motion of the defendants, E. H. Abernathy, t/a Abernathy's Food Company, James Allen, and Harry R. Watkins, to set the verdict No. 2 aside as contrary to the law and evidence; and the Court also overruled the motion of the defendant, E. H. Abernathy, t/a Abernathy's Food Company, to set the verdict No. 2 aside and enter up final judgment for the defendant, E. H. Abernathy, t/a Abernathy's Food Company, on the grounds that the verdict was contrary to the law and evidence, for misdirection of the jury by the Court, for granting certain instructions of the plaintiff over the objection and

exception of the said defendant, and for refusal to grant certain instructions of the said defendant, and for failure of the Court to strike the evidence as to the said E. H. Abernathy, t/a Abernathy's Food Company, in regard to the action for damages for the assault, to all of which action of the Court the defendant, E. H. Abernathy, t/a Abernathy's Food Company, and the defendants, E. H. Abernathy, t/a Abernathy's Food Company, James Allen, and Harry R. Watkins, by counsel, excepted; and the plaintiff, pursuant to Section 8-350 of the Virginia Code of 1950, then remitted $750.00 and accepted the judgment of the Court for $2,250.00 under protest.

Therefore, it is considered by the Court that the plaintiff recover against the defendants, E. H. Abernathy, t/a Abernathy's Food Company, James Allen, and Harry R. Watkins, the sum of $2,250.00, with interest thereon at the rate of 6% per annum, from the 10th day of April, 1959, until paid, for damages caused by the assault in this case, on which the verdict No. 2 of the jury was based, and her costs in this behalf expended.

And the said defendant, E. H. Abernathy, t/a Abernathy's Food Company, by counsel, having indicated his intention to appeal from the judgment of this Court, and having asked the Court to set the amount of the appeal bond, the Court doth order and direct that either a *supersedeas* appeal bond in the amount of $5,000.00, or a cost appeal bond in the amount of $1,200.00, conditioned as the law directs, be provided and given within thirty days from the date of the entry of this final order, and that such appeal be perfected in the manner provided by law.

Enter this July 20, '59.

C. H. SHEILD, JR., Judge.

* * * * *

page 60 }

* * * * *

Know all Men by These Presents, That we, E. H. Abernathy, t/a Abernathy's Food Company, and Globe Indemnity Company are held and firmly bound unto the Commonwealth of Virginia in the sum of Twelve Hundred and No/100 Dollars, to the payment of which we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents. Witness our hands and seals this ..... day

of September, 1959. We hereby waive our homestead exemption as to this obligation.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas at the Circuit Court Part II for the City of Newport News, Virginia held on the 20th day of July, 1959, in a certain suit pending in the said Court between Charlotte L. Romaczyk plaintiff, and E. H. Abernathy, t/a Abernathy's Food Company, et al. defendant, a judgment was entered for the said Charlotte L. Romaczyk; and, whereas, on the 20th day of July, 1959, the said Court, in order to allow the said E. H. Abernathy t/a Abernathy's Food Company, in said suit to apply for a writ of error and appeal from the said judgment, made an order at the instance of the said E. H. Abernathy t/a Abernathy's Food Company setting the amount of the appeal cost bond upon condition that the said E. H. Abernathy t/a Abernathy's Food Company or some one for him enter into bond before the Clerk of this Court in the penalty of Twelve Hundred and No/100 Dollars, with surety to be approved by said Clerk, and conditioned according to law within ....—.... days from the date of this order.

And, whereas, it is the intention of the said E. H. Abernathy t/a Abernathy's Food Company to present a petition for a writ of error, appeal from the said judgment:

Now, therefore, if the said E. H. Abernathy t/a Abernathy's Food Company shall pay all damages, costs and fees which may be awarded against or incurred in the Appellate Court by the said E. H. Abernathy t/a Abernathy's Food Company in case the judgment be affirmed in whole or in part, or the writ of error or appeal be dismissed or in case a writ of error be refused or not petitioned for within the time prescribed by law, then this obligation to be void, otherwise to remain full force and virtue.

E. H. ABERNATHY t/a (Seal)
Abernathy's Food Co.

FRANK H. COWLING (Seal)
Attorney in fact, Globe
Ins. Company.

Executed in the presence of Geo. S. DeShazor, Jr., Clerk, and Globe Indemnity Company, acting by Frank H. Cowling, its attorney-in-fact, justified on oath, before me, Geo. S. DeShazor, Jr., Clerk of Circuit Court, Part Two, in my office,

as to the sufficiency of its estate as security to the above bond; this 14th day of September 1959.

GEO. S. DeSHAZOR, Clerk.

page 61 }

• • • • •

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court Part II for the City of Newport News, Virginia:

Counsel for E. H. Abernathy, t/a Abernathy's Food Company, one of the defendants in the above styled case, in the Circuit Court Part II for the City of Newport News, Virginia, hereby gives notice of appeal from the judgment No. 2, based on the jury's verdict No. 2, as set forth in the Judgment Order entered in this case on July 20, 1959, and sets forth the following assignments of error:

1. The Court erred in removing the defendant, Tucker F. Stepp, as a party defendant during the trial before the jury of all the defendants, and in holding that the said Tucker F. Stepp was in default, and in assessing damages against the said Tucker F. Stepp separately and for a different amount than the amount assessed by the jury against the defendants, E. H. Abernathy t/a Abernathy's Food Company, James Allen, and Harry R. Watkins.

2. The Court erred in allowing the plaintiff to call the said Tucker F. Stepp as an adverse witness, after the Court had removed him as a party defendant, and in allowing the plaintiff to examine the said Tucker F. Stepp as an adverse witness.

3. The Court erred in overruling the motion of the defendant, E. H. Abernathy, t/a Abernathy's Food Com-
page 62 } pany, to strike the evidence of the plaintiff and her witnesses, as to the defendant Abernathy, pertaining to any injuries allegedly sustained by the plaintiff as a result of the altercation or assault, on the ground that no agency had been shown to exist between the defendant, James Allen, and the defendant, E. H. Abernathy, at the time of, and during, the alleged assault.

4. The Court erred in granting plaintiff's instruction No. 1, as amended, over the objection of the defendant Abernathy, as the said instruction instructed the jury that they could

bring in a verdict against the defendant Abernathy for damages for the injuries sustained by the plaintiff in the assault, when there was actually no evidence that any agency existed between the defendant Allen and the defendant Abernathy, at the time of, and during, the said assault.

5. The Court erred in refusing to grant the motion of the defendant Abernathy to set aside the verdict No. 2 of the jury, for the plaintiff, against the defendant Abernathy, for injuries sustained in the assault, on the ground that there was no agency shown by the evidence to have existed between the defendant, James Allen, and the defendant, E. H. Abernathy, and on the further ground that the said verdict was contrary to the law and evidence.

6. The Court erred in reducing the amount of the verdict No. 2 of the jury, only to $2,250.00, as this amount of $2,250.00 for injuries sustained in the assault is still so excessive as to shock the conscience of the Court, and is entirely out of all proportion to the injuries and damages sustained by the plaintiff as a result of the assault.

E. H. ABERNATHY, t/a
Abernathy's Food Company
By W. WORTH MARTIN
His Attorney.

Filed September 15, 1959.

GEO. S. DESHAZOR, JR., Clerk
By CLYDE B. LARUE, D. C.

• • • • •

page 64 }

• • • • •

ASSIGNMENT OF CROSS ERROR.

To the Clerk of the above styled Court:

Now comes the plaintiff, Charlotte L. Romanczyk, by counsel, and gives notice of her assignment of cross error and states further her assignment of error as follows:

1. The Court erred in reducing the jury verdict in the amount of $3,000.00 to $2,250.00 on the grounds that the origi-

nal verdict of the jury was not so excessive as to shock the conscience of the Court.

CHARLOTTE L. ROMANCZYK
FRED W. BATEMAN
Of Counsel.

Filed September 24, 1959.

GEO. S. DeSHAZOR, JR. Clerk,

• • • • •

page 2 }

• • • • •

The Court: Gentlemen of the jury, you are about to try the case of Charlotte L. Romaczyk. Will she stand up, please?

(The plaintiff then stood up).

The Court: Against E. H. Abernathy, trading as Abernathy Food Company, James Allen—all of you stand, Tucker Stepp and Harry R. Watkins; one plaintiff against the four defendants. Now this grows out of an automobile accident that happened on the 3rd day of October, approximately at 6:00 o'clock in the day on Military Highway near the intersection of Queen Street in the City of Hampton. It's
page 3 } a suit for damages resulting from automobile negligence I presume in the amount of $50,000.00. Now do you know anything about the case or have you discussed it in any way?

• • • • •

page 5 }

• • • • •

Mr. Bateman: If your Honor please, I would like for you to instruct the jury this involves an automobile accident also and an assault and battery two actions in one.

The Court: In addition to the accident where I told you where it happened, I believe I already told the jury that this happened on Military Highway at the intersection of Queen

Street in the City of Hampton on the 3rd of October, 1958. In addition thereto, it sets forth that the defendants, James Allen, the aforesaid and defendants Tucker F. Stepp and Harry L. Watkins acting jointly did maliciously assault and strike and beat and bruise the plaintiff in and upon the body of the plaintiff and caused the plaintiff personal injury all without cause or provocation on the part of the plaintiff. That's in addition. That's another allegation in addition to the automobile accident. That's included in the same

page 6 } damages of $50,000.00. Is that sufficient, Mr. Bateman?

Mr. Bateman: Yes, sir. I didn't want there to be any confusion.

• • • • •

(The twelve jurors then took their seats in the jury box after which another juror was called and sworn on his *voir dire* as follows).

The Court: Mr. Gilner, we are about to try the case Charlotte L. Romaczyk, stand up Charlotte, the plaintiff against the defendants, E. H. Abernathy trading as Abernathy Food Company, James Allen, Tucker F. Stepp and Harry R. Watkins. This suit grows out of an automobile accident that happened on the 3rd day—that happened on the 3rd day of October, 1958 around six o'clock and that the plaintiff was a guest of the automobile which was traveling in the westerly direction on Military Highway at the intersection of Queen Street in the City of Hampton. That she is suing for

page 7 } damages growing out of the negligence on the part of these defendants. In addition thereto the plaintiff alleges that the defendants, Allen, Stepp, Watkins jointly and severally did then and there maliciously, wrongfully assault, strike, beat and bruise the plaintiff in and upon the body of the plaintiff, did maliciously and wantonly cause the plaintiff personal injuries all without cause and upon the plaintiff. This is a suit for $50,000.00 for damages and assault and battery alleged in this complaint.

• • • • •

page 14 }

• • • • •

JAMES ALLEN,

called as an adverse witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. Would you state your name, please.
A. James Allen.
Q. Where do you live, Mr. Allen?
A. 784 Washington Avenue.
Q. How old are you?
A. Twenty-eight.
Q. By whom are you employed?
A. E. H. Abernathy.
Q. Were you so employed on October 3, 1958?
A. Yes, sir.
Q. What's the nature of your work, sir?
A. Driver-salesman.
Q. Beg your pardon?
A. Driver-salesman.

The Court: Driver-salesman.

By Mr. Bateman:

Q. What do you sell?
page 15 } A. Well, do you want me to tell you everything? Hotdogs, hamburgers, any kind of food.
Q. You sell food then, is that correct?
A. Food.
Q. Directing your attention to October 3, 1958 in the afternoon in the neighborhood of five or six o'clock, were you driving one of Mr. Abernathy's trucks?
A. Yes, sir.
Q. Were you in his employment at that time?
A. Yes, sir.
Q. Where had you been to?
A. Langley Field.
Q. And where were you going to?
A. Well, I hadn't been to Langley Field. I had been to the outside of the gate of Langley Field.
Q. All right sir, and where were you going to?
A. When?
Q. When this incident occurred.
A. I was coming back into Newport News.
Q. Where were you going to in Newport News?

James Allen.

A. Hertz'.
Q. Is that where you park your truck?
A. Yes, sir.
Q. Now, was your truck loaded or unloaded?
A. It was unloaded at the time. It was not all the
page 16 } way unloaded. I mean I didn't have enough stuff on
there to justify staying at Langley Field.
Q. As a matter of fact, you had taken a load to put on another truck at Langley Field, had you not?
A. No, I didn't take a load. I took what I had from my route out to Mr. Watkins at Langley Field but there wasn't enough on there to justify going on the Base at night. We working on the Base at night at that time.
Q. All right sir, now where did this accident occur between you and Mr. Romaczyk?
A. That was right on the Military Highway.
Q. Is that at Queen Street, in Hampton?
A. Yes, sir.
Q. What direction was Mr. Romaczyk going?
A. The same direction I was.
Q. In what direction was that?
A. Coming into Newport News; west.
Q. Excuse me, go ahead.
A. West.
Q. You were headed towards Newport News?
A. Yes, sir.
Q. On Military Highway?
A. Yes, sir.
Q. What was the color of the light at Queen Street for
traffic on Military Highway?
page 17 } A. At what time?
Q. At the time this accident occurred, just prior to it?
A. It was red at the time that it occurred. It had turned caution just before it stopped.
Q. At the time the accident occurred, was the light red or some other color?
A. At the time that it occurred?
Q. The accident between you and Mr. Abernathy.
A. Between me and Mr. Abernathy?
Q. I mean you and Mr. Romaczyk. I'm very sorry, sir.
A. It was red then.

The Court: Red?

James Allen.

A. At the time when he stopped.

Q. All right, sir. Now you were following Mr. Romaczyk, is that correct?

A. No, sir.

Q. You did have an accident with Mr. Romaczyk?

A. I wouldn't call it an accident.

Q. Did your car come into—your truck come into contact with Mr. Romaczyk's car?

A. Yes, sir.

Q. You don't call that an accident?

A. No, sir, I wouldn't.

page 18 } Q. What part of your car hit Mr. —

A. My bumper hit his bumper.

Q. Which bumper of your's, your front or rear?

A. My front bumper.

Q. Hit a part of his car?

A. His rear bumper.

Q. You were not following him?

A. No, sir. Well, I had to be following him to hit him but he pulled in front of me right at the red light and I couldn't help but hit him. I could probably stop but I had food on there and everything and I couldn't stop.

Q. How fast were you going in approaching the red light?

A. Thirty-five or forty.

Q. Thirty-five or forty miles an hour. How far were you from the light?

A. From it when he pulled in front of me?

Q. Yes, sir.

A. I don't know; about a couple of car lengths I guess.

Q. Two car lengths from the light; the light was changing from yellow to red as you testified, is that right?

A. Yes, sir.

Q. And you were going thirty-five miles an hour?

A. Yes, sir, that's right.

page 19 } Q. And only two car lengths from the light and he cut in front of you, is that correct?

A. That's right.

Q. Now, was anyone in the truck with you?

A. Yes, sir.

Q. Who was that?

A. Mr. Stepp.

Q. What was the condition of you with reference to sobriety? Had you had anything to drink?

A. Well, I stopped, I made my statement I stopped and—Pops' Restaurant and had a couple of beers before I came in.

James Allen.

Q. How long was that before this happened?

A. Well, I'd say fifteen or twenty minutes. Don't take long to drive from there.

Q. All right, sir. Now, when Mr. — after you had collided with the rear of Mr. Romaczyk's car, what, if anything, did Mr. Romaczyk do?

A. Well, he got out of the car.

Q. Did he say anything to you?

A. No, sir.

Q. He did not say anything to you. All right sir, what, if anything, did you do?

A. I got out of the truck as soon as he got out of the car and I thought it might have been something wrong

page 20 } with his car. I got out and looked at his car and there was nothing wrong with him.

Q. You rather expected something to be wrong with it. You had run into it. hadn't you?

A. I didn't run into it. I tapped his bumper.

Q. Oh, I see.

A. I knew there was nothing wrong with it but he got out so I got out.

Q. He didn't say anything to you?

A. No, sir.

Q. Did you say anything to him?

A. No, sir.

Q. Where did you go when you got out of the truck?

A. I went up between the car and the truck and seen if there was anything wrong with it.

Q. You did say something to him?

A. No, I didn't say anything to him.

Q. You say you got out and asked him if there was anything wrong—

A. I went to see if there was anything wrong with it.

Q. I see. You didn't see anything wrong with it ?

A. No, sir.

Q. Two of you stood there and neither said anything to the other, is that correct?

page 21 } A. That's right.

Q. Now isn't it a fact that you assaulted him, struck him at that time? Did you not strike Mr. Romaczyk?

A. No, sir.

Q. Who did?

A. I don't know.

Q. No one struck him?

A. I don't know.

James Allen.

Q. Were you there immediately following the accident?
A. Yes, sir, I was there.
Q. You deny that you saw anybody strike Mr. Romaczyk?
A. I deny seeing anybody strike anybody.
Q. Did you not see anybody strike anyone else?
A. No, sir.
Q. Now you tell the jury what happened while you were standing outside of the truck, if anything.
A. Well, I was standing there and Mr. Stepp got out and they had words and then I walked to the other side of the highway.
Q. Mr. Stepp had words with who?
A. I don't know who it was. They were all out of the car.
Q. Who was all?
A. Well, all three of the people were in there.
page 22 } Q. When Mr. Stepp got out of the truck, you turned and walked away, is that right?
A. I walked to the other side of the highway.
Q. On the opposite side?
A. The right-hand side.
Q. On the opposite side from where your truck was?
A. Yes, sir.
Q. Why did you do that?
A. Because I didn't want to get involved in it.
Q. Get involved in what?
A. What was going on. I knew the words going between them.
Q. As I understand you, you stated that when Mr. Stepp got out of the truck you immediately turned and walked to the opposite side of the road?
A. I didn't say that.
Q. All right, what did you say?
A. I said they had words and I walked to the other side of the highway.
Q. You saw no blows struck?
A. No blows. I had my back to them.
Q. You kept your back to it all the way—all the time, is that right?
A. Yes, sir.
Q. How did you find out when they had quit ar-
page 23 } guing or quite exchanging blows or whatever they might be doing that you didn't know anything about it?
A. Mr. Stepp came over and told me it was all over.
Q. He came across the road where you were standing back

James Allen.

to him like that (indicating). What did he do, tap you on the shoulder or how did he tell you it was all over?

A. He tapped me on the shoulder.

Q. Tapped you on your shoulder and told you everything was all right then. What did you do after that?

A. I came back over and got in the truck and drove off.

Q. One moment, if your Honor please. Now, you deny that you saw any fighting or saw any licks passed, is that right?

A. Yes, sir.

• • • • •

page 29 }

• • • • •

Q. What time did Mr. Watkins arrive at the accident scene?

A. I couldn't say exactly.

Q. Was it while you were standing across the road with your back to the —

A. No, sir, it wasn't — I was on my way. I was still on the left-hand side of the road when he came back up.

Q. When he came back up?

A. Yes, sir.

Q. What, if anything, did he do?

A. I couldn't say.

Q. Do you know whether or not he ran in the back of your truck?

A. Just from what I heard.

Q. Did you see him?

page 30 } A. No, sir.

Q. Did your truck, when you turned around, as you were standing back to the—to Mr. Romaczyk and this fellow Stepp, you were standing back to him like this (indicating). When you turned around, had your truck moved from the position it was when you came in contact with the Romaczyk car?

A. I couldn't say that.

Q. Had the Romaczyk car—

A. I couldn' say that either.

Q. Were you present at any time while Mr. Watkins was there?

A. I guess when he got out of the truck he was there.

Q. Beg your pardon?

A. When he got out of the truck.

James Allen.

Q. By, "he", are you referring to Mr. Watkins.
A. Mr. Watkins.
Q. When Mr. Watkins got out of the truck, where were you?
A. He was headed the other way.
Q. What other way?
A. Towards the other side of the road.
Q. You were walking over the other side of the road when Mr. Watkins came?
A. I was still on the left-hand side at the time.

page 31 } The Court: He was still on the left-hand side at the time.

By Mr. Bateman:
Q. What was on the left-hand side of the road then at that particular time?
A. What?
Q. Yes.
A. Two trucks and an automobile.
Q. Two trucks and an automobile. Who did the two trucks belong to?
A. Mr. Abernathy.
Q. You were driving one, is that correct?
A. That's right.
Q. Who was driving the other one?
A. Mr. Watkins.
Q. Do you know Mr. Watkins?
A. Yes, sir.
Q. Does he work for Mr. Abernathy?
A. Yes, sir.
Q. Same type of work that you do?
A. That's right.
Q. Did you see Mr. Watkins get out of his truck?
A. I don't remember.
Q. What is your answer, sir?
A. No, sir.
page 32 } Q. You did not see him get out of his truck?

The Court: He said, "I don't remember."

A. I don't remember. I don't think I did.

By Mr. Bateman:
Q. During the course of the evening or the late afternoon

James Allen.

of October 3rd, did you at any time see Mr. Watkins out of his truck at Queen Street and Military Highway?

A. Well, I saw him after it happened, after.

Q. After what happened?

A. After these people had left.

Q. When you say, "after it happened" what is the "it"? What are you referring to?

A. What is this case about? After everything was over.

Q. I'm asking you to describe what does, "everything" mean. Tell us what you mean, "everything." State what you mean by that?

A. After what happened on the road.

Q. What did happen?

A. I don't know. You tell me.

Q. If you would answer the questions, sir.

A. I said I don't know.

The Court: He said he doesn't know but just answer his questions.

By Mr. Bateman:

page 33 } Q. Would you define what you mean by, "it" or "it happened." You say you can't define that?

A. No, I can't define it.

Q. You state you did talk to Mr. Watkins?

A. No, sir, I didn't. I didn't say I talked to him. I talked to him after we got into Newport News but not out there on the highway.

Q. But he was present on the highway, is that right?

A. Yes, sir.

Q. Did you at any time see Mr. Watkins that night?

A. No, sir.

Q. Was the rear of your truck damaged in any way?

A. No, sir.

Q. Did you hear any collision between Mr. Watkins and your truck?

A. I don't remember.

Q. Could there have been one and you had not heard it?

A. Not hardly. It could have been one I guess. It might have been a tap.

Q. Had you seen Watkins previously that day?

A. Yes, sir.

Q. Where did you see him?

A. At the west gate of Langley Field.

James Allen.

Q. Was he also with you at the time you had the
page 34 } beer you told us about?
A. Yes, sir.
Q. Did he have any?
A. Yes, sir.
Q. How much did he have?
A. About the same. I guess a couple.
Q. You say a couple. Do you mean two?
A. I'd say two. It wasn't over that.
Q. Could it have been more?
A. Not hardly.
Q. Did you see this lady at the accident scene?
A. Yes, sir.
Q. What kind of clothes was she wearing?
A. I don't remember. I don't remember.
Q. Did you notice anything unusual about her?
A. She had her arm in a sling.
Q. Had her arm in a sling?
A. Yes, sir.

* * * * *

page 35 }

* * * * *

Mr. Bateman: Mr. Tucker Stepp, please as an adverse witness.

