Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

202 VA 278

Record No. 5154

In the Supreme Court of Appeals of Virginia at Richmond

MARSHALL F. RAGSDALE

v.

LELIA JONES

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. 5154

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1960.

MARSHALL F. RAGSDALE, Plaintiff in Error,

against

LELIA JONES, Defendant in Error.

From the Circuit Court Part Two of City of Newport News

Upon the petition of Marshall F. Ragsdale a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court Part Two of the City of Newport News on the 2nd day of September, 1959, in a certain motion for judgment then therein depending wherein Lelia Jones was plaintiff and Marshall F. Ragsdale was defendant.

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

RECORD

* * * * *

MOTION FOR JUDGMENT.

The undersigned, Lelia Jones, moves the Circuit Court (Part Two) of and for the City of Newport News, Virginia, for judgment against you in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00), plus the cost of this proceedings and award of execution for personal injuries sustained in the following manner, to-wit:

1. On to-wit the 9th day of July, 1958, the undersigned was riding as a guest and passenger in an automobile owned and operated by her husband, Hubert E. Jones, at the intersection of Bridge Road and Route 60 in the City of Newport News, formerly Warwick, Virginia.

2. As Hubert E. Jones approached the intersection aforesaid, he attempted to make a left turn so as to proceed north on Route 60, and in so doing obeyed and complied with all of the rules of the road, applicable ordinances and State laws.

3. At the same time, you, Marshall F. Ragsdale, were in a line of traffic traveling west on Bridge Road and approaching said intersection, and as you approached said intersection you suddenly and without warning pulled out of the line of traffic and negligently and carelessly attempted to go through the intersection at a high and unlawful rate of speed, and in so doing carelessly and negligently ran into the right
page 2 } side of the automobile in which the undersigned was riding as a guest and passenger as aforesaid.

4. In running into the automobile in which the undersigned was riding as a guest and passenger as aforesaid, you, Marshall F. Ragsdale, were negligent in each of the following particulars:

A. You failed to keep and maintain a proper and effective lookout.

B. You failed to use reasonable care and caution in keeping the automobile you were driving under proper and reasonable control.

C. You failed to exercise reasonable care and caution in the operation of the aforesaid automobile.

D. You failed to drive the said automobile at a careful rate of speed, not greater than was proper under the circumstances then existing, having due regard for the traffic, sur-

face and width of the street or highway.

E. You failed to exercise reasonable care and caution in seasonably applying the brakes of the automobile you were driving.

5. As a proximate result and in consequence of your negligence and omissions aforesaid, the automobile you were driving struck the right side of the automobile in which the undersigned was riding as a guest and passenger with considerable force and violence, by which means the head and body of the undersigned were thrown against the top and side and other parts of the interior of the automobile in which she was riding with considerable violence injuring the skin, flesh, nerves, blood vessels, muscles, tendons, bones, ligaments, joints, cartilages, brain, body, limbs, head and internal organs of the undersigned and causing emotional disturbances, personality changes, nervous disorders and anxiety.

page 3 } 6. Such injuries have activated, aggravated and precipitated symptoms from latent physical weaknesses that were free of signs and symptoms prior to the accident and injuries complained of as follows, to-wit:

A. The undersigned had previous to the accident a hysterectomy operation resulting in or causing weaknesses of the female and other organs, and these weaknesses were aggravated and made worse by the accident complained of.

B. The said accident accelerated