Mr. Martin: Now sir, I understand Mr. Bateman is going to call this man as an adverse witness and that brings up the question which is confusing to me, sir.

The Court: All right, sir.

Mr. Martin: As to whether the man is an adverse party at this time or not.

The Court: I don't know, sir. I can't answer it either.

Mr. Martin: How much of this you want me to take up before the jury? I don't know, sir. I think the Court—

The Court: What are you calling him, as an adverse witness?

Mr. Bateman: I'm merely designating him as such. It will
not be determined he's an adverse witness until
page 36 } after he testifies. I'm simply warning the Court
at this time that I anticipate that he will be an adverse witness. We don't know whether he is an adverse witness. His conduct will denote that.

Mr. Martin: There's a great difference between an adverse witness and a hostile witness.

The Court: He's calling him as an adverse witness.

Mr. Martin: We object to it. We have to at this time.

The Court: I don't know why you object because he's been named the defendant at one time.

Mr. Martin: But the Court has ruled, as far as he's particularly concerned in this particular suit at this particular time he's not a party and this jury can't pass on them.

The Court: I don't recall an order.

Mr. Bateman: He does not have to be a party, if your Honor please, to be an adverse witness. There are many adverse witnesses who are not parties to actions.

The Court: That's true. I don't think he has to be a party.

page 37 } Mr. Martin: He has to be a party, sir. An adverse witness has to be a party.

The Court: Don't take up any more in front of the jury. Let's go in the Chambers.

(At this time the Court and the attorneys for both side then retired to the Chambers of the Court).

Mr. Martin: I hate to keep taking up the Court's time and the jury's time.

The Court: I understand. I think you have an order on this one. Let's see what the order says.

Mr. Martin: An order —

The Court: Wasn't he a defendant at one time in this action?

Mr. Martin: Yes, sir.

Mr. Bateman: Still is.

Mr. Martin: But the order that was entered this morning by the Court —

The Court: What order did I enter this morning?

Mr. Martin: This is what I understood was entered.

The Court: No, sir, I have not entered that order, no, sir.

Mr. Martin: Then this man ought to be a defendant in this particular case and before this particular jury.

page 38 } Mr. Bateman: No, sir. Now if he's going to be before this particular jury and the jury has a right to find against him, that's a different matter. Then I won't object to it. He's already been found in default and the only thing against him is to be assessed for damages.

Mr. Martin: How can you say that this man is a defendant?

The Court: As far as I know, he is until that — unless something is done about that, he's still a defendant in this suit, isn't he?

Mr. Martin: Yes, sir.

The Court: All right, sir. Now you're not asking for this, are you?

Mr. Martin: I am not, no, sir.

The Court: All right. As far as I know, no order has been entered at this time.

Mr. Bateman: I assumed you had entered it when I handed it to you this morning.

Mr. Martin: If this man is a defendant, he's got a right to be in here.

The Court: We'll do that.

Mr. Bateman: I object to him being in there.

The Court: You may object but your order hasn't been entered.

page 39 } Mr. Bateman: Whether the order has been entered or not, he's in default and I would ask the Court to enter the order to be entered at this time.

The Court: Do you object to the order being entered?

Mr. Martin: I object to it being entered.

The Court: You didn't object to anything.

Mr. Bateman: I object to him objecting.

Mr. Martin: I can't see how the Court — how the jury can be permitted to possibly enter up a judgment or return a verdict for a certain—

The Court: The question in my mind this morning was whether this jury should pass on it or not. I don't know. Nobody said any more about it.

Mr. Martin: Suppose this jury finds that — take one person, say, Watkins or Allen or both of them were in this altercation along with Stepp and this woman was injured and then they return a verdict because of injuries suffered in that altercation in the assault and then this thing, as far as Stepp is concerned is submitted to another jury and they return a different amount.

The Court: As I understand it, Stepp hasn't filed any answer or made any denial of anything.

page 40 } Mr. Martin: No, sir, that's true.

Mr. Bateman: Your Honor, it would make no difference. First of all, Mr. Martin doesn't represent Mr. Stepp. Of course he has no right to object to any order that's being entered against Mr. Stepp. He doesn't represent him. He doesn't have any part of him. The second thing, Mr. Stepp

is in default. He's still a defendant before this action. He's in default in a situation where there's unliquidated damages. It's up to the Court to — the motion has been before the Court for some time for him being in default; this is the order ordering him in default and setting his case down for some future time.

The Court: Why should I set it down for some future time? That's the point that disturbs me.

Mr. Martin: That disturbs me too.

Mr. Bateman: Under the rules, you have to enter, assess the damages against him unless we ask for a jury with him. We have not asked for a jury as to Stepp so it is up to you to assess the quantum of damages. Let me see rule three-five. If you'll look at three-five and three-nineteen, three-nineteen first and then three-five. It says you shall unless we

page 41 } demand. We're not demanding a jury as to Stepp.

Mr. Martin: Again it is possible to sever, have different trials as to different defendants when they're alleged to be jointly liable.

The Court: It says the Court shall in the matter appearing to the Court and this man has waived a jury according to this thing.

Mr. Martin: Can the Court say as far as this woman's injuries are concerned to be charged to this particular man and say $500.00 and a jury come in and say as far as her injuries are concerned we're going to assess this other man $300.00 or a $1,000.00?

The Court: I suppose you can.

Mr. Bateman: That's what the rule says. If you want to put your's in default, we'll play them all by the same rules but unfortunately you haven't chosen to do that.

Mr. Martin: We object to his being treated separately.

The Court: I think I got to do it. Did you read this?

Mr. Martin: I understand that.

The Court: I'll enter it today and fix that tomorrow. We'll do it tomorrow.

page 42 } Mr. Bateman: That will be fine.

Mr. Martin: If that's true. then sir, as far as this action being tried before this jury this man is not an adverse party.

The Court: Well, I don't know whether he's an adverse party or not. Let me see what your conception is.

Mr. Martin: The contention to be called as an adverse witness, a witness has to be a party to the action. This man is not a party to this action. The Court has severed him. As far as hostile witnesses are concerned, a different rule applies.

Mr. Bateman: It doesn't make any difference as to hostile or adverse.

The Court: It does make a difference. I think I'm required to enter this up on this.

Mr. Martin: We object to it.

Mr. Bateman: Look at 8-291.

The Court: You're not in it as far as this defendant is concerned.

Mr. Martin: We object to his being severed as a party defendant.

The Court: He's not being severed. He's filed no action.

page 43 } Mr. Martin: He's severed as far as this jury is concerned. Our contention is, sir, if the plaintiff wants the Court to — insists upon the Court awarding — fixing the damages as to the defendant, Stepp, then the plaintiff must allow the Court to try the case as Court and jury as to the other defendants.

Mr. Bateman: What about this?

The Court: That's exactly what we're doing.

Mr. Bateman: By the use of words, "having an adverse interest," in this section the Legislature intended to include first the party to the litigation and second, a person though not a party who had a financial or other personal interest in the outcome. The Legislature did not mean to include a part merely because his testimony was or would be adverse to the party calling him. Adverse interest was used in its common and accepted meaning and was not used synonymous with adverse testimony which is your hostile witness.

Mr. Martin: Yes, sir.

Mr. Bateman: But he certainly has an interest in the outcome of this.

Mr. Martin: I don't see how he has any interest in the outcome of this case, not if he's severed.

page 44 } The Court: I'll have to hear the witness before I can determine.

Mr. Bateman: You have to hear the witness before you can determine whether he's hostile or not.

Mr. Martin: Hostile, yes.

Mr. Bateman: Or adverse.

Mr. Martin: No, sir. We object to him being called as an adverse witness; if he turns out to be a hostile witness, that's a different matter. Different rule of law that applies to adverse witnesses and hostile witnesses.

The Court: I'm compelled to enter this up and that puts

him out as far as the jury, as far as this particular jury is concerned and the Court has to find the rest of it.

Mr. Martin: To which action of the Court we object.

The Court: You're late doing it. You didn't make any objection this morning.

Mr. Martin: You weren't ruling on it then. You're ruling on it now.

The Court: You had no objection to it at that time. He passed me — the man filed no answer and I asked page 45 } you and you said no, it's all right. I asked you then. That's the position we're in and I am compelled by that rule, it looks like to me, to enter it up.

Mr. Martin: All right, it puts us in an awfully complicated situation by doing it.

The Court: That's true and I'm not in a position to say what this man is. He's called him as an adverse witness, that's true.

Mr. Martin: If the Court is going to enter the order and has entered the order he's no longer an adverse witness.

The Court: I don't know whether he is or not.

Mr. Martin: It says he has to have financial interest in this and he has no longer a financial interest if he's severed as a defendant.

Mr. Bateman: Here's some authority on it.

(At this time Mr. Bateman then read the Court the authority referred to).

Mr. Martin: You're talking about hostile witnesses again. If this man turns out to be a hostile witness, then you can cross examine him as I understand it.

The Court: I'm going to enter the order and then I'll determine what the witness is later.

Mr. Smith: Yes, sir, but he's calling him as an page 46 } adverse witness.

The Court: It may be.

Mr. Bateman: I simply designated him to warn the Court that I anticipated that he would be hostile. I so explained.

Mr. Smith: Are you going to allow him to use cross examination to interrogate him?

The Court: If he turns out to be an adverse or hostile witness, yes.

Mr. Smith: But not at the present.

The Court: I don't know. I'll have to see what it is.

Mr. Smith: Suppose your first question is leading?

Mr. Bateman: Object to it. That's the best thing I know.

(At this time the Court and the attorneys for both sides then returned to the Courtroom).

Mr. Martin: If it please the Court, so there may be no misunderstanding as to the objection of the defendant, Watkins, Allen and Abernathy, we object to Mr. Stepp being called as an adverse witness at this time, sir.

The Court: The Court will determine what page 47 } he is.

Mr. Martin: All right, sir.

TUCKER F. STEPP,
called as a witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. Will you state your name, please, sir.
A. Tucker F. Stepp.
Q. Where do you live?
A. 5959 Jefferson Avenue.
Q. And what is your age, sir?
A. Twenty-eight.
Q. Where are employed?
A. McCress, in Hampton.
Q. Where were you employed on October 3, 1958?
A. Hampton Road Testing Laboratory.
Q. You were not employed by Mr. Abernathy, Abernathy Food Company, is that correct?
A. No, sir, that's correct.
Q. Did you see Mrs. Romaczyk on October 3, 1958?
A. I don't know exactly. I saw her the day of the fight, the wreck happened. I don't know exactly what date it was. I don't remember what date it was.

Q. All right, sir. Now referring to the date that page 48 } the fight and the wreck happened, where did the wreck happen?

A. It happened on Military Highway, the other side of Newmarket Shopping Center. I don't know which part it was. At the stop light of Aberdeen Road I believe it was.
Q. Could it have been at Queen Street?

Tucker F. Stepp.

A. I don't know — I don't remember where Queen Street is at. I wouldn't say. I'm not for sure.

Q. It was on Military Highway, is that correct?

A. Yes, sir.

Q. Were you at the scene of the accident?

A. Yes, sir.

Q. Who were you with or who was with you at that time?

A. I was with James Allen.

Q. James Allen?

A. Yes, sir.

Q. Was James Allen driving a vehicle?

A. Yes, sir.

Q. What kind of car was he driving?

A. It wasn't a car. It was a truck.

Q. A truck? What kind of truck?

A. Just a Meals on Wheels, Abernathy.

Q. And you were riding with him?

A. Yes, sir.

page 49 } Q. How long had you been riding with him prior to the accident?

A. Maybe two and half hours. I had been with him that long. We hadn't been riding all that time.

Q. Where was the last place you had been prior to the time this accident and fight occurred?

A. We had been in a — place this side of Langley Field Gate. I don't know what the name of it is.

Q. Who else was there other than you and Mr. Allen?

A. Watkins.

Q. And you left from this place in the vicinity of Langley Field Gate in the truck with Mr. Allen, is that correct?

A. Yes, sir.

Q. And where were you headed then?

A. Well, we were coming back to Newmarket shopping Center where I had my car parked.

Q. All right, sir. Was the truck loaded or not?

A. I don't — I don't remember that. I don't remember whether it was or not.

Q. You were not in the employ of Mr. Abernathy or the gentleman you were riding with. You were simply riding along with him, is that correct?

A. That's correct.

page 50 } Q. All right. sir. Now you mentioned that — about the accident. About what time of day did the accident occur?

Tucker F. Stepp.

A. Maybe five forty-five, between five forty-five and six o'clock.

Q. And who was — who was involved in the accident?

A. Six people; Allen, Watkins, myself, her and two more.

Q. All right. Now, how many cars were involved, or trucks?

A. Two trucks.

Q. How many cars?

A. One. All I know of. Just one and two trucks and a car.

Q. Two trucks and a car, is that right?

A. Yes, sir.

Q. Now, you say you were proceeding on Military Highway coming in a general direction of Newmarket, is that correct?

A. That's correct.

Q. With Mr. Allen?

A. That's correct.

Q. During that time, did Mr. Allen collide with any other vehicle and if so, who?

A. No, sir, no other vehicle except the one — except that one.

page 51 } Q. Which one is that one?

A. Whatever her name is. I don't know —

Q. This is Mrs. Romaczyk.

A. Mrs. Romaczyk's car then.

Q. All right. He collided with Mrs. Romaczyk's car, is that correct, Mr. Allen?

A. Yes, sir, bumped the back of it; yes, sir, hit the back of it

Q. What part of his car came in contact with what part of the Romaczyk car?

A. I'd say the bumper looked like the bumpers hit, the bumpers.

Q. Was it the front or rear bumper of the truck?

A. Both rear of the car and front of the truck.

Q. So the Allen vehicle collided with the rear of the Romaczyk vehicle, is that correct?

A. That's correct.

Q. All right, sir. Immediately following the accident, what, if anything, happened?

A. We got into an argument — you mean after the wreck? We got into an argument.

Q. We got into an argument. Who is, "we"?

A. Everybody. Everybody I guess. Seemed like to me.

Q. Everybody. Let's use some names.

page 52 } A. James Allen, myself, Tucker F. Stepp, and her husband, I guess it was her husband, I don't

know his name, Mr. Romaczyk and her brother. I don't know her brother's name.

Q. How about Watkins? Did you see him there?

A. Watkins wasn't there at that time, no, sir.

Q. All right, sir. So who started this fight?

A. I helped start it I guess. I helped start it. I don't know who all started it. They got out of the car and came back to the truck where we were sitting. They got out of the car and came out to the front of truck and her husband asked us where we were going to, something like that and one thing led to another.

Q. All right. Did Mr. Romaczyk, after he had asked you where you were going or words to that effect, or Mr. Allen, as the case may be, did he then go back to his automobile?

A. Yes, sir, I think he started back to his automobile. He went back to the automobile but he didn't get in it, I don't think.

Q. Did he get partially in the car?

A. I wouldn't say. I don't remember and I wouldn't say for sure.

Q. And after he was partially in the car, is that when you and Mr. Allen got out of the truck?

page 53 } A. Yes, sir.

Q. Where did you go when you got out of the truck?

A. We went up there and started an argument with him then.

Q. You went up there and started an argument with him?

A. Yes, sir.

Q. That was you and Mr. Allen, is that correct?

A. That's correct.

Q. All right, and as a result of that argument, did you get in a fight?

A. Yes, sir.

Q. And who was in the fight?

A. At that time me and her husband I think. Allen wasn't in the fight. Allen wasn't in the fight.

Q. All right, did he get in the fight at a later time?

A. No, sir.

Q. At any time?

A. Not that I saw. I didn't see him get in a fight, no sir.

Q. Would you have seen had he gotten in the fight?

A. I don't know because all of us—all of us were in one bunch. I wouldn't say for sure.

Tucker F. Stepp.

Q. That is you and Mr. Allen and Mr. Romaczyk
page 54 } were all in one bunch?

A. All of us. She was there and her brother and her too.

Q. She had gotten out of the automobile?

A. Yes, sir, she was there too.

Q. Did you see Mr. Allen knock this lady down?

A. No, sir.

Q. Did you see her knocked down at any time?

A. I wouldn't say for sure about that because I don't remember. I wouldn't say.

Q. Did you see her on the ground lying prone on the ground?

A. I wouldn't say that. She might have been but I didn't see her. I wouldn't say she wasn't. I didn't see her.

Q. Had you had anything to drink that day?

A. Yes, sir, I had been drinking that day.

Q. Did you have anything to drink with Mr. Allen that day?

A. Yes, sir, I had drank — not with him; not with him I hadn't but I had drank some that day but not with him. I had been drinking Vodka.

Q. Did you see Mr. Allen or Mr. Watkins have anything to drink that day?

A. Yes, sir, I saw them drink beer.

page 55 } Q. Where was that?

A. I — down at the place outside Langley Gate. They sell beer but I don't know the name of the place.

Q. Just a short time from the time the accident occurred, is that correct?

A. Yes, sir.

Q. Where did Mr. Allen pick you up that day?

A. Newmarket Shopping Center.

Q. All right, sir. Now, state whether or not Mr. Watkins was involved in an accident with these vehicles in the truck he was operating?

A. I couldn't state that because — he was in an accident but I think everybody in that car was out of the car when it happened. Everybody was out of the car and trucks and all when he came up.

Q. As I understand it, first of all, you and the truck in which you were riding, operated by Mr. Allen ran into the back of the Romaczyk car?

A. That's right.

Q. And when Romaczyk got out of the car and asked you where you were going or something to that effect?

Tucker F. Stepp.

A. That's right.

Q. He started back to his car to get in and you and Mr. Allen got out and started an argument which resulted in a fight. Mr. Watkins wasn't there at that time?

page 56 } A. Not at that time he wasn't there.

Q. All right. Now, when did Mr. Watkins arrive at the scene?

A. He came up when we were all still outside when he came up.

Q. Did you see his truck?

A. Yes, sir.

Q. Did you see his truck hit the truck operated by Allen?

A. No, I wouldn't say that. I wouldn't say, no, sir.

Q. At any time while you were there, did you see Mr. Watkins cause his vehicle to move either the truck of Allen or the car operated by Abernathy, I mean Romaczyk?

A. I thought it moved the truck but I'm not sure but I thought it hit the back of the truck we was in.

Q. You didn't see the Watkins' truck hit the Allen truck, is that right?

A. That's right.

Q. Did you see it move the Romaczyk car?

A. No, sir, because I wasn't facing it. I was facing back to the truck. I didn't see it move the car.

Q. What lane of travel was Mr. Allen traveling in at the time the accident occurred?

A. We were in the left-hand lane.

page 57 } Q. Would that be next to the center of the road or the island?

A. Next to the island.

Q. All right, sir. Now, did, at any time during this controversy, did Mr. Allen leave the area where the automobile accident occurred?

A. We left before the Cops came there.

Q. But did he leave before you left?

A. We left together.

Q. I see. Now, you were over in this left-hand lane of the car. Did you see him walk over to the opposite side of the road?

A. No, I don't remember whether I did or not. I don't remember that.

Q. Mr. Allen was there during the whole time the fight was in progress, wasn't he?

A. Yes, sir, as far as I know, he was.

Tucker F. Stepp.

Q. All right. Now, after Mr. Watkins came up there, did you hear Mr. Romaczyk make any remarks to him?

A. No, sir, I don't remember him making any remarks, no, sir.

Q. Did Mr. Watkins get in the fight?

A. Yes, sir.

Q. What, if anything, did he do?

A. What did he do?

page 58 } Q. Yes.

A. I don't know what he did. I don't know what he did.

Q. Did you hear anybody say anything to Mr. Watkins when he came up?

A. No, sir, not that I remember.

Q. But shortly after he arrived, he was in a fight, is that right?

A. Yes, sir, he got in.

Q. All right. At that time after Mr. Watkins had gotten in a fight, were you and Mr. Allen also in the fight at that time?

A. No, sir, I think we had quite — Allen wasn't in the fight at all but I had quit fighting I think at that time. I wasn't in.

Q. You say he wasn't in the fight at all yet you say he was there all the time.

A. He was there, that's right. I didn't see him hit anybody. As far as I know, he didn't hit anybody but he was there.

Q. Did you see him get a hold of anybody?

A. I wouldn't know that. I didn't see him.

Q. You saw Mrs. Romaczyk there?

A. Yes, I saw her there.

Q. Do you know what type of clothing she was

page 59 } wearing?

A. No, sir, I don't remember.

Q. Did you notice anything unusual about her?

A. No, sir.

Q. Was her arm in a sling or not?

A. That I don't remember. I know her arm was hurt at the Police Station but I don't know whether it was in a sling then or not. I don't remember.

Q. How was it hurt? Did you see her arm?

A. At the Police Station I think she had a bandage on it. At the Police Station.

Q. Was her arm bleeding?

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

Tucker F. Stepp.

Q. But you do know her arm was bandaged. You don't know whether she was carrying it in a sling or not?
A. I don't remember.

The Court: He saw her arm bandaged at the Police Station.
A. I don't remember whether she had anything or not. I don't remember that.

By Mr. Bateman:
Q. Did you twist Mrs. Romaczyk's arm at any time during this fracas?
A. No, sir, not that I know of, no sir.
Q. Did Mr. Allen or Mr. Watkins twist her arm?
page 60 } A. No, sir, I didn't see any of them twist her arm. I was at the time at the Police Station and Mr. Watkins called the Police Station he was the one that knocked her down or something.
Q. Mr. Watkins called the Police Station?

Mr. Martin: Objection.
The Court: I sustain it at this point.

By Mr. Bateman:
Q. You stated you were at the Police Station. Was Mr. Watkins at the Police Station?
A. No, sir.
Q. Did you at any time see Mr. Watkins after that which he made the statement to you as to whether or not he struck Mrs. Romaczyk?
A. No, sir, he never did tell me he struck her.
Q. Did you see Mrs. Romaczyk on the ground at any time?
A. No, sir. I'm not for sure. I don't think so. It's been so long ago I don't remember for sure.
Q. Did Mrs. Romaczyk get out of the car before Mr. Watkins arrived?
A. Yes, sir.
Q. She was out all during the time, is that right?
A. That's right.
Q. And what, if anything was she doing?
page 61 } A. She was arguing. She was arguing with us. I don't know what about. I don't remember what she said but she was in the argument then.
Q. She was asking you not to fight?

A. Yes, sir. I think—I'm not for sure. I think that's what she was asking more than likely. I am not for sure.

(At this time the last answer was read to the Court).

Mr. Bateman: Answer Mr. Martin.

CROSS EXAMINATION.

By Mr. Martin:

Q. Mr. Stepp, has Mr. White over here or Mr. Bateman, both of them talked to you about this affair before today?
A. No, sir, I never have seen them.
Q. You haven't seen them before today and on this particular occasion, Mr. Stepp, as I understand it you met up with Mr. Allen around Newmarket?
A. Yes, sir.
Q. And you went with him as a passenger, just riding with him at the time this—you went down to Langley Field?
A. That's all, yes sir.
Q. And you went into some place. I think you played a little pool, didn't you?
page 62 } A. Yes, sir, we shot pool.
Q. And you had had a few drinks before that yourself?
A. Yes, sir, I had.
Q. And you had a beer down at this—
A. No, sir, I didn't have a beer there.
Q. You didn't have a beer?
A. No, sir.
Q. Mr. Allen and Mr. Watkins had one or two?
A. One or two, not more than two I don't think.
Q. I see. Now, when you came back up the road, do you recall anything about how the accident itself occurred? Do you remember where Mr. Romaczyk's car was just prior to the accident?
A. Yes, sir.
Q. Where was it?
A. Just before that we was in the left-hand side next to the island and he was in the lane next to us.
Q. He was on the right-hand side?
A. Yes, sir.
Q. All right sir, then what happened?
A. We were both headed towards the circle at Newmarket

Shopping Center. We got almost to that light. The light started changing and he pulled around in front of us and he pulled over in our lane and got in front and page 63 } Allen couldn't stop in time and Allen hit him in the back.

Q. I see. So the reason for this accident then was Mr. Romaczyk pulling over in front of you?

A. Yes, sir, yes, sir.

Q. And then right after the accident occurred, Mr. Romaczyk got out of his car and came back and didn't he say something about where the Hell are you going?

A. Yes, sir, he asked us couldn't we see where the Hell we were going.

Q. He used the word, "Hell", didn't he?

A. Yes.

Q. He was belligerent, wasn't he?

A. I don't know what that word means.

Mr. Bateman: We called him as a hostile and adverse witness. This gentleman has him on cross now and I think he's asking leading questions which I object to. I don't think he's entitled to do that.

The Court: Overrule the objection.

Mr. Martin: Yes, sir.

Mr. Bateman: Except.

By Mr. Martin:

Q. And he was antagonistic. He came out of the car with a chip on his shoulder?

A. Yes, he came out real mad. He was mad page 64 } when he came out.

Q. He said, "where in the Hell were you going" or something like that?

Mr. Bateman: I object to that.

The Court: He answered that. It's not necessary to go into that more than two times.

Mr. Bateman: I object. The question is argumentative too.

The Court: I will sustain you on that.

By Mr. Martin:

Q. All right, you and Mr. Allen got out of the truck?

A. Yes, sir.

Q. And about that time didn't Mrs. Romaczyk get out of the car and her brother get out of the car?

Tucker F. Stepp.

A. Yes, sir, her and her brother.
Q. Everybody got out?
A. Yes, sir.
Q. But when this fight started, Mr. Allen didn't get in it, did he?
A. No, sir.
Q. The fight was between you and Mr. Romaczyk?
A. That's right.
Q. And Mrs. Romaczyk was in there trying to stop it and her brother was in there too?
page 65 } A. Yes, sir.
Q. And Mr. Allen had nothing to do with it?
A. Not the fight, no sir.
Q. All right, sir. Then things sort of let up a little bit, is that right?
A. That's right.
Q. And Mr. Watkins came up?
A. Yes, sir.
Q. Now, was anybody in any of the vehicles when Mr. Watkins came up behind the truck that you had been in?
A. No, sir.
Q. The Romaczyks and Mr. Cantrell were out of the car?
A. Yes, sir, as far as I know, they were.
Q. I see. Then there was some further altercation, is that right, some further wrestling and that sort of thing?
A. Yes, sir.
Q. And did anybody hit you?
A. Yes, sir, I guess I got hit too.
Q. Beg your pardon?
A. Yes, sir.
Q. Who hit you?
A. I wouldn't be for sure who hit me. At one time we were all wrestling and fighting so anybody could have hit me at that time.
page 66 } Q. I see. Mrs. Romaczyk, was she talking at all?
A. Yes, sir, she was talking.
Q. And what—what was her attitude about it?
A. She was—she was mad, that's all. She was mad.
Q. She was mad and she got in it too?
A. No, I didn't see her hit nobody. She was just arguing with us. She was arguing.
Q. I see. And then when Mr. Watkins came up, did you see him hit Mrs. Romaczyk?
A. No, I didn't see him hit her, no sir.
Q. Did you see him shove her or anything like that?

Tucker F. Stepp.

A. No, sir.

Q. But you're certain that Mr. Allen didn't get in the fight?

A. Yes, sir, I'm certain he didn't get in it.

Q. As a matter of fact, didn't Mr. Allen go over to the side of the road?

A. I'm not sure whether he did that or not.

Q. To get away from it?

A. I am not sure whether he did that.

Q. After the altercation out there, things kind of simmered down, what happened to the Romaczyk party? Did they leave?

page 67 } A. I—yes sir, everybody left; yes sir, everybody left.

Q. Who left first?

A. They must have left first because they were in front of us. They had to leave first before we could leave.

Q. They left?

A. Yes, sir.

Q. And then as I understand it, you and Mr. Allen got in the truck and you left?

A. We left.

Q. You don't know what happened to Mr. Watkins?

A. No, sir, I don't know what happened to him.

Q. Were you stopped up the road?

A. Yes, sir.

Q. Who stopped you?

A. Stopped by Hampton Police.

Q. Hampton Policeman?

A. Yes, sir.

Q. And where did he take you, if he took you any place?

A. He took me to the Police Station.

Q. Did he take you any other place first?

A. No, sir.

Q. Didn't you—didn't you go over—didn't he

page 68 } ask Mr. Allen to drive his truck up to where the Romaczyks were?

A. Mr. Allen was there. I wasn't there at that time. I stayed in the truck at that time and he talked to Mr. Allen.

Q. But Mr. Allen got out?

A. That's right, and then he called me over.

Q. And what was said by the—by Mrs. Romaczyk or Mr. Romaczyk or this other boy, Cantrell?

A. At that time?

Q. At that time.

Tucker F. Stepp.

A. I don't know because they were on the outside of the car and I was on the inside. I don't know what they said.

Q. As a result of this, you personally were taken to the Police Station in Hampton?

A. Yes, sir.

Q. Allen wasn't taken?

A. No, sir, he told Allen to go ahead home I think.

Q. You were the only one that was taken there?

A. That's right.

Q. When you got down there, did you have any conversation with the Romaczyks?

A. Yes, sir.

page 69 } Q. And as a result of that conversation, did you make any agreement as to what you would do regarding any injuries they had?

A. Yes, sir.

Q. What was that agreement?

A. Well, they took a warrant out for me. I'm not for sure what the warrant reads. I didn't see it. They took it out and dropped it later. I told them if they dropped the warrant I carry them to the doctor and pay the doctor bill for them.

Q. I see.

A. Because she had me for hitting her and knocking her down and that's what they locked me up for that Watkins called the Police Station and the Police answered and the Police said he said that—

Q. Don't tell what he said.

The Court: Don't say that.

By Mr. Martin:

Q. But what happened between you and the Romaczyks about this agreement?

A. That's all that happened I told you. I agreed to pay that. Nothing else but that.

Q. Did they drop the charge?

A. Yes, sir.

Q. Who took you from the Police Station back to Newport News?

page 70 } A. She and her husband and brother, Mrs. Romaczyk.

Q. In other words, they put you in their car and took you back to Newmarket?

A. Yes, sir.

Tucker F. Stepp.

The Court: Is that all?
Mr. Martin: Wait just a minute.

By Mr. Martin:
Q. Do you know whether anybody else, I'm talking about Mr. Allen and Mr. Watkins, were charged with anything?
A. No, sir, neither one of them were charged with anything.

Mr. Martin: All right. That's all.

RE-DIRECT EXAMINATION.

By Mr. Bateman:
Q. How do you know that, sir?
A. How do I know?
Q. Yes.
A. Well, I don't—he asked me did I know. I don't know. As far as I know, they weren't.
Q. Your answer is, you don't know.
A. That's right.
Q. Not that they weren't?
A. As far as I know.
Q. You have stated—I want to clear one thing up here. You stated in your testimony to Mr. Martin that page 71 } all of you were there fighting at one time. That's after Watkins had come up and gotten into the picture. I believe your statement was, "we were all wrestling and tussling and fighting." Is that correct?
A. All of us were fighting, yes sir, except Allen, yes, sir.
Q. Was Mr. Allen present?
A. I didn't—I couldn't see at that time whether he was present. We were all wrestling. As far as I know, he was present but I couldn't see him at that time.
Q. At any time did you see Mr. Allen make any effort to quiet the fight down or keep you people from fighting?
A. No, sir, not that I think so.
Q. When you say all was fighting, who do you mean?
A. I mean well, I'd say Watkins was fighting, her husband, her brother and myself.

Mr. Bateman: I see. All right, sir.

• • • • •

page 72 }

• • • • •

DOCTOR FRANCIS J. CARBONARA,
called as a witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. White:
Q. Doctor, will speak loudly enough so these gentlemen can hear you. Doctor, will you please state your name.
A. Francis J. Carbonara; John.

The Court: What's his last name?

A. Carbonara.

By Mr. White:
Q. All right. Doctor, are you a licensed practicing practitioner?
A. Yes, sir.
page 73 } Q. Do you practice in Hampton?
A. Yes, sir.
Q. Doctor, have you had occasion to treat the plaintiff, Mrs. Charlotte Romaczyk?
A. Yes, sir.
Q. When did you have occasion to treat her?
A. To treat her for this accident or to treat her for her own business?
Q. Well, did you have occasion to treat her for an injury to her arm?
A. Oh, yes, that was about three days before—three days before the accident. That was on a Wednesday.
Q. What type of injury did she have?
A. She had a laceration of her forearm which required five stitches.
Q. I see. At the time you treated this, you sewed this laceration?
A. Correct.
Q. Was there any other treatment you rendered the arm?
A. It was a routine treatment for the laceration. We steri-

lized the skin with alcohol. We washed the wound with severine chloride usually or boiled water or sterile saline.

Q. When did you next see Mrs. Romaczyk?

page 74 } A. I saw her the next day for another reason. The wound was all right.

Q. I think your statement was the wound was all right?

A. The next day, yes.

Q. If anyone doesn't hear or understand what the Doctor says—

The Court: I have asked the jury. Can you hear him all right?

Jurors: Yes, sir.

By Mr. White:

Q. When did you next have occasion to see Mrs. Romaczyk?

A. That was Saturday morning.

Q. That would be what date?

A. I think October 4th.

Q. October 4. What was her complaint at that time?

A. She had upper lip swollen and cut, evidently had been cut by one of her teeth being pushed in (indicating); was all black and blue. She had several bruises. Some of them on her forearm and there was some other ones on her leg. Upper lip and there were bruises on her forearm. Also there were two stitches that were torn. I mean the stitches cut through the skin.

page 75 } Mr. Smith: If your Honor please, I didn't hear the last part.

The Court: Two stitches were torn.

A. I mean two stitches were found was loop of cutting or silk was found like this (indicating) and the skin which had been put together by the stitches was not together.

The Court: The skin had been put together by the stitches was not together?

A. Was not together because the two stitches had been cut through the skin.

The Court: You understand what he means?

Mr. Smith: Yes, sir.

Doctor Francis J. Carbonara.

By Mr. White:

Q. What was Mrs. Romaczyk's emotional condition on that Saturday?

A. She was upset, emotionally upset and mad. I mean she was annoyed and—

The Court: Emotional.

A. Emotionally upset.

The Court: You said mad at one time, didn't you?

A. Yes, was mad for it happening.

The Court: Upset.

By Mr. White:

page 76 } Q. Mad for it happening. You mean the accident?

A. For the happening, that's right.

Q. Doctor, where is your office located?

A. In Hampton, 5 Hampshire Drive.

Q. And what is that near?

A. That's near the Field, I would say, Langley Field; about a mile.

A. Straight line.

Q. Now Doctor, how long have you been practicing in this area?

A. I'd say seventeen months—seventeen months, that's right.

The Court: Seventeen months?

A. Roughly.

By Mr. White:

Q. Doctor, subsequent to your examination of this laceration which you had previously sewn, did you render any additional medical treatment to her the following Saturday—

A. Not the following—the Saturday following the accident and I looked at that and I noticed the skin was slightly open after I saw her on a Sunday for the same reason and the skin was still open and the second time she got an infection. How much was injury at the time had to do with the infection I

Doctor Francis J. Carbonara.

cannot say. I mean I cannot rule it out. I cannot
page 77 } say it did. It is possible that the injury of the hand
might have had something to do with the stitches
with the slight gaping of the skin.

* * * * *

page 78 }

* * * * *

By Mr. White:

Q. Doctor, you stated that the wound did become infected?

A. That is correct. That is positive.

Q. My question is this. Can you say with a reasonable degree of medical certainty that the infection was a result of a disturbance of the laceration as a result of an altercation?

A. The infection do happen with and without a disturbance and I still have to say I cannot be absolutely positive that that gaping of the skin was a direct cause of it. It is possible but—

Q. Now Doctor, my question is this.

The Court: He's answered it. He said it's possible but I cannot say.

Mr. White: He said he cannot be absolutely positive. I would like to redirect him to my question.

By Mr. White:

Q. Can you say with a reasonable degree of medical certainty that such infection was the result of the
page 79 } wound having been disturbed as a result of an
altercation?

A. The wording escapes me but once again I have to repeat it is possible that—due to the fact that the infection is going to happen without disturbance the infection could come, happen without the laceration. I still again could say that it is possible that that had something to do with the development of the infection. It is possible. I cannot be sure. I can be much more sure always in a relative way that pulling of the skin and violence of the skin might have had something to do with the pulling of the stitches because that does not happen usually unless violence is applied.

Doctor Francis J. Carbonara.

• • • • •

page 80 }

• • • • •

By Mr. White:

Q. Do you recall what your total charges have been to date to Mrs. Romaczyk, your charges for medical services?

A. I think I charged $15.00, something like that.

Mr. Martin: I can't hear.

The Court: I think he said eighteen.

A. Fifteen.

Mr. Martin: I think it ought to be cleared up how much of the charges are for charges for injuries sustained by this wound for this injury.

A. Fifteen for Saturday and Sunday.

Mr. White: If I failed to do that, Mr. Martin can cross examine him.

Mr. Martin: I think he answered.

The Court: Let him finish.

page 81 } By Mr. White:

Q. How much of those charges for $15.00 could you reasonably say were the result of treatment subsequent to October 3, and your treatment of this condition of her arm?

A. I didn't charge the patient $15.00. Is not the matter of suturing of the wound which I done on Wednesday. I charged her $15.00 only for the Saturday and the Sunday and of course I had to look at the wound but not much treatment was made to the wound itself that Saturday and Sunday.

Q. But your bill of $15.00 was for services rendered on Saturday and Sunday?

A. And Sunday, yes sir.

Q. Did they include the examination and—

A. Of the lip.

Q. Of her whole torso?

A. Her lip.

Doctor Francis J. Carbonara.

Q. Particularly her mouth and the things you have mentioned?
A. Yes, sir.

Mr. White: Answer Mr. Martin's questions.

A. I'll be glad to.

CROSS EXAMINATION.

By Mr. Smith:

Q. Doctor, you saw Mrs. Romaczyk on a
page 82 } Wednesday prior to this accident?
A. That is correct.
Q. For her arm?
A. That's right.
Q. Do you know how that occurred?
A. Yes, she cut herself with a razor or something fell on her arm.
Q. Cut herself with a razor?
A. Razor, not willingly of course. There was an injury.
Q. You didn't examine her then for anything further at that time?
A. I did not examine her but that is correct.
Q. Now, when you examined her on Saturday, following this accident I believe you testified that she had—
A. A swollen upper lip.
Q. A swollen lip?
A. Bleeding and cut.
Q. It was bleeding at that time?
A. Yes, sir.
Q. And it was cut?
A. That's right.
Q. Inside?
A. Yes, sir.
Q. Didn't have to be sutured?
page 83 } A. No.
Q. And that could have been caused by a blow to the mouth?
A. That is correct. Very likely, yes.
Q. By a fist or a hand or anything of that kind?
A. That is correct.
Q. Now, what else did you find? I believe you mentioned something about a bruise?
A. Several bruises, yes.

Q. Several bruises?
A. That's right.
Q. And where were they located?
A. I think they were bruises on the forearm, on the shoulder and I think on both legs.

The Court: Forearm?

A. No, forearm.

The Court: I couldn't understand. Forearm or head.

By Mr. Smith:
Q. Forearm and on her shoulder and on her leg?
A. That's right.
Q. And you saw her Sunday but that was because of this arm, is that correct?
A. I saw her on the arm and she was also complaining of slight pain on her lip (indicating).
page 84 } Q. Is that all you saw her then? Did you see her any more?
A. Not after that, no, because she was in the hospital after that.
Q. She was what?
A. She was in a hospital for something completely different.
Q. For something else?
A. That's right and in the hospital she was treated for the infection of the forearm.

Mr. Smith: I think that's all.

• • • • •

HAROLD WATKINS, JR.,
called as an adverse witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:
Q. Would you state your name, sir.
page 85 } A. Harold Watkins, Jr.
Q. Where do you live, Mr. Watkins?
A. Right now at the Colonial Hotel.

Harold Watkins, Jr.

Q. Where, sir?
A. Colonial Hotel.
Q. Colonial Hotel. And how old are you, sir?
A. Thirty-two.
Q. By whom are you employed?
A. At the present, no one, sir.
Q. By whom were you employed on October 3rd?
A. E. H. Abernathy.
Q. 1958.
A. E. H. Abernathy Food Company.
Q. What was the nature of your employment?
A. Driver-salesman I imagine it is.
Q. Directing your attention to October 3, 1958, did you—were you involved in an accident with a Mr. Romaczyk?
A. I don't remember the date exactly but I remember the night, I mean—
Q. Where was—you remember the night. You were in an accident, is that correct?
A. Yes, sir.
Q. Where did it occur?
A. If you call it an accident.
Q. All right, sir. Where did it occur?
page 86 } A. Just this side of the overpass by the—on the tunnel route, coming in—
Q. Was it on what is commonly referred to as Military Highway?
A. Yes, sir.
Q. Was it in the City of Hampton?
A. As far as I know. I'm from Portsmouth.
Q. Now you say, "if you call it an accident." What do you call it, Mr. Watkins?
A. I wouldn't know what to call it.
Q. All right, sir. Now again, referring to the—to the day of October 3, or when this accident or, as you refer to it, "I don't know what to call it," occurred on the Military Highway, did you see the plaintiff, Mrs. Romaczyk?
A. Yes, sir. I wouldn't have knowed it until I just seen her.
Q. Beg your pardon?
A. I wouldn't have recognized her until she came into the Courtroom though, sir.
Q. I see. Now, when you—did you see Mr. Allen at this place on Military Highway?
A. When I first come up, yes sir.
Q. When you first arrived, who was there?

Harold Watkins, Jr.

A. It was five people in the middle of the highway on the island.

page 87 } Q. Middle of the highway on the island?

A. Yes, sir.

Q. All right, sir. Who were those five people?

A. From what I gather, it was Mrs. Romaczyk and her husband and her brother-in-law or whatever he is.

Q. All right, who else?

A. Mr. Allen and Mr. Stepp.

Q. All right. Now, does that island—

A. Divides the highway.

Q. Divides the highway Is it near where the vehicles that Mr. Romaczyk and Mr. Allen were located?

A. Right next to it.

Q. All right, sir. What, it anything, was going on then?

A. When I got there, didn't look like nothing but a bunch of arguing but I gathered after I got there that something had taken place.

Q. There wasn't any fight in progress when you arrived, is that correct?

A. No, it was at the boiling point.

Q. When you arrived, did your truck come in contact with Mr. Allen's truck in any way?

A. I left the car in gear, sir, when I got out which was third gear which I think if they had tapped the rear of the vehicle it would have conked out automatically.

page 88 } Q. My question is, did your vehicle come in contact?

A. Yes, sir.

Q. It did come in contact with it?

A. Yes, sir, I was trying to frame my statement where it wouldn't have knocked no vehicle past no light.

Q. Did it push the vehicle at all?

A. I don't see how it could have.

Q. Did it?

A. I don't think it could have, sir.

Q. You can't say positively whether it did or not, is that your—you say, "I think"?

A. I imagine his vehicle might have tapped the other—at the end of the car in front of him. Yes sir, I'll say that.

Q. Then his vehicle might have pushed forward into Romaczyk?

A. Yes, sir, probably could have.

Q. After your truck came in contact with it, is that right?

A. Yes, sir.

Harold Watkins, Jr.

Q. What, if anything, did you do when you arrived at the accident?

A. I come up and seemed like an awful lot of cussing going on and everything just erupted. I don't know, whatever happened after that seemed like a wrestling match more than anything else.

page 89 }

Q. Did anybody say anything to you?

A. I don't believe they were directing it at anybody in general, sir. Everybody was just cussing.

Q. Did you get in a fight?

A. Not a fight. I mean—I define a fight as something where you use your fist or something on people.

Q. What were you using, gloves?

A. On them little people, no sir.

Q. What were you using then?

A. I was wrangling. I was trying to hold the daggoned business up, seemed like.

Q. Who were you wrestling with?

A. I don't know, sir.

Q. Were you wrestling with Mr. Allen?

A. No, sir.

Q. Were you wrestling with Mr. Stepp?

A. No, sir.

Q. Wrestling with Mr. Romaczyk?

A. From what I gather, it must have been, sir.

Q. You didn't know who it was?

A. I didn't know him—I couldn't have pointed him out on the street, sir. It was getting a little dark.

Q. Did you hit Mr. Romaczyk?

A. No, sir.

page 90 }

Q. Did you at any time have conversation with the Police Officer in Hampton?

A. I called the Policeman, Mr. Stepp stated a while ago and I did not say that I told the man that I pushed the woman down. I stated that I—I had—I had been in a tussle out there and that myself or anybody that was in the tussle when she jumped in, I imagine could have—she could have been thrown down due to the tussle that followed that.

Q. So she could have either been thrown by you or Mr. Allen or Mr. Stepp or—

A. Her own husband.

Q. Or her own husband?

A. Yes, sir.

Q. Or anyone, is that right?

A. Yes, sir, when a woman gets into something like that.

Q. You did see her lying on the ground?

Harold Watkins, Jr.

A. I stated I saw her sitting on the ground.
Q. Sitting?
A. Yes, sir.
Q. You don't know who caused her to be sitting there?
A. I don't know how the lady got there whatsoever.
Q. Did you twist her arm?
A. No, sir.
Q. Who did grab her by the arm?
page 91 } A. I don't remember anybody grabbing her by the arm.
Q. Were you mad?
A. I guess people get cussing on you, you get mad too.

The Court: Just answer the question. Were you mad, not what somebody else would be.

A. No, sir, I wasn't exactly mad.

The Court: You weren't exactly mad?

A. No, sir.
Q. How long did the fight last after you got there?
A. A matter of minutes, sir.
Q. How many minutes?

The Court: A matter of minutes.

A. Very few, sir. I couldn't say exactly.

By Mr. Bateman:
Q. Can you give us any estimate?
A. No, sir because I wouldn't have any idea. I mean two or three minutes at the most.
Q. And there was quite a bit going on, is that right?
A. I wouldn't say there was quite a bit going on, no sir. Seemed like everybody was trying to get squared away and out of there, looked like to me.
Q. Were you and Mr. Allen and Mr. Stepp, all
page 92 } of you were in this, weren't you?
A. I don't remember seeing Mr. Allen, sir. I mean I seen him when I come up and that's the last I seen of him.
Q. Did you see him standing across the road with his back to you like this (indicating)?
A. No, sir. The trucks were right against where the whole business was going on. He walked to the right side of the road

Harold Watkins, Jr.

he said and—I didn't take no time to look over there.

Q. Did you see him standing over there? You did state when you arived at the scene that he was in the presence of Mr. and Mrs. Romaczyk and this other boy?

A. I saw five people in the middle of the highway.

Q. And that included Mr. Allen?

A. Yes, sir.

Q. So he was there when you arrived?

A. Yes, sir.

Q. Isn't it a fact you told the Police all of you were mixed up in this, referring to you, Tucker and Allen and yourself?

A. I don't remember saying it, sir, if I did.

Q. The best you recall, what did you tell the Police?

page 93 } A. The best I recall when I called I was calling to find out if any way Mr. Stepp could be gotten out of jail. I thought they probably put him on something that I was probably to blame for too and the Policeman stated, I called two times that he wanted to talk to me, would I come over there and I told him I rather not, sir, and I just never went. So I called back a little later and told them I was somebody else and evidently he recognized my voice and I asked him about Mr. Stepp and he said he had been released after he had agreed to pay hospital bills for these people.

The Court: Don't tell what they said. It's not evidence.

By Mr. Bateman:

Q. Now where had you been immediately prior to the accident and this fracas?

A. You mean the place outside the Field?

Q. Where did you last leave from?

A. Pop's, I believe is the name.

Q. What is Pop's?

A. Right outside the main gate at Langley Air Force Base.

Q. Where were you at Pop's?

A. I drank a couple of beers and shooting pool. We usually stop and shoot pool because it is one of the few pool tables around here, small one.

page 94 } Q. Had you exchanged any merchandise from your truck to Mr. Allen's or vice versa?

A. No, sir, we both agreed we both didn't have enough left on both trucks to justify going on the Field and staying out there half the night and not to make any money at all.

Harold Watkins, Jr.

Q. So you were planning to—rather you had some beer at this particular place called Pop's and Mr. Allen was there then?

A. Yes, sir.

Q. Mr. Stepp too?

A. Yes, sir.

Q. They all have some beer?

A. Stepp didn't drink any beer there, sir.

Q. Allen did?

A. Yes, sir, we both drank a couple of beers.

Q. After you left this place, where were you going?

A. We were coming into Hertz' where we park the trucks at night.

Q. Do you use this area at Pop's or that general vicinity to meet or unload your trucks in the course of your employment?

A. Well, at first we were at the service station and then we moved down to Pop's because he had a large lot there and we parked at the service station, the trucks, two trucks there. We were in the man's way.

page 95 } Q. You were working for Mr. Abernathy, is that correct?

A. After we left the Field we wasn't. We were when we were working on the Field.

Q. You had to bring the truck back to the garage, is that correct?

A. Yes, sir.

Q. That's part of your employment, isn't it?

A. Yes, sir.

Q. Where do you pick the trucks up?

A. Hertz' Rental Service on Virginia Avenue.

Q. And where do you park them?

A. Hertz' Rental Service.

Q. And when you take the trucks from Hertz, do you get them in the morning, night or when?

A. Morning.

Q. And where do you load the trucks?

A. Right at Hertz'.

Q. And from there, what do you do?

A. Well, we have individual routes you go on.

Q. You go out on your route?

A. Yes, sir.

Q. And after you have completed your route, where do you then go?

Harold Watkins, Jr.

A. Back to Hertz'.

page 96 } Q. Is the truck parked there then?

A. Yes, sir.

Q. You're not allowed to keep the trucks over night?

A. No, sir.

Q. Where is the supplies and records and so forth kept?

A. Well, at one time Mr. Allen kept all the money and receipts for the day and was sent back with the fellow that would truck the stuff down in the morning.

Q. Where was that done? At Hertz' when you come in at night?

A. What do you mean?

Q. The accounting, the accounting where you turned your money over to Mr. Allen?

A. Yes sir, we checked up every day. It was more or less a route sheet.

Q. You checked in as you came in at night?

A. Check up yourself.

Q. At Hertz', is that right?

A. Yes, sir.

Q. Turned it over to Mr. Allen and then he made arrangements to get it on in?

A. Yes, sir.

Q. Did you receive any injuries yourself, sir?

page 97 } A. No, sir.

Q. Didn't you have to go to the doctor to have your hand fixed?

A. No, sir.

Q. Your hand was bruised, wasn't it?

A. No, sir.

Q. You didn't complain about that?

A. No, sir.

Q. Did you—did anyone strike any blows against you, hit you?

A. No, sir, not as I remember. They could have.

Q. And no one said anything to you when you arrived at the accident scene when you saw these five people there?

A. I imagine there were a few curse words directed at different people.

Mr. Martin: I couldn't hear that.

A. I imagine there were a few curse words directed at different people.

Harold Watkins, Jr.

By Mr. Bateman:

Q. You imagine. None was directed at you though?

A. It's hard to say. I mean it was quite a bit going on.

Q. You can't say for sure they were, could you?

A. No sir, I don't imagine anybody could.

Q. How much do you weigh, sir?

page 98 } A. About one ninety-six, ninety-eight.

Q. About one ninety-six?

A. Yes, sir.

Q. Did you weigh about that much on October 3, of last year?

A. Yes, sir.

Q. Is that about your normal weight?

A. Yes, sir.

Mr. Bateman: Answer Mr. Martin.

CROSS EXAMINATION.

By Mr. Martin:

Q. Mr. Watkins, when you came up to this—where the truck and the car were stopped, I believe you said there were about five people out there near where the island were?

A. Sir?

Q. I believe you said there were five people out near the island part?

A. Yes, sir, they were on the island.

Q. And what was your purpose in going in and stopping and going out there?

A. Well, I wanted—whatever was going on, I wanted to help break it up or straighten it up or whatever it was.

Q. I see, and that you took on your own initiative?

A. Yes, sir, I worked with Jim and I figured it

page 99 } was part of my business, I mean being we both represented the same man, the firm.

Q. How about Mr. Stepp? Did you see him out there?

A. Yes, sir, I did. There was five people out there.

Q. I see, and was it your purpose to break it up as far as he was concerned?

A. As far as everybody was concerned.

Q. As far as everybody was concerned?

A. Yes, sir.

Mr. Martin: I see. No questions.

Mr. Bateman: That includes Mr. Allen?

A. Yes, sir, everybody.

Mr. Bateman: All right, sir.
Court: Is that all?
Mr. Bateman: Yes, sir.
Court: Step down. Call the next witness.
Mr. Bateman: Mr. K. C. Romaczyk.

KAZMERE C. ROMACZYK,
called as a witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:
Q. State your name, sir.
page 100 } A. Kazmere C. Romaczyk.
Q. Talk loud enough so the jury can hear you.

Court: What is your first name?

A. Kazmere.. K-A-Z-M-E-R-E.

By Mr. Bateman:
Q. How old are you, sir?
A. Thirty-one.
Q. Where do you live, sir?
A. 142 Chichester, Hampton.
Q. 142 Chichester?
A. Avenue.
Q. In Hampton?
A. Yes, sir.
Q. Where are you employed, sir?
A. National Aeronautics and Space Administration in Langley Field.
Q. Will you talk a little louder.
A. NASA, Langley Field.
Q. How long have you been employed there, sir?
A. I went—first employed there in 1949. I left there in '56 for a period of four months after which I returned.
Q. Roughly, you have been working there since 1949 except for four months, is that right?
A. Yes, sir.

Kazmere C. Romaczyk.

Q. Directing your attention to October the 3rd, page 101 } of last year, state whether or not you were involved in an accident?

A. Yes, sir, I was.

Q. Where was the—where was the accident located?

A. The accident was located at the intersection of Military Highway and West Queen.

Q. Who was operating the—were you operating the vehicle?

A. Yes, sir, I was operating the vehicle.

Q. What kind of car were you driving?

A. A '55 Mercury.

Q. What other vehicle was involved in the accident, if any?

A. There was another vehicle. It was a truck, Abernathy's Meals on Wheels, I believe the name on the side of the truck and a third vehicle was also involved. It was a second Abernathy's Meals on Wheels truck.

Q. Who was driving the first vehicle?

A. Mr. Allen.

Q. Is he in Court today? Do you know Mr. Allen?

A. Yes, sir, I recognize the man (indicating).

Q. Was anyone with Mr. Allen?

A. There was a Tucker Stepp, was a passenger.

Q. All right, sir. Will you tell us how the accident happened, Mr. Romaczyk? First, which direction page 102 } were you going?

A. I was going west on Military Highway.

Q. Was anyone with you?

A. Yes, sir, my wife.

Q. Is that Mrs. Romaczyk?

A. Mrs. Romaczyk.

Q. Who else?

A. James C. Cantrell.

Q. Who is he?

A. He's my wife's brother, my brother-in-law.

Q. How old is Mr. Cantrell?

A. I believe he's seventeen. I can't be sure.

Q. All right now. Where were you going from and to on this particular occasion?

A. I was going from my home, 142 Chichester. We were going to Victoria to where my wife's mother lives.

Q. Victoria, what?

A. Virginia.

Q. Now getting back to the accident scene, what direction was the Allen vehicle going?

Kazmere C. Romaczyk.

A. The Allen vehicle was traveling west.
Q. The same direction you were?
A. The same direction, that's right.
Q. All right, sir. Were you moving at the time the collision occurred or were you stopped?
page 103 } A. I was stopped. I was stopped at a red light.
Q. And how long had you been stopped at that light?
A. Five or six seconds. I couldn't be sure.
Q. Had you come to a complete stop?
A. Yes, sir, I was at a complete stop.
Q. And some five or six seconds after that the accident occurred as far as Mr. Allen is concerned, is that correct?
A. Yes, sir.
Q. What part of his car came into what part—in contact with what part of your car?
A. His bumper came in contact.
Q. Which bumper?
A. His front bumper came in contact with my rear bumper.
Q. Do you have—did you see him prior to the impact?
A. No, sir.
Q. Would you describe the nature of the impact with respect to intensity? Was it loud or whatever terms you wish to use.
A. The impact as to being loud, I couldn't sav. The jolt jarred me so much that I—I might have heard it but it didn't register with me as much as the jolt registered.
page 104 } Q. You were jolted, is that right?
A. Yes, sir.
Q. And what, if anything happened after the impact?
A. My first impressions were that his rear bumper went over my bumper and crashed into mv truck so I got out to see what damage was done and I went to the rear of the car and observed that his bumper was resting squarely on mine so I asked the man, the driver of the truck, the exact words I don't remember but words to the effect if he couldn't see where he was going or if he didn't see me sitting there; after which I returned to the car.
Q. Who did you direct those remarks to?
A. To the driver of the truck.
Q. Is that Mr. Allen?
A. Mr. Allen, yes, sir.
Q. Did he make anv response to you?
A. I believe he said it was my fault, that I pulled out in front of him.

Kazmere C. Romaczyk.

Q. All right. Then at that particular time where was Mr. Allen? Was he seated in the truck or outside?

A. He was seated in the truck.

Q. Was Tucker or anyone else in the truck with him?

A. Yes, sir, Tucker Stepp was in the truck.

Q. After those remarks were exchanged, what, if anything, did you do?

page 105 } A. I proceeded to get back into my car.

Q. Did you actually in fact get back in your car?

A. I got into the car with the exception of one foot which I was seated in my car ready to close the door. Before I could pick my left foot to put it into the car, the two men came out of the truck and got between the car door and the car itself where I couldn't close it.

Q. And who were the two men?

A. Mr. Allen and Mr. Stepp.

Q. Did they make any remarks to you at that time, and if so, what?

A. They said that it was my fault, that I pulled out in front of them and that's why they hit me.

Q. Did you respond to that?

A. I said I was sitting there, that I was sitting at the light waiting for it to turn green. My wife said that—she also said we were sitting there waiting for the light to turn green. We were sitting there stopped before they come up. The exact words I don't remember what it was but it was in that sense.

Q. Was there any retort from Mr. Stepp or Mr. Allen?

A. Mr. Stepp, he cursed my wife.

Q. What did he say?

A. The exact words he said was, "you're a God-

page 106 } damn liar."

Q. What did you say?

A. I didn't say anything then. I half-way stood up with my left foot still on the ground. I half-way stood up.

Q. What happened after that?

A. After that, one of them, I believe it was Mr. Allen grabbed me by my shoulder and pulled me away from the car.

Q. You say you think it was Mr. Allen. Could you point the man out in the Courtroom?

A. Yes, sir, the man with the red sweater there.

Q. All right. Go ahead. Mr. Allen got a hold of you—What did you do? How did he get a hold of you?

Kazmere C. Romaczyk.

A. He grabbed me by this arm (indicating) and pulled me away from the car.

Q. Did he strike you?

A. Not at that time, no, sir.

Q. All right. Tell us what happened then?

A. I got free of him and I noticed the car was rolling forward again and the—I looked. There was no one driving my car. There was no one in the truck to be pushing the car. After I saw the car going forward and I saw the truck going forward, there was no one in the truck to be driving it. That's when I saw the second Abernathy truck pushing it and it in turn pushing my car.

page 107 } Q. Was your car actually moving then?

A. Yes, sir.

Q. Who was driving the second Abernathy truck, if you know?

A. Mr. Watkins.

Q. Which one is Mr. Watkins?

A. The man sitting on the right.

Q. All right sir, what, if anything, happened then?

A. I went back in the direction of the second truck and I told him that there was a car sitting in front of the first truck, if he would please not push the truck and he jumped out of the truck, came—running over toward the group of us and he said something about, "when you argue with my friends you argue with me" or "when you fight with my friends, you fight with me." I don't remember the exact words he used but it was that nature that he used it.

Q. Was there any fight going on at that time?

A. There was no fight that I know of at that time, no, sir.

Q. All right, sir. He said, "when you argue with my friends" and something to the effect, "you fight with my friends, you fight with me." Is that right?

A. Yes, sir.

Q. What, if anything, happened then?

A. Then Mr. Stepp grabbed me by my—he put

page 108 } one hand on each shoulder here and he pushed me back down between the rear of my car and the front of Mr. Allen's truck and pushed me back down backward. He says, "come on boys, now I've got him."

Q. Now who was then present when Stepp did that?

A. Mr. Watkins and Mr. Allen.

Q. They were both there present, is that right?

A. Yes, sir.

Q. How far were they from you?

Kazmere C. Romaczyk.

A. They were all right together.
Q. Near the vicinity of you?
A. Yes, sir.
Q. All right now, tell us what happened after that.
A. Then not knowing what I was going to do, I heard my wife's voice. She evidently had come out of the car and she somehow got through there and says, "now you leave him alone."
Q. Who was she talking to then?
A. It didn't appear she was talking to anyone in particular. She was talking to them in general.
Q. Who was it she wanted left alone?
A. She evidently wanted them to leave me alone.
Q. What happened after that?
A. That's when the fight really started.
Q. All right, who hit who?
page 109 } A. I—things happened so fast, I cannot remember who really hit who.
Q. Who was in the fight? Let's start that way.
A. I was there and I was being held by two men. Mr. Allen and Mr. Stepp.
Q. All right.
A. And Mr. Watkins appeared to me that he tried to come up in front of me and hit me.
Q. Did he hit you?
A. Not that I can remember. He did not hit me in the fact. Whether he hit me in the arms, I don't know.
Q. Describe as best you can what happened after that?
A. Everything seemed to happen pretty fast. On one occasion I and my brother-in-law, James Cantrell, picked my wife off the ground and carried her into the car. Then before I could get into the car, someone had drug me back out there again.
Q. Who was that?
A. Now which one, I don't know.
Q. Were they all present?
A. Yes, sir.
Q. They all, I mean was Mr. Allen, Mr. Watkins and Mr. Stepp were present then?
A. Yes, sir.
page 110 } Q. Was it one of those persons that drug you from the car?
A. Yes, sir.
Q. You don't know which one it was?

Kazmere C. Romaczyk.

A. No, sir.
Q. Were you struck?
A. I was struck in the arms but I wouldn't know who struck me or—
Q. All right. Was Mrs. Romaczyk struck?
A. I did not see her struck.
Q. Did you see her on the ground at any time?
A. Yes, sir.

Court: He said that.
Mr. Bateman: Pardon?
Court: He already testified that he saw her on the ground.
Mr. Bateman: Sir—I think it's another witness.
Court: Didn't he say he saw her? Go ahead, excuse me.

By Mr. Bateman:
Q. What was Mrs. Romaczyk's physical condition at that time? Was anything unusual about Mrs. Romaczyk?
A. At the time I saw her on the ground?
Q. No, prior to this accident and fight.
page 111 } A. Yes, sir.
Q. Describe the condition of her arm.
A. Her left arm was in a sling, she made out of a white piece of cloth at home there. She carried her left arm in a sling.
Q. Was her arm in a sling at the time you were approached by Mr. Allen and these other people?
A. Yes, sir.
Q. All right, sir. Now, getting back to—did you or did you not see Mrs. Romaczyk on the ground?
A. Yes, sir.
Q. Do you know who knocked her to the ground?
A. No, sir.
Q. Did you at any time see any of these defendants take a hold of Mrs. Romaczyk?
A. Seems like—I did see one of them have her by the left arm, the one that was in a sling.
Q. Which man was that?
A. I couldn't say which one it was.
Q. Was it you or your brother—her brother who had her by the arm?
A. No, sir, I'm sure of that.
Q. It was one of the three gentlemen, one of either Mr. Allen, Mr. Watkins or Mr. Stepp, is that right?

A. Yes, sir.

page 112 } Q. All right, sir. Then did the fight continue for any length of time?

A. After I was drug back out of the car from—when I placed her back into the car and I was drug back out, the—seemed like they were still trying to grab me.

Q. Who is "they" now?

A. Well—

Q. Use some names.

A. Mr. Allen and Mr. Stepp, they would grab each side of me, one on each arm and hold me and it seems as though Mr. Watkins could strike me from the front. Mr. Watkins swung once and I managed to duck and he fell on the ground.

Q. Mr. Watkins swung at you?

A. Yes, sir.

Q. You managed to duck and what?

A. And he fell on the ground.

Q. Who fell on the ground?

A. Mr. Watkins fell on the ground.

Q. All right, go ahead.

A. My wife, she in turn got out of the car again and she came out there and tried to get me out of the fight and in turn I was trying to get her out of it. My principal interest was to get her away from the three men, get her in the car where she would be safe.

Q. Was she fighting?

page 113 } A. I didn't see her fighting. All I could see, she was trying to stay between me—the three men and myself so that they wouldn't beat me.

Q. All right. When did the fight stop?

A. The length of time the fight went on, it would be a guess. I would say ten minutes or so but—

Q. Did you at any time ask these men to leave you alone?

A. I don't know whether I asked them to leave me alone or not.

Q. Or language to that effect?

A. I tried to get in my car the first time I had picked her up and put her in the car but whether orally I told them to leave me alone or not, I don't remember.

Q. Did you start this fight or did they start it?

A. They started the fight.

Q. How did the fight end? I mean why did it stop? Who stopped it, if anyone?

A. After the fight, it seemed to end just as quickly as it started. Mr. Allen and Mr. Stepp, they came to us and said, "get in the car and there's no harm done, no damage done. Just get in the car and go on about your business" but Mr.

Kazmere C. Romaczyk.

Watkins still wanted to fight and they seemed to try to press him away from us and let us get in the car and go on about our business and that's when I got into my car page 114 } and left.

Q. Did you leave as soon as you could leave from the scene?

A. Yes, sir, as soon as they would let me leave.

Q. Where did you go then?

A. I went to—the Esso filling station at the intersection of Aberdeen Road I believe that is, and Military Highway from which I called the Police Station.

Q. How much do you weight, Mr. Romaczyk?

A. My weight varies from 135 to 140 pounds.

Q. On October, could you give us any idea when this fracas occurred, could you give us any idea what your weight was?

A. Approximately 137 pounds.

Q. During the time during this accident and the fight and the fight following, were there any other people present at the scene?

A. There was quite a number of cars that stopped on both sides of the highway and people were standing there watching, some sitting in the cars watching.

Q. Did you ask them for assistance?

A. I had asked one man if he would go and call a Police Officer.

Q. Did any of those people make any effort to give you any assistance?

page 115 } A. No, sir.

Q. They just stood and watched, is that correct?

A. Yes, sir.

Q. Do you know who any of those people were?

A. No, sir, I do not know them.

Mr. Bateman: Answer Mr. Martin.

CROSS EXAMINATION.

By Mr. Smith:

Q. Mr. Romaczyk, let's talk about the accident a little bit. You were proceeding west on Military Highway, is that correct?

A. Yes, sir.

Q. And you never did see the Food truck until after you were struck?

Kazmere C. Romaczyk.

A. Yes, sir.

Q. That's correct?

A. Yes, sir.

Q. You never were traveling in the right-hand lane and passed the truck?

A. I could have passed the truck. Hours earlier. I don't know exactly what you mean by the question.

Q. I mean just prior to the accident, not hours earlier. Did you pass the truck at that time prior to the accident?

A. No, sir, I do not recall passing the truck
page 116 } prior to the accident.

Q. You don't know what they were talking about when they came up to you and told you you had cut in front of them, is that correct? Didn't you state that Mr. Allen or Mr. Stepp, one, you said that you had been stopped at the stop light and they said, no, that you had cut in front of them and stopped and you didn't know what they were talking about, is that right?

A. When they said I had cut in front of them, I was traveling west in the right-hand lane. There was a car sitting at that intersection in that right lane. I went from that right lane into the left lane, the passing lane. I stopped.

Q. You did then cut from the right-hand lane into the left-hand lane just before reaching the intersection, is that correct, because of a car stopped in the right-hand lane for the light?

A. Possibly some two or three hundred feet distance from the light.

Q. Two or three hundred feet?

A. I would say that possibly. I don't know exactly.

Q. What time of day did this happen?

A. Approximately six o'clock in the evening.

Q. Were you going to make a left turn at that intersection?

A. No, sir.

page 117 } Q. What was your purpose in getting in the left-hand lane then?

A. My purpose I guess was to pass the car that was sitting there at the light.

Q. Now you didn't see the Abernathy truck when you pulled from the right-hand lane into the passing lane, is that correct?

A. No. sir, I did not see it.

Q. Did you look for any traffic in the passing lane?

A. Yes, sir. I looked through my rear-view mirror inside my car and then I looked through my side-view mirror.

Kazmere C. Romaczyk.

Q. Was there any traffic at all behind you that you could see?

A. There was lights, car lights and such but there was nothing close enough that would endanger my cutting in from the right lane into the left lane.

Q. And it was dark at that time then. You needed lights?

A. Yes, sir, I did need lights.

Q. And when this accident occurred, was the vehicle in the right-hand lane still there?

A. Yes, sir, it was sitting there.

Q. Still there?

A. Yes, sir.

page 118 } Q. And what did they do, go on.

A. They went on when the light turned green.

Q. They went on. Had you gotten out of your car at that time when they left?

A. I had gotten out of the car immediately after the impact. I had gotten out of the car and looked at my rear, my rear end of my car.

Q. And you looked at the rear end of your car and then turned around to get back in, is that correct?

A. Yes, sir.

Q. And you say you partially got back in?

A. Yes, sir.

Q. Now, what was your intention then?

A. My intention was to get back into the car and proceed.

Q. To go ahead?

A. Yes, sir.

Q. So the impact wasn't enough to stop or even to talk to this other driver or anything. You were just going to go on about your business, is that correct?

A. The impact was pretty jolting and my greatest fear was that he had come over my bumper and crashed into my trunk.

Q. I understand that but that fear was done away with when you went back and looked at the car, isn't

page 119 } that correct?

A. When I saw his bumper resting against mine, I could not see any damage there.

Q. So then you are—well, you were going to go on though, weren't you?

A. Yes, sir.

Q. So the impact and jolt and everything after you had looked at it was not enough to concern you to even talk to the

driver of the other truck and you were merely going to go on and go ahead?

A. I—when I mentioned to him if he couldn't see where he was going—

Mr. Smith: Could you answer my question on a yes or no basis?

Mr. Bateman: I don't think he is restricted to—

Mr. Smith: He can give an explanation but I would like to hear the answer first.

Mr. Bateman: I would ask the Court to have the question read back to him and I would interpose an objection before he answers that question.

Court: I don't know—what is the purpose of this, Mr. Bateman? Tell me. I don't follow you.

Mr. Bateman: He's not allowed the witness to
page 120 } answer the question.

Court: Do you remember the question?

(At this time the last question was read to the witness).

Mr. Bateman: Your Honor, now I impose an objection. It's not subject to a yes or no answer.

Court: He may finish the answer.

By Mr. Smith:

Q. Were you going ahead?

Court: Let him finish. If he has any further answer, I'll let him answer.

A. I could not see any damage done to the rear of the car and the bumper sitting squarely on my bumper, I could not see whether the bumper was damaged or not. I talked to the driver and from the way that he talked back, I felt that it wouldn't do any good to try to—to come to any kind of discussion there at that time.

By Mr. Smith:

Q. Now, did you go back to the truck and talk to the driver?

A. I went back to the rear of my car. That's as far back I guess as I went.

Q. All right, sir. Now, did he get out?

Kazmere C. Romaczyk.

A. At the time I was at the rear of my car he
page 121 } did not get out.

Q. He did not get out?

A. No, sir.

Q. So when did you make this statement to him, Mr. Romaczyk, about couldn't he see where he was going?

A. At the time I was looking at the rear of my car.

Q. And he was still in the truck?

A. Yes, sir.

Q. And then you—that's all you said and then you went and got back in your car or started to get back in almost all the way in and you were going to drive away,is that correct?

A. Yes, sir.

Q. All right, sir. So then at that time you weren't hurt. Your wife wasn't hurt and your brother-in-law wasn't hurt, is that right?

A. I don't know.

Q. Weren't you going to leave the scene? Did you even know who the driver of the truck was?

A. No, sir, I did not know the driver.

Q. You did not and you were going to leave. So now you want this jury to believe that somebody got hurt from that first accident and you were getting in the car?

Mr. Bateman: I object to that.

By Mr. Smith:
page 122 } Q. And you were getting in the car and you were going to leave?

Court: He's asking him the question. Just ask him the question.

By Mr. Smith:

Q. You mean that you were going to get in the car and go ahead and drive away not knowing whether anybody was hurt in your car and not trying to find out who the driver of the other truck was?

Mr. Bateman: If your Honor please, that question has been answered before. He told him why he was leaving. The other man was hostile. I object to it.

Court: He's cross examining the witness. I'll let him answer it.

Kazmere C. Romaczyk.

By Mr. Smith:
Q. Is that correct?
A. Would you repeat the question, please?

Court: Read it back.

(At this time the last question was read to the witness).

A. When I—I was getting back in my car, the driver of the truck and his passenger gave me the impression they were trying to blame me for the accident which I knew it was not my fault but yet I could see no cooperation be-
page 123 } tween the driver of the truck and myself.
Q. All right. Now, Mr. Romaczyk, you have previously stated that your intent of getting back in the car was to leave. Am I not correct on that?
A. Yes, sir.
Q. And at that time no one from the truck had said one word to you, had they?
A. At the time I had decided to get back into my car and leave?
Q. That's right.
A. Yes, sir, they did say something.
Q. They said something?
A. Yes, sir.
Q. I thought nobody had said anything to you until you had started to get back in your car?
A. No, when I said to him if he could not see where he was going, he said that it was my fault, I had pulled in front of him. That was before I left the rear of my car.
Q. All right. Now, is that all that transpired?
A. That was all—the other man said something, I don't recall what it was but that was all that was said until I tried to get back into my car.
Q. And from that one sentence that it was vour fault, that you had pulled in front of him, you deducted that vou weren't going to get any cooperation and the thing for you
page 124 } was to leave?
A. No, sir, the passenger seemed like he was anxious to get out of the truck.
Q. Oh well now, Mr. Romaczyk. You mean to sit there and say now you can look at a man and see whether he's anxious to get out of a truck or not?
A. He was leaning over and eventually he crawled out of that truck.

Kazmere C. Romaczyk.

Q. Eventually. I'm talking about right now when you were looking at him, when he answered the question.

A. Yes, sir, he was yelling something out of the truck. I don't know what he said.

Q. You didn't hear it, did you?

A. It was audible. I heard it but it wasn't audible.

Q. The fact remains you were going to leave, go on without getting any information concerning the accident. Am I correct in that?

A. Yes, sir, I guess at that time you probably are correct.

Q. You say that is correct.

Court: He said, "yes at that time you probably are correct."

By Mr. Smith:

Q. All right, sir. You have heard of calling the page 125 } Police at an accident, haven't you?

A. There was no way I could call a Police, sir.

Q. No way you could call them?

A. Not from there, no, sir.

Q. But you have heard of calling them when you have had an accident, if there is any damage?

A. Yes, sir.

Mr. Bateman: Your Honor, I object to what he's heard about.

Court: I sustain that. I don't think that's important what he has heard.

By Mr. Smith:

Q. All right, sir. Now you state that when you got out and came back to the car, you said, "can't you see where you're going." Is that your language? Did you use the word, "Hell" in that conversation, Mr. Romaczyk?

A. Not to my—I do not remember using it, no, sir.

Q. Can you deny that you used it?

A. I do not remember cursing.

Q. Can you deny it?

Mr. Bateman: Your Honor, I object to that. He said he couldn't remember it.

Kazmere C. Romaczyk.

Mr. Smith: I'm asking him whether he can deny it whether he said it or not.

page 126 } Court: He's under cross examination.

Mr. Bateman: He doesn't have to answer the question if he doesn't remember it.

Court: I'll rule he can answer it.

Mr. Bateman: I object to it and note an exception.

By Mr. Smith:

Q. Can you deny that you used the word, "Hell" Mr. Romaczyk, or you're not sure?

A. I don't normally use it in front of strangers regardless of the circumstances.

Q. You don't normally use it where?

A. In front of strangers.

Court: In front of strangers, regardless of the circumstances. Talk a little louder.

By Mr. Smith:

Q. But you can't deny you didn't use it?

Mr. Bateman: Again objection.

Court: Overruled.

Mr. Bateman: Exception.

A. No, sir, I cannot deny that I didn't use it.

By Mr. Smith:

Q. All right, sir. So then you started back to the car. At that time were your wife and your brother-in-law still in the car?

page 127 } A. Yes, sir.

Q. They had not gotten out?

A. No, sir.

Q. And I believe you testified then that somebody came up and grabbed you by the arm, is that right?

A. No, sir, after I had gotten back in the car, two of the men, Mr. Allen and Mr. Stepp came to the car after which they said it was my fault that they hit me and then when one of them cursed my wife, I partially stood up and that's when one of the men grabbed me.

Kazmere C. Romaczyk.

Q. And no words had passed by your brother-in-law or by you at that time?

A. I don't understand the question.

Q. Had any of you three said anything back to them at that time after they made their remark?

A. When they said their remarks, the only thing that I said was that I was sitting at this light waiting for it to turn green and that's the only thing I can remember my wife saying.

Q. She said the same thing?

A. Maybe not the exact words.

Q. I mean the exact effect?

* * * * *

page 128 }

* * * * *

By Mr. Smith:

Q. Now Mr. Romaczyk, I believe we left off where you were being pulled out of the car after some words had passed between the two men who came up to your car and you and your wife, is that correct?

A. Yes, sir.

Q. Mr. Cantrell at this time hadn't entered into the picture at all?

A. No, sir.

page 129 } Q. He didn't say anything to these men either?

A. No, sir.

Q. All right, sir. Now who pulled you out of the car?

A. I'm sure it was Mr. Allen that pulled me out of the car.

Q. Mr. Allen?

A. Yes, sir.

Q. And what happened after that?

A. After he pulled me out of the car and away from the car, that's when I noticed the car was rolling forward again and then I looked. There was no one behind the wheel of my car to be driving it and I looked at the truck and it was also rolling forward and there was no one behind the wheel of it to be driving and I looked further back in line of traffic and I saw this second Abernathy truck pushing the first one.

Q. Pushing it. So there wasn't any second impact then, was it Where the Abernathy—the second truck hadn't come along then and hit the vehicles in the rear then, had it?

Kazmere C. Romaczyk.

A. I don't know whether he was jogging it or bouncing it or not. I don't know.

Q. But it was just rolling. You didn't hear any impact and didn't see your car jump with a jolt or anything of that kind?

page 130 } A. When I saw it going, it was being pushed.

Q. Just rolling?

A. Being pushed forward.

Q. Was the first truck up against it then when you saw it rolling?

A. The first truck was up against my car.

Q. And rolling right along with it, is that right?

A. Yes, sir.

Q. And you were outside at that time?

A. Yes, sir.

Q. Was your wife and Mr. Cantrell still inside, inside the car?

A. Yes, sir.

Q. They were?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir, I'm sure of that.

Q. All right, now. How did you get away from Mr. Allen?

A. I managed to pull free from him.

Q. Where did he have you?

A. He had me by the arm, this part of the arm (indicating).

Q. With one hand?

A. Yes, sir.

page 131 } Q. One hand?

A. Yes.

Q. And you broke away from him and what did you do then? Did you run somewhere or walk or do what?

A. At the time I broke away from him, I turned towards the car. That's when I noticed the car was rolling forward.

Q. And nobody behind it and then you noticed the second car and truck—and then you saw the second truck?

A. Yes, sir.

Q. And all this time while you were looking from one vehicle to the other nobody was bothering you at all?

A. They hadn't bothered me at that time physically. I don't know—

Q. That's what I mean. They didn't have hold of you, anybody?

A. No, once I broke free of them, they didn't have hold of me.

Kazmere C. Romaczyk.

Q. By breaking free, what did you do? Just pull away from them?

A. I managed to twist and pull away from them.

Q. Then I believe you stated on direct testimony you walked on back to the second truck, is that right?

A. I walked partially back to the truck. Just how far back I got, I don't remember.

page 132 } Q. That's when you yelled at the man or called to him to stop pushing the vehicle?

A. I asked him to stop pushing the truck because my car was sitting in front of the other truck.

Q. Where was Mr. Allen and Mr. Stepp all this time?

A. They were in the vicinity of my car.

Q. In other words, they had allowed you freely to walk past the truck number one and half-way to truck number two, is that right?

A. Whether it was a walk or half run, I don't recall.

Q. Well, you forgot all about this altercation at that time to run and tell the man to stop pushing the truck, the car?

A. Well, I didn't want him to push my car in the middle of the intersection.

Q. Well, at that time was it any in the intersection at all, your car?

A. It was approaching the intersection. It was getting close.

Q. Approaching it at that time when it was rolling?

A. Yes, sir.

Q. So the first impact hadn't pushed you into the intersection. As a matter of fact, hadn't even pushed you up to entering the intersection then, had it?

page 133 } A. I had had my foot on the brake when I was waiting for the light to turn.

Q. And it didn't move your car?

A. Well, I imagine it moved it some, yes, sir.

Q. But not very much?

A. That I don't know.

Q. All right. Now, after you made this comment to Mr. Watkins and then—what happened after that?

A. I came back to—I came back to my car where Mr. Allen and Mr. Stepp were. They weren't right at the car but I started back to my car.

Q. And your wife and Mr. Cantrell still in the car?

A. Yes, sir.

Q. Even though you had been so-called pulled out of your car, they didn't bother to get out at all at that time?

Kazmere C. Romaczyk.

A. No, sir.

Q. So you—they still remained in the car while you had been pulled out of the car, yanked free and gone back and said something to him and come back forward to your car. They stayed in the vehicle?

A. As best I can remember, they stayed in the vehicle.

Q. All right, sir. And Mr. Allen and Mr. Stepp were up by your car. They had made no attempt to follow you or anything of that kind, is that correct?

page 134 } A. It all happened so fast, whether they followed me I don't know.

Q. All right. Now then, Mr. Watkins came up, is that correct?

A. Yes, when I spoke to him, as I turned to come back to my car then he came up out of his truck.

Q. Then he came up. Is that what you said?

A. Yes, sir.

Q. And at that particular time now there had been no altercation at all, had there? No blows or anything of that kind other than you had been grabbed by the arm and lifted out of the car?

A. That was—up until that time.

Q. Up until that time, that's correct, isn't it?

A. That's the only thing I remember.

Q. Your wife and Mr. Cantrell and you all up until that time had no injuries and no trouble whatsoever, is that right?

A. That I don't know.

Q. What do you mean, you don't know?

A. I don't know whether my wife and Mr. Cantrell had injuries.

Q. How could they have gotten any injuries? They hadn't been outside of the car?

A. They may have had injuries in the car. I

page 135 } don't know.

Q. You don't know, is that right?

A. I am not in a position to know, no, sir.

Q. Now when you got back in the car now, I'm going back again to where you got out—got partially back into the car, before you got pulled out of the car. Where was your wife sitting? Was she beside you?

A. My wife was sitting in the—in the front seat beside me, not—this is at the time of the impact now or—

Q. I've gone back now to the time that you are getting back in the car after having looked to see whether you had any damage. Was your wife in the front seat then?

Kazmere C. Romaczyk.

A. Yes, sir.
Q. Mr. Cantrell in the front seat?
A. Mr. Cantrell I believe was in the back seat.
Q. He was riding in the back seat?
A. I believe he was.
Q. Just you and your wife up front then?
A. Yes, sir.
Q. Well, when you got back in the car or partially back in and you made a comment and your wife made a comment, did you look at her? Did you see her then after you got back in the car?
A. After I inspected my car?
Q. Yes.
page 136 } A. I got back in the car and—whether I said anything to her or not I don't remember.
Q. Well, you would have known if her lip had been cut, wouldn't you and she would have been bleeding from it? Wouldn't you have known it at that time?
A. I don't think I would have seen it because it was fairly dark. It wasn't—it wasn't night.
Q. Weren't the headlights on the truck behind you, Mr. Cantrell?
A. No, sir, they were not on.
Q. They were not on?
A. No, sir.
Q. And the intersection was not lit at all?
A. Just the stop light there, the best of my knowledge.
Q. All right, sir. Now after Watkins came up, then what happened?
A. That's when Mr. Stepp grabbed me and pushed me back between the rear of my car and the front of his—of the Allen truck.
Q. So between the rear of your car and the front of the first truck?
A. Yes, sir.
Q. How much room was there in between there?
A. The bumpers were—were met together there
page 137 } but the back of my car, the bumper extends past the car a little bit and of course the bumper—I believe extends forward of his truck a little bit and I would say maybe a foot and a half or two foot space above the bumpers. I'm not—I can't be sure of that but that's a guess.
Q. Was there any space in between the bumpers? Is that where you all were, between the two vehicles?

Kazmere C. Romaczyk.

A. There was no space that I can recall between the bumpers.

Q. You were just pushed up against the two vehicles, is that right?

A. I was pushed down between the—pinned into kind of a—a little space there where the two bumpers are meshed, the actual rear of my car and trunk and all, the bumper extends past that.

Q. All right, sir. Then did anybody hit you there?

A. Mr. Stepp grabbed me and pushed me back down in there and said, "come on boys, now we got him."

Q. What did they do?

A. Mr. Allen, I believe was, from where I was looking, on the right and Mr. Watkins was on the left. That's when I heard my wife's voice and it appeared to me that they were all getting ready to hit me and I didn't know which one was going to hit me first.

Q. What appeared? Now what happened
page 138 } though? Did they hit you?

A. Not at that time, no, sir.

Q. They did not?

A. Not at that time.

Q. All right, sir. Now, where was your wife? You say you heard a voice. Where was she?

A. She was approaching from my car. I saw her push through the men and try to get between the men and myself and she said, "now leave him alone."

Q. All right. Then what happened?

A. Then that's when I believe one of the men, I don't know which one it was, grabbed her by the arm and pulled it out of the sling, pulled her out of the way.

Q. You don't know which one that was?

A. I could not honestly say which one it was.

Q. Stepp still had hold of you?

A. No, when she said that, he freed me and the three men, they turned. She managed to get in there somehow and when they turned, things were happening so fast I couldn't remember every detail.

Q. You don't mean, Mr.—that the three men converged on your wife, do you?

A. One of them grabbed her and when they turned toward my wife, I managed to get up again and I was trying to get to her to get her out of the—get her back into the
page 139 } car.

Q. All right. Now get up. Had you been pushed down to the ground?

Kazmere C. Romaczyk.

A. No, I was not to the ground.
Q. Beg your pardon?
A. No, sir.
Q. You were not on the ground?
A. No, sir.
Q. They freed you then and turned towards your wife and one of them pulled the arm out of the sling, you said?
A. Yes, sir.
Q. And then—then what did you do? Did you get to your wife and get her back in the car?
A. No, sir, by the time I got up, someone else grabbed me and seemed like when they pulled her arm out of the sling—whether it pained her or just what, I don't know but she managed to be pulled aside and then two of the men grabbed me and the third man was going to—looked like he was getting ready to hit me from the front. One man was on each side of me.
Q. Who was on each side of you?
A. Allen and Stepp. Which side, I don't recall.
Q. They both had you. All right, now what happened then?
A. And Watkins was getting—
Q. I know what you said he was getting ready
page 140 } to do but what happened. Did he hit you?
A. I don't recall being hit that particular instant.
Q. You don't recall. Now, how much do you say you weigh, Mr. Romaczyk?
A. Approximately one hundred thirty-seven pounds.
Q. And it's been testified Mr. Watkins weights one hundred ninety-six and you tell me you don't know whether you were hit or not?
A. I was not hit in the face.
Q. You were not—were you hit at all?
A. The next day my arms were sore and my shoulders were sore.
Q. I asked you whether you were hit?
A. I think it's possible.

Court: Do you know whether you were hit or not?

A. I could not say definitely whether I was hit or not.

By Mr. Smith:
Q. You can't say definitely you were being hit. Both arms were being held, weren't they?

Kazmere C. Romaczyk.

A. Yes, sir.

Q. He couldn't have hit your arms then, could he?

A. Not that one instance, no, sir.

Q. All right, sir. So at that particular time page 141 } can I safely say Mr. Watkins did not hit you?

A. At that particular time, yes, sir, I think it would be safe to say.

Q. So far you hadn't been struck at all, have you; that is by a blow?

A. No, sir, but—well, my back and my legs were skinned up at that time.

Q. What was that from?

A. That's when they pushed me back over the bumpers of the car and truck.

Q. All right, sir. Now then, after you got away and your wife—you said the two grabbed you again and Mr. Watkins was standing there in front of you, then what happened?

A. The best I can remember, my wife got into it again. She came back out there again and tried to—tried to stop the fight.

Q. Where was Mr. Cantrell all this time?

A. I don't know.

Q. You don't know where he was?

A. At that point I would not know where he was.

Q. All right. Your wife got back in it again. What happened to her at that time, anything?

A. I don't recall. It was too many things happening all at once.

Q. All right, you don't recall anything happen- page 142 } ing to her that you can testify to?

A. Yes, sir.

Q. Then what happened to you?

A. It appeared to me—

Q. Now Mr. Romaczyk, I don't know what it appeared to be. I want the facts, what happened. That's what we're interested in, what happened, so tell me what happened?

A. Things happened too fast. I can't recall everything that happened.

Q. You said this thing took ten minutes. That's what you testified to on direct examination and now every question I asked you say it happened so fast you can't tell me what happened.

A. We were being pushed around, shoved around.

Q. Isn't that the whole thing in a nutshell, it was just a shoving and pushing match?

Kazmere C. Romaczyk.

A. No, sir.

Q. It is not? You haven't told me anything yet. What happened after you were grabbed by the two and Mr. Watkins was there?

A. I do recall my brother-in-law, James Cantrell being hit.

Q. Now I'm asking about you now. Let's stick with you here until we get through with you and then we'll pick up the other two. What happened to you?

page 143 } A. I suffered no more than a couple of sore, bruised shoulders the following day.

Q. Now what happened? I'm not asking about your injury now. I'm asking you what happened. I've got you to the point where the two men have you by the arm and Mr. Watkins is standing in front of you and your wife intercedes again. Now what happened? What did they do to you? Where did you go? Is that when everything all of a sudden broke up?

A. No, sir, I was—when she came in the second time, whether she got hit that time or not I don't know.

Court: You don't know.

By Mr. Smith:

Q. You don't know. All right, sir. What happened to you?

A. I was trying to get to my wife to get her out of the fight and get her back into the car.

Q. Did you get to her?

A. Once I got to her.

Q. Beg your pardon?

A. Once I got to her.

Court: Once he got to her.

By Mr. Smith:

Q. At this time?

A. No, it was whether it was this time or later, just when I cannot say.

page 144 } Q. All right. Now then, your wife got back in the car. You got her back in the car?

A. I picked her up and carried her back to the car.

Q. You picked her up and carried her back?

A. James Cantrell picked her up off the ground and carried her back to the car.

Q. And you don't know how she got on the ground?

A. No, sir.

Kazmere C. Romaczyk.

Q. Because both of them had—two men had hold of you and Mr. Watkins was standing there in front of you. Now who did she intercede with? Who did she try to get to, Mr. Watkins?

A. She—when those two men held me, she came between Mr. Watkins and myself on one occasion.

Q. All right.

A. Another occasion, Mr. Watkins swung at me and missed and fell to the ground.

Q. Swung at you and missed?

A. Yes, sir.

Q. Who had hold of you then?

A. I believe it was one man but which one I don't know.

Q. One man had you?

A. Yes, sir.

page 145 } Q. What did you do, duck your head?

A. I pulled away and managed to duck away from his swing.

Q. And he fell to the ground?

A. Yes, sir.

Q. Where was his blow aimed, for your head?

A. Yes, sir, it was aimed for my head.

Q. And was the man standing directly behind you that was holding you?

A. No, I believe he was standing on one of my sides. Which side I couldn't recall.

Q. All right, you got your wife back in the car. What did you do then? Did you get back in too?

Mr. Bateman: If your Honor please, I'm going to object. He's been over this three times. This is the third time he's gone back. It's repetitious.

Court: This is the last time he got back in the car.

Mr. Bateman: It's repetitious and I object to it.

Court: I don't think it is, the third time. If it is, I don't recall it.

By Mr. Smith:

Q. Did you get back in the car then and leave?

page 146 } A. I sat her down in the seat of the car. Before I could get into the car or do anything, someone had grabbed me and pulled me back out away from the car.

Q. Who was that?

A. I would not know. He grabbed me from the rear.

Kazmere C. Romaczyk.

Q. All right. So let me see if I am correct now, Mr. Allen, I mean Mr. Romaczyk. In all your testimony nobody has hit you with a fist, have they?
A. I wouldn't say they didn't.
Q. You wouldn't say what?
A. They did not hit me.
Q. Well, can you tell the jury an instance when they did?
A. I can't say they hit me and I wouldn't say they didn't hit me.
Q. You weren't hit in the face, were you?
A. No, sir.
Q. Did you have any bruises on your body?
A. Yes, sir.
Q. Where?
A. My right arm, my shoulder was *burised.*
Q. Shoulder but not anywhere on your body down your mid section, chest, back or anywhere?
A. No, sir, my shoulders and the back of my legs.
Q. The shoulder and the back of your legs
page 147 } where you pushed up against the car?
A. In the bumpers.
Q. Bumpers there. You had no injury from the accident whatsoever, did you?
A. No, sir.
Q. Now as I say, so far you don't know that anybody hit you in the face or in the body here?

Court: He's answered no, he has not. That's what he said several times.

By Mr. Smith:
Q. And you didn't see anybody hit your wife, did you?
A. No, sir.

Mr. Bateman: What was your answer?
Court: No, sir.

A. No, sir.

By Mr. Smith:
Q. And you haven't identified any of the defendants as having hold of your wife, have you, by name?
A. I haven't identified them. I couldn't be sure.
Q. All right, sir. Now Mr. Romaczyk, you stated that you all left; that this thing broke up about as sudden as it started,

is that correct, and you all drove on off and went to the Esso station where you called the Hampton Police?

A. Yes, sir.

page 148 } Q. Is that correct?

A. Yes, sir.

Q. Now did you later on in the company of the Hampton Police meet up with Mr. Stepp and Mr. Allen?

A. Yes, sir.

Q. Other than at the Police Station?

A. Yes, sir.

Q. All right, sir. Is it not correct that you were asked by the Hampton Police Officer, you and your wife and Mr. Cantrell, whether Mr. Allen was in this altercation or not?

A. No, sir, we were not asked that.

Q. You were not?

A. No.

Q. When you made your complaint to the Police Department, what did you tell them?

A. Over the phone or to the policeman?

Q. Yes, what you were looking for. Who you wanted them to pick up.

A. I told them it was two trucks, the names on the truck were Abernathy's Food, Meals on Wheels. There were two men in one truck and one man in the second truck and I told them roughly what happened at the intersection in just a few words and they told me to remain there by the telephone, that they would get in touch with me and then the page 149 } phone rang sometime later. How long, I don't recall and the man on the other end of the phone said they had had one of the trucks at the Newmarket Shopping Center, if I would come down there.

Q. All right, sir. Now you went there and as a result of the Police being there and you being there and Mr. Allen being there and Mr. Stepp being there, the only person taken to Police Headquarters was Mr. Stepp, is that correct?

A. Yes, sir.

Q. So you made no charges against Mr. Allen then, did you?

A. I — the Police Officer asked me if I had seen Allen hit anyone. I said. "no, I did not see him hit anyone" and the Police Officer turned and said he was free to go.

Q. So Mr. Allen was turned loose there by the Police?

A. Yes, sir.

Q. And Mr. Stepp, now who did he hit? Who did you tell the Police that he hit?

Kazmere C. Romaczyk.

A. I told the Police that Mr. Stepp grabbed me and pushed me down between the rear of my car and the front of his truck.

Q. And did your wife make any comment about her being abused or did you make any comment that any of these men had abused her at that time?

A. My wife I believe made the comment that it
page 150 } was Mr. Stepp that pulled her arm.

Q. That pulled her arm?

A. Yes.

Q. All right, sir, and you didn't make any comment to the Police about Mr. Allen pulling you out of the car or anything of that kind, did you?

A. No, sir, I was very upset at the time.

Q. All right, so from the time that you talked to the Police and the arrest was being made, the only person that you and your wife incriminated was Mr. Stepp, is that correct?

A. I didn't feel that I was the one that should say who was guilty or who wasn't.

The Court: He's asking you a question. Did you or did you not. Can you answer that?

A. Well, please repeat the question.

(At this time the last question was read to the witness.)

A. Like I said, — I'm trying to say, the Police Officer asked me if I saw Mr. Allen hit anyone and I said no. Now whether that —

Q. So the only person that was charged or taken down and arrested on you and your wife and Mr. Cantrell's say-so was Mr. Stepp, isn't that correct?

The Court: Was he the only one?

By Mr. Smith:

page 151 } Q. That's a very simple question. He was the only one arrested, wasn't he?

A. Yes, sir, he was the only one taken down to the Police Station.

Q. After you got to the Police Station now, didn't you drop the charges against Mr. Stepp or agree to withdraw them?

A. Yes, sir.

Q. On the basis that he would pay the — any doctor and hospital bill that you all might have, is that correct?

A. He said he would pay any of the expenses.

Q. All right sir, and then you carried Mr. Stepp back to Newmarket where he got his car, is that correct?

A. Yes, sir.

Q. Everybody very buddy, buddy, at that time, is that right?

A. No, sir.

Q. No?

A. No, sir.

Q. But you gave him a ride back?

A. I gave him a ride back, yes, sir.

Q. And he is the one supposedly who grabbed you and pulled your wife's arm, is that right?

A. Yes, sir.

• • • • •

page 152 }

• • • • •

JAMES C. CANTRELL,

called as a witness by the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. Will you state your name, please sir.

A. James C. Cantrell.

Q. Mr. Cantrell, will you talk loud enough so the jury can hear you and of course counsel over at the table can hear you too. Where do you live, Mr. Cantrell?

A. Victoria, Virginia, now.

Q. Are you related to Mrs. Romaczyk?

A. Yes, sir.

Q. What relation are you to her?

A. I'm her brother.

Q. How old are you, sir?

A. Eighteen.

Q. Do you know approximately how much you weigh?

James C. Cantrell.

A. Around one forty-two.

page 153 } Q. Now directing your attention to October the 3rd, of last year, did you have occasion to see the defendants, Allen and Watkins and so forth?

A. Yes, sir.

Q. Where did you see them?

A. On Military Highway at Queen Street, I believe.

Q. In whose car — rather, first of all, were you in an automobile?

A. Yes, sir.

Q. In whose car?

A. Mr. Romaczyk's.

Q. Where were you seated in the car?

A. In the back seat.

Q. And who was seated on the front seat?

A. Mrs. Romaczyk and Mr. Romaczyk.

Q. And where were you going from and to on the afternoon of October 3?

A. We were coming from Mr. and Mrs. Romaczyk's home and we were going to my mother's.

Q. Where is that?

A. Victoria, Virginia.

Q. All right. Now, did you see Mr. Allen, the defendant, Mr. Allen that day?

A. Yes, sir.

Q. What was he doing when you saw him?

page 154 } A. Well, did you state —

Q. Speak a little louder, sir. I can't hear you.

A. At first, the first time I saw him?

Q. The first time you saw him. What was he doing? Was he in another car or vehicle?

A. Well, he came up to our car.

Q. Was he driving another car?

A. Yes, I believe he was.

Q. What kind was it, do you know?

A. It was truck.

Q. It was a truck?

A. Yes, sir.

Q. All right, now did a collision occur and if so, between whom?

A. Yes, sir, a collision did occur between the truck and car.

Q. Now was that truck operated by Mr. Allen?

A. Yes, sir.

Q. What — describe the collision? What part of the truck came in what part of the car?

James C. Cantrell.

A. Well, the truck ran into the back of our car.

Q. All right. Now, just prior to the time the accident occurred, would you tell us whether or not the car in which were riding was moving or stopped?

A. Just before the accident?

page 155 } Q. Yes.

A. We had stopped at a stop light.

Q. And how long had you been stopped before the accident occurred?

A. Several seconds there.

Q. And immediately following the accident, did you observe any fight between any parties?

A. Yes, sir.

Q. Who did you observe fighting?

A. Mr. Allen and Mr. Watkins and Mr. Stepp.

Q. Who were they fighting with?

A. They were fighting with Mr. and Mrs. Romaczyk and myself.

Q. Tell us how the fight started, if you know?

A. Well, after the accident occurred and my brother-in-law, Mr. Romaczyk, he went back to see if it was any damage done to the car and I don't think it was enough—

Mr. Smith: What was that?

A. I didn't think it was enough to — pay much attention to right at that time and he got back in his car, started to get back in his car and then Mr. Allen and Mr. Stepp came up to the car before he could close the door and started an argument.

By Mr. Bateman:

Q. What, if anything, did they say and to whom

page 156 } did they say it?

A. Well, they were telling us it was all our fault; that we had pulled out in front of them. He just kept telling us it was our fault and —

Q. Did they curse or use any profanity?

Mr. Smith: Objection.

A. Yes, sir.

Mr. Smith: Leading question.

Mr. Bateman: All right, sir.

The Court: Don't lead him.

James C. Cantrell.

By Mr. Bateman:

Q. State whether or not you heard any profanity, and if so, who used it?

A. Yes, I did hear some. I believe it was Mr. Stepp.

Q. All right. And who was that directed to?

A. My sister I believe.

Q. To your sister?

A. Yes.

Q. Would that be Mrs. Romaczyk?

A. Yes, sir.

Mr. Bateman: All right.

The Court: Let him state what it was. What did he say.

Mr. Bateman: All right, if you want to ask page 157 } him.

The Court: Yes, sir.

By Mr. Bateman:

Q. What did he say?

A. Just what he said?

Q. Yes.

A. He called her a Goddamn liar.

Q. All right. Now immediately following that conversation, was there any blows struck and if so, who struck them?

A. Well, my sister, Mrs. Romaczyk, was hit and I was hit.

Q. Who hit you?

A. Watkins.

Mr. Smith: Objection. That's a leading question and I can't hear the witness either.

The Court: He said he was hit.

Mr. Smith: He hasn't said he was hit yet.

The Court: He said he was hit.

Mr. Smith: I can't hear him. I beg your pardon.

By Mr. Bateman:

Q. Speak a little louder, please. Talk loud enough so this gentleman can hear you and these gentlemen want to hear you. All right, you say you were hit. Who hit page 158 } you?

A. Watkins hit me.

Q. All right, who hit Mrs. Romaczyk?

A. I believe Watkins also hit her.

James C. Cantrell.

Mr. Martin: Objection, if the Court please. What the boy believes and what he knows are two different things.

The Court: Do you know who hit her?

A. Well, he hit me first.

The Court: You said Watkins hit you?

A. Yes, sir.

The Court: Now do you know who hit the other party?

A. Well, I didn't see them hit her. He hit me. He was getting ready to hit her and I stepped in front of him. Then at the same time Mr. Stepp and Mr. Allen had my brother-in-law pinned up against the truck and when I stepped in front of my sister to catch her blow, he hit me and it stunned me and when I came to, she was lying on the ground and Mr. Stepp and Mr. Allen still were tangling with my brother-in-law, Mr. Romaczyk.

By Mr. Bateman:

Q. Did Mr. Allen strike you at any time?

A. I don't think so.

Q. Did you see Mr. Allen strike anyone else?

A. No. sir.

page 159 } Q. Was he present when the fight was in progress?

A. Yes, sir.

Q. Was he participating in it?

A. Yes, sir.

Q. But you didn't actually see him hit him?

A. No, sir.

Q. Is that right? Did you see Mr. Allen leave the scene and walk across the street and turn his back to the accident scene and where you people were having the trouble?

A. No, sir.

Q. Did he stay—correction. Strike it please. At any time during the problem that you were having there, the discussion, the fight or the automobile accident, did you observe Mr. Allen leave the immediate vicinity?

A. No, sir.

Q. Was he present during the entire time of all the scuffling and so forth?

A. Yes, sir.

James C. Cantrell.

Q. Now, who was it that hit you?
A. Mr. Watkins.
Q. And you say you stepped in between him and your sister; that he was aiming to hit your sister, is that right?
A. Yes, sir.
Q. And I believe you said after he struck you, that you later observed your sister laying on the ground?
page 160 } A. Yes, sir.
Q. Did you see anybody twist your sister's arm and if so, whom?
A. I don't — I don't think I saw anyone twist her arm. I'm not sure.

Mr. Bateman: Answer Mr. Martin. Mr. Smith.

CROSS EXAMINATION.

By Mr. Smith:
Q. Mr. Cantrell, you didn't get hurt in the accident then, did you?
A. When the truck hit the car, it jerked my head and later on my head begin to hurt and my neck. Whether it was caused in the accident, I couldn't say.
Q. Did you tell that to the doctor?
A. Yes, sir.
Q. You did?
A. I believe I did.
Q. Maybe you didn't?

The Court: He said, "I believe I did."

By Mr. Smith:
Q. You believe you did. Did he give you any treatment for it?
A. I don't remember.
Q. You don't remember?
A. No, sir.
page 161 } Q. What did you — was that the only thing you got from the accident?
A. No, I have had my upper lip and my bottom lip — from the accident.
Q. From the accident?
A. Yes, sir.
Q. That's the only thing?
A. Yes, sir.

Q. And you received no treatment for that for your neck?
A. I don't remember.
Q. You don't remember?
A. Whether I had any treatment for that or not.
Q. Well then, it must have stopped then pretty quick then, didn't it?
A. No, it didn't.
Q. It did not. Would it surprise you to know that on the doctor's report there's no mention of any trouble as to your neck or head or anything of that kind.

Mr. Bateman: I object to that, if your Honor please. This man is not presenting a claim here.
Mr. Smith: It goes to his credibility.
The Court: He made a statement and he has a right to ask him about the statement.

page 162 } Mr. Bateman: I object to what the doctor said. He can ask him what he knows but not as to what the statement the doctor made.

The Court: That hasn't anything to do with this case. You can test his veracity all you want.

By Mr. Smith:
Q. All right, sir. Now, on the accident, Mr. Cantrell, were you all in the right-hand lane at any time or just prior to the accident, traveling in the right-hand lane of the four lane highway?
A. We were in the right-hand lane at first.

Mr. Bateman: Your Honor, I object to this question. It goes beyond the realm of cross examination. I did not ask this witness where the vehicle was.
The Court: I will let him answer it.
Mr. Bateman: And this is certainly not cross examination. He's adopting him as his own witness.
The Court: Proceed.
Mr. Bateman: Objection.

By Mr. Smith:
Q. Were you in the right-hand lane? You said you were I believe?

page 163 } A. Yes, sir.
Q. And when did you cut into the passing lane? How far back up the road is what I mean.

A. It was I guess several hundred yards or something.

James C. Cantrell.

Q. Several hundred yards?
A. I think it was, yes, sir.
Q. And did you see a car stopped at the intersection in the right-hand lane when your brother-in-law switched lanes? Could you see up to the intersection?
A. Yes, sir.
Q. You could?
A. Yes, sir.
Q. All right, was there a car there?
A. Yes, sir.
Q. There was?
A. Yes, sir.
Q. All right. You pulled into the inside lane and came to a stop, is that right?
A. Yes, sir.

Mr. Bateman: Your Honor, I'm going to object to this question. It was not covered on direct examination. It's not proper for cross examination.
Mr. Smith: He's a witness to the accident, a witness in the passenger's car.
Mr. Bateman: It is not proper cross examination.
The Court: The Court rules he can testify.
page 164 } Go ahead.
Mr. Bateman: Save the objection.
Mr. Smith: Would you read the question? I don't remember where I was.

(At this time the last question was read.)

By Mr. Smith:
Q. How long were you stopped?
A. Several seconds there.
Q. You then felt the impact of the truck?
A. Yes, sir.
Q. Had you ever seen the truck before?
A. No, I haven't.
Q. You had not?
A. No.
Q. On the highway I mean?
A. No, I didn't see it.
Q. And you were—what did it move the car any distance?
A. I couldn't say whether it did or not.
Q. You don't know whether it moved the car or not?
A. No.

James C. Cantrell.

Q. Did it throw you forward?
A. Yes, it did.
page 165 } Q. Down into the seat
A. No, not—I was sitting in the seat.
Q. Didn't throw you off of it?
A. No, sir.
Q. Didn't throw your sister up into the dash-board?
A. I don't know.
Q. And your brother got out of the car, I mean your brother-in-law got out of the car at that time, didn't he?
A. Yes, sir.
Q. Afterwards?
A. Yes.
Q. How long was he outside?
A. A minute or two, something like that.
Q. Did you hear any comments made then by him or anyone else while he was outside?
A. No, sir.
Q. And he came to get back, back in the car, is that right?
A. Yes, sir.
Q. Was your sister hurt at that time?
A. I don't know.
Q. Well, she didn't say anything within that two minutes about her lip being cut or anything of that kind or she hurt her arm or anything?
page 165-A } A. She didn't say anything.
Q. She didn't say anything?
A. Not about that.
Q. And your brother-in-law was getting back in the car. Did he make any statement about there wasn't any damage and he was going on?
A. I don't think so.
Q. You don't think so. All right, and then he was pulled out of the car, is that right?
A. Yes, sir.
Q. And did you stay in the car?
A. For a few seconds I think.
Q. Just a few seconds?
A. Yes, maybe a minute.
Q. Where were you when the second Abernathy truck came up?
A. I believe I was still in the car.
Q. Still in the car?
A. I think so, yes, sir.
Q. And how much time passed before that truck came up?

James C. Cantrell.

A. Not much.

Q. Well, had the two boys grabbed your brother-in-law and — where were they holding him, do you know?

A. Between the truck and the car.

page 166 } Q. How do you know that?

A. Well, I could see out through the window.

Q. You could see out the window?

A. Yes, sir.

Q. And is this a four door or two door car?

A. Two door.

Q. Did you attempt to get out then?

A. Yes, sir.

Q. And when did you know that the Abernathy truck was there, the second one?

A. I believe after I got out.

Q. After you got out?

A. Yes, sir.

Q. So you didn't know anything about the first truck being pushed into your car the second time then, did you?

A. Pardon?

Q. Did you know anything about another impact?

A. No, sir.

Q. You did not.

A. I was —

Q. You didn't even feel that?

A. Wait, the truck came up behind us, behind the first truck and stopped. Then I got out and the car — after I got out, a few seconds after I got out, the car started

page 167 } rolling a little bit.

Q. Was your sister out then?

A. I don't know.

Q. You don't know whether she out of the car then or not?

A. No, sir, I don't remember.

Q. But you were outside when the car started to roll?

A. I believe I was. I'm not sure.

Q. All right, sir. Now you said that they had your brother pushed up against — your brother-in-law pushed up against the car. That is, Mr. Stepp and Mr. Allen?

A. He was between the car and the truck.

Q. And when did you first see Mr. Watkins?

A. He got out after — I believe my brother-in-law went back and asked him to quit — he was bumping the first truck which was bumping our car, pushed it under the stop light.

Q. You were outside then. You saw that happen?

A. No, I don't remember whether I was out at that time or not.

Q. All right. sir. And then when did you first see Watkins?

A. After my brother-in-law went back and asked him to —

Q. Quit pushing the car?

page 168 } A. Quit pushing the car.

Q. All right, then what did he do, get out?

A. He got out.

Q. And then what happened?

A. He told us if we was arguing with his buddies, we was arguing with him and he started fighting also.

Q. I mean did he just up and hit you then?

A. Not right then, no.

Q. What did he do?

A. He was after my brother-in-law.

Q. After your brother-in-law?

A. Yes.

Q. And who else was — was anybody else after your brother-in-law?

A. All three of them.

Q. All three of them?

A. Yes.

Q. How did you finally get into the picture?

A. Well, I was trying to help him out.

Q. You were trying to help him out?

A. Yes.

Q. In what way?

A. Trying to, you see, all three of them was after him.

Q. That's right.

page 169 } A. I was trying to draw some of them away from him.

Q. In what manner?

A. Well, I didn't say anything.

Q. Were you hitting him, wrestling him, pushing him, talking to him?

A. I was just standing around there.

Q. Just standing there and in that manner you were going to draw one of them away from him, is that right?

A. No.

Q. Then what were you going to do?

A. Let's see. My sister was out there also. She was out. Well, all three of them was after my brother-in-law. Well, I was standing out there trying to get in between him and the three of those and now and then I got pushed out of the way from them.

James C. Cantrell.

Q. You were trying to get in between your brother-in-law and the three?

A. One of them, anyhow.

Q. Well, were the three of them standing in front of your brother-in-law right in front of the—where they had him pinned in, is that what you are saying?

A. Yes, sir.

Q. What?

A. Yes, sir.

page 170 } Q. Nobody had hold of them, did they?

A. Yes, I think all of them did.

Q. All of them had hold of him?

A. I think so.

Q. All three of these—these two bigs boys here and this other big boy you have seen, all three of them had hold of this 135 pound boy?

A. As much as I could see, I think so.

Q. Nobody hit him though, did they?

A. I didn't see anybody hit him.

Q. You didn't see anybody hit him. All right, and you said you tried to get into it and they pushed you aside, is that right?

A. Yes, sir.

Q. How about your sister? Did she try to get into it?

A. Yes, sir.

Q. And what did they do to her?

A. They hit her a couple of times I think.

Q. They hit her?

A. I think so.

Q. Who hit her?

A. I don't know.

Q. You mean with their fist?

A. I don't know. I didn't see them hit her.

page 171 } Q. You didn't see anybody hit her then, did you?

A. No.

Q. When did you get hit?

A. They had my brother-in-law, two of them, Allen and Stepp had him backed up against the truck and Watkins had my sister backed up against the truck getting ready to hit her and that's—

Q. What do you mean getting ready to hit her. How do you know he was getting ready to hit her?

A. Because he had his fist drawn back getting ready to hit her.

James C. Cantrell.

Q. This boy here, this boy was going to hit your sister?
A. Yes.
Q. With his fist?
A. Yes.
Q. All right, then what did you do?
A. I stepped in front of him.
Q. You stepped in front of him?
A. Yes, sir.
Q. Did he have hold of your sister?
A. By her neck (indicating).
Q. By her neck?
A. Yes.
Q. And you got in front of him?
page 172 } A. Yes.
Q. And how did you manage that?
A. His arm was up, you see, and I tried to slip between his arm and he hit me.
Q. Rather than trying to pull him off, you were just going to stick your face up in front of your sister's?
A. Yes, sir.
Q. And you got hit. Where did you get hit?
A. In the mouth.
Q. In the mouth. That's where you had the blow to your mouth, was from the fist, is that right?
A. Yes.
Q. Did you have any other bruises or anything from your fight?
A. Well, I still have a knot here on my chin.
Q. Is that from that blow too?
A. I think so. It wasn't there before.
Q. Well then, it didn't come from the accident either, did it?
A. No, sir, I don't think so.
Q. And you didn't see Allen, Mr. Allen hit anyone, did you?
A. No, sir.
Q. Did you see Mr. Stepp hit anyone?
A. No, sir.
page 173 } Q. You saw no one hit your wife, I mean your sister?
A. No, sir.
Q. And you saw no one hit Mr. Romaczyk?
A. No, sir.
Q. And after you were hit, you say you were stunned. Were you knocked down?

James C. Cantrell.

A. No, sir, I was stumbling around there on the ground there.

Court: Stumbling around on the ground.

By Mr. Smith:
Q. Stumbling around on the ground. When did you see your sister on the ground?
A. I guess it was a few seconds after he hit me.
Q. Where was she? I mean was she right there where she had been?
A. Right around in there I think. Right around there. I don't think she was at the same place.
Q. Sitting down or lying down?
A. She was lying down.
Q. Lying down?
A. Yes, sir.
Q. And did her husband ever get her back into the car?
A. I got her back in the car at that time.
page 174 } Q. You got her back in the car?
A. Yes, sir.

Court: At that time.

By Mr. Smith:
Q. At that time. And then did she get out again?
A. I think so.
Q. You think she did?
A. Yes.
Q. And got back into it again, is that right?
A. Yes, sir.
Q. Now did you make any comments at all out there, Mr. Cantrell?
A. None that I can remember.
Q. Never opened your mouth?
A. No, sir, I don't think so.
Q. At all?
A. No, sir.
Q. Did your sister say anything?
A. I don't know.
Q. You don't remember. Now, after this thing happened and you all drove off, you went down to an Esso station and Mr. Romaczyk called the Police, didn't he?
A. Yes, sir.

James C. Cantrell.

Q. And then you later drove I believe to Newmarket where you met up with Mr. Stepp and Mr. Allen, is that correct?

page 175 } Mr. Bateman: If your Honor please, another objection. It goes beyond the direct examination.

Court: All pertains to the same thing.

Mr. Bateman: I would like to state the objection now to keep from having to get up every time.

Court: All right, go ahead.

By Mr. Smith:

Q. You met up with Mr. Allen and Mr. Stepp and the Police Officer and you all three, is that correct?

A. Yes, sir.

Q. And as a result of that, Mr. Stepp was arrested, is that correct?

A. He was taken down to the Police Station.

Q. Taken down to the Police Station?

A. Yes, sir.

Q. Mr. Allen was not?

A. No, sir.

Q. No one accused Mr. Allen then of doing anything, is that correct?

A. We told the Officer that we didn't see him hit anyone.

Q. You didn't see him hit anyone?

A. No, sir.

Q. So he was letting—

page 176 } A. Yes, sir.

Q. Now after you got down to the Police Station, the charges were dropped by you all, weren't they, against Mr. Stepp?

A. Yes, sir.

Q. And why?

A. Well, the Officer that had taken Mr. Stepp in kept insisting that we turn him loose, that we couldn't prove anything.

Q. Wasn't any agreement made by Mr. Stepp that he would pay the doctor's bill, if there were any?

A. He said he would, yes, sir.

Q. And wasn't that the reason that they were dropped?

A. I don't know.

Q. And then who left the Police Station together?

A. All four of us.

Q. And did Mr. Stepp get in your car?

A. Yes, sir.
Q. And you all drove him back to Newmarket?
A. Yes, sir.
Q. Where he got out?
A. Yes, sir.
Q. Do you have a lawsuit pending?
A. Yes, sir.

page 177 } Mr. Smith: That's all. Just a moment. Just one other question, Mr. Cantrell.

By Mr. Smith:
Q. You stated that you were in the car when your brother-in-law got out, was pulled out of the car and that you didn't get out until later on, is that correct?
A. A few seconds later.
Q. And you didn't know whether your sister was still in the car then or not?
A. I don't remember whether she got out first or I got out first.
Q. Did you both get out there at the same time?
A. I don't remember.
Q. Well, do you know—how did you get out of the car?
A. I got out on the left-hand side.
Q. On the driver's side?
A. Yes, sir.
Q. And you don't know whether she was still in there or not?
A. No, sir, I don't remember.

* * * * *

page 178 } MRS. CHARLOTTE ROMACZYK,
called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:
Q. Would you state your name, please.
A. Mrs. Charlotte Romaczyk.
Q. Where do you live, Mrs. Romaczyk?
A. 142 Chichester Avenue.
Q. Directing your attention to October 3, 1958 did you see the defendants, Allen and Watkins?

Charlotte Romaczyk.

A. Pardon?

Q. Did you see—directing your attention to October 3, 1958 did you see the defendants, Allen or—or Watkins?

A. Yes, sir.

Q. Where did you see them?

A. I saw them after the accident on Pembroke and West Queen.

Q. Would you speak a little louder now. I want to hear you back here. You saw them where?

A. Just after the accident on Pembroke and West Queen.

Q. All right. Who was involved in an accident?

A. Mr. Allen, Stepp and Watkins.

Q. Would you tell us what happened, as briefly
page 179 } as possible, as to the accident, sir.

A. Well, as my husband stopped for the stop light a few seconds after he stopped, the first Abernathy truck hit us in the rear. My husband got out to look at the damage and turned around and came back to the car and then Mr. Allen and Mr. Stepp got out of the truck and come over to the car and started arguing. They told my husband it was all his fault; if he hadn't have stopped, they wouldn't have hit us and they said we had pulled out in front of them and I told him it wasn't so because we had come to a complete stop and we had stopped for a few seconds before he hit us and Mr. Stepp told me I was Goddamn liar.

Q. What happened after that?

A. Well, my husband said, "well, you can't talk to my wife like that" and he stood up and then Allen grabbed him by the shoulder and pulled him out of the car.

Q. Mr. Allen grabbed him by the shoulder?

A. Yes.

Q. All right. What happened after that?

A. Well, Allen and Stepp pushed him a couple of times and he was dodging. He was breaking away from them when he noticed the car moving and he went back and looked and it was the second Abernathy truck there and he asked the driver of the second truck which was Watkins, if he couldn' see his car in front of him and please don't push it. He
page 180 } was pushing it under the stop light.

Q. All right. Following that, what, if anything, happened?

A. Watkins got out of the car and came over to where Stepp, Allen and my husband was.

Q. All right. What happened then?

Charlotte Romaczyk.

A. And Stepp and Allen grabbed Kass, my husband by the shoulder and pushed him up against the truck and one of them said, "come on boys, we got him" and Mr. Watkins was going to beat him.

Q. What, if anything, did you do?

A. I got out of the car and tried to get between Watkins and my husband.

Q. Did you say anything to them or do anything?

A. I told them to leave him alone.

Q. Did you attempt to engage in the fight in any way?

A. No, I tried to get between them. I thought if they saw a woman in there, they wouldn't swing.

Q. Did any of them hit you and if so, whom?

A. Watkins hit me.

Q. What did he hit you with?

A. He hit me with his fist.

Q. What, if anything did that do to you?

A. Well, he hit me a glancing blow and it page 181 } stunned me.

Q. Where did he hit you?

A. He hit me on the side of my face. I think Doctor Carbonara would have it in his record; I had a knot on the side of my face.

Q. What, if anything, happened after that?

A. Stepp grabbed me by the arm and I had it in a sling and pulled it out and twisted it.

Court: Who did?

A. Stepp.

By Mr. Bateman:

Q. Did Watkins get in a fight with anyone else?

A. He tried a number of times to hit my husband.

Q. What kept him from hitting your husband?

A. Well, my husband is real light and small and he kept ducking.

Q. Did you see Mr. Allen hit anyone and if so, whom?

A. I didn't see him hit anyone. I saw him try to hit someone.

Q. Who was he trying to hit?

A. He was trying to hit my husband.

Q. You have heard Mr. Allen testify that he walked away from the accident scene while the fighting was going on and

had his back to it all during that time. Was that true or not?

page 182 } A. No, it isn't.

Q. Was he present where the fight was going on?

A. He was present the whole time.

Q. And was he participating—was he or not participating in the fracas?

A. He was participating in it.

Q. You cannot state that he definitely hit any individual but he was participating in it, is that correct?

A. Yes.

Q. All right. Now, going back to the automobile, would you describe the impact to the car in which you were riding?

A. It was quite a blow. It threw me forward and jerked back and cracked my neck. It was hard enough to do that.

Q. All right. Now, did you—do you recall any other thing that occurred to you as a result of that impact as far as the car was concerned?

A. No, it just—I just hit my shoulder on the dash and it hurt my neck.

Q. All right. Now following the impact, would you tell us what injuries, if any, was incurred by you as a result of this fight?

A. During the fight?

Q. You said you got hit?

A. Yes, sir.

page 183 } Q. All right, tell us what—how many times were you hit?

A. I was hit three times.

Q. By whom?

A. That I know of.

Q. By whom?

A. Watkins. The third time was Stepp when he twisted my arm so I was hit twice by Watkins and then Stepp twisted my arm.

Q. Would it have been possible for you to have been hit by anyone and you not have seen them?

A. Yes.

Q. Now describe to the jury what injuries you sustained in the fight?

A. I was hit in the mouth and—inside of my lip was cut where my teeth went almost through the gum and I had a large knot on the side of my face where one of them hit me with their fist on the side of my face and I had two stitches

Charlotte Romaczyk.

torn out of my arm. I had bruises on my leg and I had bruises on my back.

Q. Did you say or do anything to these people to incite this action on their part?

A. I just told them that we had already made a complete stop when we got to the stop light and it wasn't

page 184 } our fault.

Q. Was that the only statement that you—

A. Beside the statement that I asked them to leave my husband alone.

Q. During this fight, were you as a result of any of the blows or otherwise, were you knocked down?

A. I was knocked well, completely out one time and twice I was stunned.

Q. Were you knocked down to the ground?

A. Yes.

Q. Were there any other people around where this thing occurred?

A. There were a number of people.

Q. Did you ask them for assistance?

A. I asked them couldn't they do something.

Q. Did anyone volunteer to do anything?

A. No one volunteered. A couple of men started out of the cars but that was all.

Q. Now immediately prior to this incident I believe your arm had been injured, is that correct?

A. Yes.

Q. How did that happen?

A. I was making a dress and I had a straight razor that I use to cut the hem loose when I turn up the hems on my dress and I started to the door. Someone knocked on the door and I started out of my bedroom to the door to answer

page 185 } it and I tripped over our floor furnace and fell on the razor.

Q. Which arm did you cut?

A. I cut my left one.

Q. All right. Now, did that require any medical attention?

A. Yes, Doctor Carbonara took five stitches.

Q. How long was that before the Friday that this incident occurred?

A. I hurt my arm Wednesday morning just after I took the children—

Q. This occurred on Friday, is that correct?

A. Yes, sir.

Charlotte Romaczyk.

Q. And did you see the doctor immediately after the—you had the accident and cut your arm?

A. Yes. In fact, the person that came to the door, was a friend of mine and she heard me fall and she came in the house and we walked right on out of the front door and went to Doctor Carbonara's office.

Q. And your arm was dressed then, is that correct?

A. Yes, sir.

Q. Was it dressed between that time and the time the accident happened?

A. He dressed it the next day.

Q. How was your arm progressing then?

A. Fine. He said it looked good.

page 186 } Q. Now following the accident, was there any change in the condition of your arm?

A. Yes. My arm hurt me all night Friday and it hurt all day Saturday and Sunday. I believe it was Sunday Doctor Carbonara said it was infected.

Q. All right. How long did your arm—how long did this infection or cut last before it was cured?

A. Almost six weeks.

Mr. Smith: Objection. I don't believe the Doctor said—the Court has ruled out on the infection and I don't think it's proper for him to ask her that.

Court: I ruled on his testimony.

Mr. Smith: Sir?

Court: I ruled on his testimony.

Mr. Bateman: As far as—if there's anybody in the world can tell what happened, this lady can do it.

Mr. Smith: She's a pretty good doctor then.

Mr. Bateman: She can tell a lot better than anybody else can.

Court: Go ahead and finish your examination.

By Mr. Bateman:

Q. Would you tell us—what was the last—strike that. What was the last question?

page 187 } (At this time the last question was read to the Court).

By Mr. Bateman:

Q. Were you required to use any medicines or other items on your arm?

Charlotte Romaczyk.

A. Yes, I had to have my arm—well, they operated on my arm in the hospital. They opened it and scraped it and Doctor Carbonara opened it several times and scraped it and I had to have it bandaged at least twice a day, sometimes three times a day and keep it soaked in water for weeks.

* * * * *

page 188 }

* * * * *

By Mr. Bateman:

Q. You say he dressed your arm several times, is that correct?

A. Yes.

Q. Following this accident and so forth on the 3rd, you were later confined in the hospital for another ailment, is that correct?

A. Yes.

Q. And during the time you were in there, they treated the arm also, is that correct?

A. Yes.

Q. How long did you remain in the hospital when you went in on this particular occasion?

Mr. Smith: Where is that proper?

Mr. Bateman: All right.

page 189 } Court: Now—

Mr. Bateman: I withdraw the question.

Court: We're going into a different matter.

Mr. Bateman: I'm not going into the injuries she had. I simply wanted to show the duration.

Court: Let's go ahead, Mr. Bateman.

Mr. Bateman: Yes, sir.

Court: If you want to.

Mr. Bateman: Yes, sir, I want to. May I proceed now?

Court: Yes, sir.

By Mr. Bateman:

Q. All right, sir. Did you dress your arm yourself?

A. Before the accident? Right after the accident?

Q. Yes.

A. No.

Charlotte Romaczyk.

Q. Immediately following the accident, where did you go, if anywhere? Did you continue on to Victoria?

A. Yes.

Q. Did you receive any medical treatment at Victoria?

A. No. I stopped in Hopewell at my Aunt's house. She is a nurse and she did not take the bandage off. She unwound it enough to put the bandage back in place and page 190 } the arm was bleeding when she unwrapped it and she put the same bandage right back on without touching the cut at all.

Q. Now the doctor indicated on his examination you had a bruise on your mouth. Is that correct?

A. Yes.

Q. Did that result from this fight?

A. It resulted from Mr. Watkins hitting me in the mouth.

Q. Tell us whether or not any of your clothing was torn or damaged?

A. Yes, I had on a white sweater and I had on red pedal-pushers and they were torn and muddy from the back of my heels on up into my hair.

Q. Were you able to continue to use those clothes or were they damaged beyond practical use?

A. I had to throw them away. I couldn't use them any more.

• • • • •

page 196 }

• • • • •

By Mr. Bateman:

Q. Can you tell the jury whether or not the condition of your arm changed as a result of this fight that you were in?

A. Yes.

Q. In what way?

A. Well, it had healed over before the accident and afterwards the healing was busted open.

Q. The healing, what do you mean, scabbing over?

A. Yes, sir.

page 197 } Q. And I believe you testified it was some stitches broken in your arm?

A. Yes, two stitches was torn out.

Charlotte Romaczyk.

Court: She's testified to that.

By Mr. Bateman:

Q. All right, would you describe to the jury, your emotions, if any, at the time this occurred referring to indignities and embarrassment and so forth.

A. They were terrible. I think it's the most terrible experience I ever had in my life especially when most of our friends found out.

Mr. Martin: I couldn't hear that.

(At this time the last answer was read to Mr. Martin).

By Mr. Bateman:

Q. Were there people present at the time that you were knocked down to the ground when this man hit you in the mouth?

A. There were a number of people present.

Q. Did that cause you any embarrassment?

A. Yes.

Q. Would you express the best way you can to the jury how that effected you?

A. Well, it upset us for weeks. I thought it was horrible to have three big men out there trying to beat up
page 198 } three other people with everybody standing around and watching. I didn't think it was funny at all.

Q. What was the value of your clothing that was damaged as a result of this?

A. Both of them—I bought them together. It was a suit and both of them together were $21.00 and then I had a pair of shoes. I have to have all my shoes made and it was just a small pair of flat-heel shoes and I had to pay $12.00 to have them made.

Q. How old were the shoes when—

A. Well, I had had them about a year but I hadn't worn them but just a couple of times.

Q. Do you have any idea normally how long a pair of shoes would last you?

A. A pair of shoes lasts me quite a while.

Mr. Bateman: Answer these gentlemen.

Charlotte Romaczyk.

CROSS EXAMINATION.

By Mr. Martin:

Q. Mrs. Romaczyk, getting back to the accident itself, where were you riding in the car? What part of the car?

A. In the front seat.

Q. I see and that's a two door automobile, is it not?

A. Yes.

page 199 } Q. And I take it your brother was riding in the back seat?

A. Yes.

Q. Your husband driving?

A. Yes.

Q. All right now, when you came up to this intersection of Military Highway and West Quenn Street, how fast was your husband driving before he tried to stop?

A. I imagine around thirty miles an hour.

Q. Was there heavy traffic on the road?

A. There was quite a bit of traffic.

Q. Right much traffic and you were going on to Victoria, I believe?

A. Yes.

Q. Did you have any particular time you wanted to get there?

A. Before the next day.

Q. I see. How far is it to Victoria?

A. 137 miles.

Q. I see, and you wanted to get there that night, did you not?

A. Well, it didn't matter that much. I just wanted to be sure I was there Saturday.

Q. I see. So your husband was driving about thirty-five miles an hour and in the outside traffic lane, was

page 200 } he not?

A. He was driving in the right lane.

Q. In the right lane. It's a four lane highway, dual highway, is it not?

A. Yes.

• • • • •

By Mr. Martin:

Q. Mrs. Romaczyk, you were driving in the outside lane going towards Victoria, going in a general westerly direction

and do you recall a car stopped at this intersec-
page 201 } tion?

A. There was a car stopped.

Q. I see, and your husband didn't pull up in back of that car, did he?

A. No.

Q. Was that the only car stopped at the intersection?

A. Yes.

Q. I see, but your husband instead of pulling behind that car cut into the left lane and pulled up alongside of the car, is that correct?

A. Not immediately.

Q. What do you mean, "not immediately"?

A. Well, he pulled up several hundred yards before he got to the stop light.

Q. I see, and at that time when he pulled over into the left lane, did you notice any vehicles behind you?

A. I did not see any.

Q. When your husband stopped, did he come to a normal stop?

A. He came to a normal stop and he completely stopped.

Q. I see, and then you were struck from the rear?

A. Yes.

Q. When you were struck from the rear, what did you do?

A. It pitched me forward.

page 202 } Q. I see but did you get out of the car?

A. Not immediately, no.

Q. Your husband got out of the car?

A. Yes.

Q. This particular day I believe was October the 3rd. Can you describe the weather for us?

A. It was drizzly, it was bad weather. It had been raining quite a bit because the ground was wet.

Q. It was drizzling at that time?

A. Not a heavy drizzle. It was misty and wet.

Q. Misty and it was—it was cool, was it not?

A. Yes.

Q. And your windows were up in the car, weren't they?

A. The vents weren't.

Q. I'm talking about the windows now.

A. The windows, yes.

Q. The windows were up in the car and after the accident your husband got out of the car?

A. Yes.

Q. He got out on the left-hand side of the car, did he not?
A. He got out on the left-hand side.
Q. And he closed the door, did he not?
A. No.
page 203 } Q. He left the door open, mam?
A. He left it not completely closed but not open.
Q. Oh, I see.
A. He didn't slam the door.
Q. He didn't slam it but it came to, did it not?
A. Partially, yes.
Q. Now what do you mean by, "partially," mam? Did it come all the way to?
A. The side of the car?
Q. Yes mam.
A. No.
Q. It did not. That I believe is a Mercury automobile that you were driving in?
A. Yes.
Q. And it's a four door automobile?
A. No, it isn't. It's a two door.
Q. I mean a two door, excuse me; two door automobile. Those are big doors?
A. Well, it is a Monterey and I don't believe the doors are so large.
Q. Well, they're the normal doors that you find on a two door automobile, aren't they; at least normal size?
A. Yes.
Q. And they're rather heavy, are they not?
A. I don't know what you mean by rather
page 204 } heavy.
Q. Well, when you open or close them, aren't they a little heavy?
A. I have never tried to lift one. I just always push it open.
Q. When you push it open, does it require a reasonable amount of strength and a reasonable amount of effort?
A. I don't think so.
Q. You don't think so and when you get out of the car and you move the door, doesn't it automatically close?
A. It depends. Sometimes it will close all the way and sometimes it won't.
Q. I see.
A. It depends on how the car is sitting.
Q. But this particular night, particular evening when your husband got out of the car and he partially closed the door,

it was misting and it was cold. It was cool but he didn't close the door, is that correct, mam?

A. Well, he didn't slam it.

Q. He didn't slam it but it closed, didn't it?

A. Yes.

Q. It closed. All right, and the vents were open. Were both vents open?

A. Yes.

Q. And how far were they open?

A. About an inch.

page 205 } Q. About an inch. And then your husband went to the back of the car?

A. Yes.

Q. And he said something to the driver of the truck, did he not?

A. Yes.

Q. And what did he say?

A. I believe he said, "couldn't you see my car stopped here?"

Q. And he said it in a normal tone, didn't he?

A. My husband isn't the type that gets violent with anyone.

Q. I didn't suggest that he was at the moment.

A. He said it in a normal tone.

Q. He said it in a normal tone?

A. Naturally he was upset but that was all.

Q. But he said this in a normal tone?

A. Yes.

Q. And he was then back at the back of the car or was he back of the truck?

A. He wasn't in back of the car. He was by the back fender of the car.

Q. I see. I see and you could hear him plainly of course?

A. I could hear him.

page 206 } Q. Did you hear what the truck driver said?

A. No, I couldn't.

Q. Did he say anything, do you know?

A. I don't know whether he did or not.

Q. When your—your husband got out of the car and went back, do you remember the words that he said, that he used when he said something to the truck driver?

A. As close as I can remember, he said, "didn't you see my car stopped here?"

Q. He didn't use the invectice, "Hell," did he?

A. No.

Charlotte Romaczyk.

Q. Didn't use that word at all?
A. I can swear on that.
Q. Beg your pardon. I didn't say you. I asked if he used that word.
A. No.
Q. He did not. All right, so then after looking at the back of the car and making this remark to the truck driver, he then came back to the automobile, is that right?
A. Yes.
Q. And got in?
A. Partially in.
Q. Partially in. All right, now did you when he came back to the car, did you continue to look at the truck?
A. I looked at the children.
page 207 } Q. The what?
A. My children.
Q. Your jewelry?

Court: Her children.

By Mr. Martin:
Q. Your children?
A. Yes.
Q. Were your children in the car?
A. My children were in the back seat of the car.
Q. I see. I hadn't known about that before. Where were they? Were they lying down or sitting or what?
A. They were sitting on the seat. It did throw them off the seat.
Q. You were looking at the children?
A. Yes.
Q. Were the children on the left side of the seat seated on the rear seat or the right side?
A. I don't remember which side they were on.
Q. Can you recall which side of the rear seat that your brother was sitting?
A. No, I don't.
Q. You don't know that. So you didn't observe the truck driver, did you?
A. Yes.
Q. You did observe him. When did you ob-
page 208 } serve him, having in mind your husband being at the back of the car? Did you observe him then?
A. No.
Q. When did you observe him?

Charlotte Romaczyk.

A. When he came to the car door.

Q. I see. Then which one came up first, the truck driver or the other man?

A. They both came together.

Q. Which was the truck driver?

A. Allen was the truck driver.

Q. You are sure about that, aren't you?

A. Yes, sir.

Q. Can you explain to us how you know that, mam?

A. Because when I looked out after my husband had started getting—before my husband started to get in the car, Allen was behind the steering-wheel so I figured he was the driver.

Q. I see. Didn't I understand you, maybe I misunderstood, I understood you to say the first time you saw Allen and this other man was when they came up alongside this car?

A. If you know, there's quite a difference in the complexion and so forth. I saw the blond head behind the steering-wheel.

Q. You did see him in the truck?

page 209 } A. Not enough to recognize him but enough to know he was light complexioned.

Q. Then the two men came up alongside of your car and your husband was partly in and partly out of his car?

A. He had his left foot out of the car and he was just sitting down.

Q. He was just in the act of sitting down and he had his left foot out of the car and somebody reached in and grabbed him?

A. Yes.

Q. How did they grab him?

A. By the shoulder or the arm.

Q. Which shoulder, mam?

A. His left.

Q. His left shoulder?

A. Yes.

Q. Grabbed him by the left shoulder and they pulled him out of the car, didn't they?

A. Yes.

Q. And then both of them took over, didn't they?

A. Yes.

Q. Took hold of him?

A. Yes.

Q. One on each side?

Charlotte Romaczyk.

A. One on each side.

page 210 } Q. They hit him, didn't they?

A. They pushed him against the truck and both of them was holding him while Watkins was trying to hit him.

Q. Oh, I see. I see. You mean that *immediatly* thereafter they got him out of the car, they took him to the back of the car and they held him against the trunk, the two of them, is that right?

A. They didn't take him. They pushed him.

Q. They pushed. All right, they pushed him back and held him back against the back of the car?

A. The front of the truck, between the car and the truck.

Q. Between the back of the car and the front of the truck?

A. Yes.

Q. And Watkins was there to hit him?

A. Yes.

Q. I see. Now, when was it that your husband went back to the Watkins' truck and asked him to stop pushing on your car so it wouldn't be pushed out in the intersection?

A. It was before they pulled him out of the car. He had started back in the car after he asked Watkins to please stop pushing the car.

Q. Oh, I see. So Allen, Allen and this other man, Stepp, didn't do anything to your husband until after

page 211 } your husband went back and asked Watkins to stop pushing the car?

A. Oh, they had pushed him around, yes. They hadn't hit him. They had pushed him around.

Q. I see. Did you see anybody hit your husband?

A. Not directly. I saw them when they swung at him and I saw them trying to hold him when somebody was trying to hit him.

Q. Well, you heard your husband testify nobody hit him.

A. I didn't say they hit him. I said they tried to hit him.

Q. I see, but that was the man they were after, wasn't it?

A. Yes.

Q. Your husband was the man they were after and there were three gentlemen, these two men here and Mr. Stepp and they all had him?

A. Yes.

Q. It was their purpose to injure him and to hit him?

A. Yes.

Q. But nobody ever hit him?

A. Well, it wasn't because they didn't try.

Charlotte Romaczyk.

Q. Oh, I see. Then when did you get out of the car? Where was your husband when you got out of it?

page 212 } A. I got out of the car when Allen and Stepp had him pushed up against the truck and Watkins was getting ready to hit him.

Q. Where was your brother then?

A. He was still in the car.

Q. Now what side of the car did you get out of?

A. I got out on the driver's side. I slid under the wheel and got out.

Q. I see, and when you got out of the car you were mad, weren't you?

A. I wasn't nearly as mad as I was scared to think three men as big as that was going to try to whip my husband.

Q. I see. So you got out of the car and you went back to them and you got in between them?

A. Yes.

Q. You were scared and you got out of the car and you went back and got right in the middle of it?

A. Yes.

Q. And then somebody shoved you out of the way, didn't they?

A. Somebody didn't shove me. Someone pulled me out of the way. They pulled my arm out of the sling.

Q. And pulled you out of the mixup there, pulled you out of the way?

A. Yes.

page 213 } Q. And you were still scared, weren't you?

A. Naturally.

Q. So you went right back in again, didn't you?

A. Well, I think any woman, any normal woman that loves her husband wouldn't stand by and watch three men try to beat him up regardless of how scared she is.

Q. Again I ask you, Mrs. Romaczky, did you see anybody hit your husband?

A. I didn't see him actually hit. I saw him duck when they swung at him.

Q. I see. Two of them holding him and another one hitting at him?

A. Yes.

Q. You went in between them twice. All this time there were people gathering, weren't they?

A. There were quite a few people.

Q. And they were standing around, weren't they?

A. They were standing there watching.

Charlotte Romaczyk.

Q. Watching, and you appealed to them for aid, didn't you?

A. I asked if someone couldn't do something.

Q. Did you say anything about won't somebody get the Police or anything like that?

A. I don't recall.

Q. I see.

page 214 } A. I don't recall what the exact words were. I just asked someone to please do something.

Q. Now isn't it true, that the—as far as you could tell, all of the anger, if there was any—all of the anger, if there was anger of these three men, Watkins and Allen and Stepp was directed at your husband. That's the man they were going to get, isn't that right?

A. That's what they said.

Q. Yes, sir, and they were grabbing him and holding him and they were going to hit and you were the one that they hit?

A. Yes.

Q. And somebody pulled your arm?

A. Yes.

Q. And threw you on the ground?

A. I wasn't thrown on the ground. I was knocked on the ground.

Q. Mrs. Romaczyk, I ask you this question. Isn't it true that you were excited, you were angry, you were infuriated and that's the reason you got out of the car and went back and got in this altercation. Isn't that true?

A. I wouldn't stand there and watch three men try to beat my husband, regardless.

Mr. Martin: Will you read the question please, Mr. Reporter.

page 215 } (At this time the last question was read to the witness).

By Mr. Martin:

Q. Will you answer the question, please?

A. I got into it simply because I would not see them stand there and beat him to death.

Q. And yet no one had struck him?

A. It wasn't they didn't try. I figured if they were holding him and one was trying to hit him, they weren't playing.

Charlotte Romaczyk.

Mr. Martin: May I again ask the indulgence of the Court and ask the Court Reporter to read the question to which I have not gotten an answer.

Court: You may repeat it again. You had two questions since that one.

Mr. Martin: Yes, sir, but I haven't got an answer to that question.

Court: Go back and answer that question about being infuriated.

(At this time the last question was read to the witness).

* * * * *

page 216 }

* * * * *

A. No.

By Mr. Martin:

Q. Now in describing your injuries, there was some difficulty you had with your neck, is that right, mam?

A. Yes.

Q. You heard the doctor testify, Doctor Carbonara I believe his name is. You heard him describe your injuries. He said that they were—consisted of a bruise of the mouth, that is the upper lip, bruise and contusion—abrasions and contusions of the left shoulder and both legs and these torn stitches in your wrist and he made no mention of any difficulty with your neck. Did you tell him anything about your neck?

A. I don't recall. My back bothered me but it didn't bother me near as much as my arm and my mouth.

Q. I see. And you didn't receive any treatment for that, did you, mam?

A. I don't know. I received quite a bit of treatment.

Q. Well, from Doctor Carbonara, did you receive any treatment for your neck?

page 217 } A. Not to my knowledge.

Q. You only saw him on the two occasions after the accident?

A. Yes.

Q. The 3rd and 4th. How about your shoulder. I think you have said something about that? Was your shoulder injured in the fight?

Charlotte Romaczyk.

A. It was bruised when I hit—it was bruised when I hit the dash.
Q. I see. Did you receive any treatment for that?
A. No.

Mr. Martin: I see.
Mr. Smith: All right, thank you, mam.
Mr. Bateman: Was the bruise painful?

A. Well, my shoulder ached.

Mr. Bateman: That's all.
Court: All right, you can stand down.
Mr. Bateman: That's our case, if your Honor please.
Court: The plaintiff rests.
Mr. Martin: If the Court please, we have several motions we would like to make.
Court: Out of the presence of the jury?
Mr. Martin: Yes, sir.

• • • • •

page 218 }

• • • • •

Mr. Martin: On behalf of the defendant, Abernathy, we move to strike as to any injuries sustained by this lady from the assault because there's been no agency shown between Abernathy and—
Court: Hand me my tablet. Let me get those people straight now. I don't want to make a mistake here. All right.
Mr. Martin: As between Abernathy who is the operator of the Food Business.
Court: The principal.
Mr. Martin: He's the principal, yes, sir. There's no agency shown between Watkins and or Allen and Abernathy as far as the assault is concerned and we move to strike as to Abernathy for any injuries received by this lady in the assault.

(At this time both Attorneys then presented their arguments in reference to the motion).

Mr. Bateman: I submit, sir, that there's ample
page 219 } authority there and it should not be stricken as to the assault.

Court: It won't be stricken as to the assault except as to Watkins because Watkins came up later and got into it.

Mr. Bateman: It could not be stricken for Watkins. Maybe if Abernathy—Watkins got in it.

Court: I'm talking about agency. That's the only question before me, is the principal and agent.

(At this time both counsel continued their argument before the Court).

Court: I'm going to pass on this this way. As far as agency is concerned, there's no agency *beteen* Watkins and Abernathy but there is between Allen and Abernathy.

Mr. Martin: As to the altercation?

Court: Yes, sir.

Mr. Martin: As to the assault?

Court: Altercation and as to the accident, both.

Mr. Martin: Then of course that brings us to our—we except to the Court's ruling.

• • • • •

page 234 }

• • • • •

JAMES ALLEN,

called as a witness in his own behalf, having been previously sworn, testified as follows:

page 235 } DIRECT EXAMINATION.

By Mr. Martin:

Q. Mr. Allen, you have already testified in this case and given your name and address and that sort of thing. I want to ask you just a few questions about the altercation that took place, this tussle between the parties in the Romaczyk car and the parties that were in the truck. Did you enter into that in any way?

A. No, sir.

Q. Did you—did you ever lay your hands in any way upon this lady?
A. I didn't touch anybody.
Q. You didn't lay your hands on anybody?
A. No, sir.

• • • • •

page 236 }

• • • • •

HAROLD WATKINS, JR.,
called as a witness in his own behalf, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:
Q. Mr. Watkins, you testified previously in this case and I just want to ask you a few questions about this altercation that took place. What started the thing, do you know?
A. No, sir, I don't but I do know something that happened before I got there and it had been more of less straightened out a little bit but it seemed like when I got there, it just all started again.
Q. I see. Now, in this altercation, did you at any time strike this lady over here?
A. No, sir, I did not.
Q. Did you make any attempt to strike her?
A. No, sir, I didn't.
Q. Did you hit—did you hit Mr. Romaczyk?
A. As I recall, I ain't hit anybody, sir.
Q. Was the tussle that was going on, was that page 237 } between you and Mr. Romaczyk?
A. It was dark and I wouldn't even knew the gentleman until I come into Court; I wouldn't have recognized him yesterday.
Q. Beg your pardon?
A. I wouldn't have recognized either gentleman if I saw them on the street until they come into the Courtroom yesterday.
Q. You definitely state you did not strike this lady?

A. I did not hit that lady.

Q. Did you lay your hands in any way upon her?

A. I didn't lay my hands around her, on her but during the shuffling that ensued I imagine the lady could have been caught between somebody or any way in the world, I don't even know, but I stated I did see her on the ground.

Mr. Martin: Yes, sir. All right, your witness.

CROSS EXAMINATION.

By Mr. Bateman:

Q. Did I understand your response to Mr. Martin, his first or second question to be, "when I got there it all started again"?

A. It seemed like it did, yes, sir, spontaneously. Just everything erupted it seemed like. Quite a bit of
page 238 } cussing and what not going on.

• • • • •

TUCKER F. STEPP,

recalled as a witness in his own behalf, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:

Q. Now Mr. Stepp, you have already testified in this case but I just want to ask you a couple of additional questions. In this altercation that took place, in this tussle, did James Allen participate in it in any way that you saw?

A. No, sir.

Q. Did you ever see Mr. Watkins strike anybody?

A. He didn't actually strike anybody. I saw him tussling, he was wrestling.

Q. Who was he wrestling with?

A. I don't know.

Q. Was it this lady here?

page 239 } A. No, sir, it was a man but I don't know what man it was.

Mr. Martin: I see. That's all. Answer Mr. Bateman, please.

E. H. Abernathy.

CROSS EXAMINATION.

By Mr. Bateman:

Q. Did you have your vision focused on Mr. Allen at all times?

A. No, sir.

Q. That you were there?

A. No, sir.

Q. Then it would have been possible for him to have struck this lady and you not have seen it, is that correct?

A. Yes, sir, that's right.

Q. And was your—was Watkins in your vision at all times?

A. No, sir, not all the time.

Q. Now, when you were on the stand yesterday according to my notes here you made the statement, "we went up there and started an argument with them." Is that correct?

A. Yes, sir. We went up, yes, sir, that's right. I went up there after he started back to the car, yes, sir.

Q. And we, referring to yourself and Mr. Allen, page 240 ; is that correct?

A. That's right.

• • • • •

E. H. ABERNATHY,

called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:

Q. Will you state your name please, sir.

A. E. H. Abernathy.

Q. What is your address, Mr. Abernathy?

A. I live at Seven Pines, Henrico County, Virginia.

Q. What business are you in, sir?

A. Food business.

Q. Tell us about that. What sort of food business are you in?

A. We have lunch trucks.

Q. I see.

A. It's on a contract basis with the Government and then with any concern, business concern that we serve, all types of foods.

E. H. Abernathy.

Q. Now in the course of your business, did you
page 241 } hire Mr. Allen and Mr. Watkins?
A. I did.
Q. And what was their job?
A. Driver-salesmen.
Q. What were they supposed to do?
A. They would go to certain areas and dispense food.
Q. I see. And then what would they do after that with the trucks? Would they bring them back?
A. They were supposed to return them back down to the parking lot at Hertz'.
Q. I see. Now, on this particular occasion, did you have any knowledge of this accident and the resulting altercation?
A. Not until I was served with the papers over in Richmond, Virginia.
Q. All right, sir. Now, had at any time Mr. Allen or Mr. Watkins engaged in any fight of any type—

Mr. Bateman: I object to the question.
Court: Let him finish and don't answer it until—don't answer it.

By Mr. Martin:
Q. While working for you that you know of.

• • • • •

page 243 }

• • • • •

By Mr. Bateman:
Q. You stated these gentlemen were employed as driver-salesmen, is that correct?
A. That's correct.
Q. Now in that capacity you also stated that they dispensed food for you, that is they sold food for you. Is that correct?
A. That's correct.
Q. At various and sundry points?
A. Yes, sir.
Q. Now did you furnish them with the food to sell?
A. I did.
Q. Did you furnish them with any automotive
page 244 } equipment with which dispense the food from?
A. I did.

E. H. Abernathy.

Q. On October the 3rd, 1958 were these two gentlemen working for you?

A. They were.

Q. And when this accident occurred, they were in the course of their employment, is that correct?

Mr. Martin: Objection, sir.

A. I can't answer that, sir.

Mr. Martin: Objection.

Mr. Bateman: I withdraw the question and restate the question that on October 3, 1958 they were working for you, is that correct? They were on your payroll?

A. Yes, they were on the payroll.

By Mr. Bateman:

Q. And a part of their duties was to dispense food, you have stated. Do you know which particular territories they were working on that particular day?

A. Supposedly, yes, sir.

Q. Which one was Mr. Allen working?

A. Newport News.

Q. And which one was the other gentleman working?

A. Langley Air Force Base.

Q. And is it customary in your business for them to exchange products from one truck to another?

page245 }

A. At the time it was, yes, sir.

Q. At that time?

A. Yes, sir.

Mr. Bateman: All right, that's all.

Mr. Martin: Come down, Mr. Abernathy. The defendant rests.

• • • • •

page 246 } INSTRUCTIONS.

PLAINTIFF'S INSTRUCTION NUMBER ONE.

(Granted):

Mr. Martin: We object to it, sir. The Court has already told them.

Court: think that's true.

Mr. Bateman: We're entitled to an Instruction on it, sir.

Court: What about the part down here.

Mr. Martin: You see, it's confusing because it says in one place it says no evidence against the defendant, Watkins and Abernathy as far as the—as the second accident is concerned.

Court: That's right.

Mr. Martin: That's true but then it says this shouldn't influence you at all in regard to your verdict with reference to the defendant, Abernathy insofar as the first action and subsequent assault and battery.

Mr. Bateman: If any.

Mr. Martin: If any, that's right, when the Court has already instructed them as far as the assault and battery committed by Watkins is concerned, they can find Abernathy—

Mr. Bateman: But we're talking about in this particular case, the first accident.

Court: I'm going to put it in this particular
page 247 } case. I don't want to confuse them.

Mr. Bateman: What do you suggest doing? "Assault and battery by Allen, if any." I think that's clearly enough as it is.

Court: Something ought to be put in there.

Mr. Bateman: After the word, "battery" on the fourth line from the bottom insert the word, "by Allen," "by the defendant, Allen, if any is concerned."

Court: I don't think you ought to say by Allen. This is consorted. It is Stepp and Allen. Stepp was in the car with them.

Mr. Bateman: This is the way it reads though. We are not interested insofar as Stepp is concerned in this case. We're simply saying—

Court: Consorting, all coming out of the same truck and starting to hold the man together.

Mr. Bateman: This is not the purpose of this Instruction. This Instruction is simply to tell them what the condition is with reference to the evidence having been struck and clarifying as to the—as to the remaining defendants. If you wish it to read, "nor should it influence your verdict with reference to the defendant, Abernathy, insofar as the first accident and subsequent assault and battery by Allen, if any."

Court: Or by Allen and others in consort.

page 248 } Mr. Bateman: All right.

Court: You got to cover the whole thing. If we don't keep it in there, it's not in there.

Mr. Bateman: I have no objection to putting that in there.
Court: Let's put that in there.
Mr. Bateman: Insert, "by the defendant, Allen, or others in consort, if any."
Court: Granted.
Mr. Smith: We object and except for the reasons heretofore stated.

* * * * *

page 276 }

* * * * *

Court: Gentlemen, you will retire to consider your verdict.

(At this time the jury then retired to the jury room to consider their verdict and returned with the following verdict).

"One: We, the jury, award to the plaintiff, Mrs. Charlotte Romaczyk the sum of $100.00 damages incurred from the accident through negligence of Mr. James Allen as agent for Mr. E. H. Abernathy.

(S) ROBERT ELLENSON, Foreman."

"Two: We, the jury, find a verdict against Harry R. Watkins, James Allen and E. H. Abernathy for assault and battery and award to Mrs. Charlotte Romaczyk the sum of three thousand dollars ($3,000.00) damages.

page 277 } (S) ROBERT ELLENSON, Foreman."

* * * * *

Court: Any motions?
Mr. Martin: If it please the Court, on behalf of all the defendants, we move the Court to set aside the verdict of the jury as contrary to the law and the evidence.
Court: Which verdict are you speaking of?
Mr. Martin: That is the verdict of the assault and battery designated as Number Two.
Court: I will mark it Two for the purpose of identification.
Mr. Martin: As being contrary to the law and the evidence, for misdirection of the jury by the Court and for the granting of Instructions of the plaintiff over the objection

and exceptions of the defendants and for refusal to grant Instructions of the defendants to which action exception was taken and for the further reason that the verdict is excessive.

page 278 }

• • • • •

Court: Now Mr. Bateman, I am ready to enter up judgment in the other matter because this boy is involved in the assault too.

Mr. Bateman: If your Honor please, I would move that you award the judgment for the same amount as the jury returned.

Court: I will give $500.00 and cost which will be $540.00 I believe, sir. You can write that order.

• • • • •

page 281 } Court: We ended off two or three actual judgments in this thing but one you made a motion to set aside. There was only one for the plaintiff lady, whoever her name was, Romaczyk. Is that right?

Mr. Martin: No, I thought—maybe we better clear that up, if the Court please. Our motion, there were several motions incorporated into one to set the verdict aside—well, one motion to set the verdict aside as to excessiveness and award a new trial. As to—that is as to all defendants, that is as to Allen and Watkins and Mr. Abernathy. Then there was a second motion to set the verdict aside as to Mr. Abernathy completely on the grounds that the verdict was contrary to the law and evidence, for misdirection of the jury by the Court and for failure of the Court to strike the evidence as to Mr. Abernathy in regard to assault.

Court: That's the one I'm speaking of but the one, the damages for the injuries resulting from the accident, the automobile accident which was the $100.00 verdict, wasn't it?

Mr. Martin: Yes, sir, there were no motions on that.

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Answer and Grounds of Defense	4
Affidavit Denying Agency	7
Instructions	7, 131
Order—April 9, 1959	9
Order—April 9, 1959	9
Order—April 10, 1959	10
Order—April 10, 1959	11
Order—July 20, 1959	12
Bond	13
Notice of Appeal and Assignments of Error	15
Assignment of Cross Error	16
Proceedings	17, 27, 125, 133
Witnesses:	
James Allen	19, 126
Tucker F. Stepp	33, 128
Doctor Francis J. Carbonara	47
Harold Watkins, Jr.	53, 127
Kazmere C. Romaczyk	62
James C. Cantrell	91
Mrs. Charlotte Romaczyk	106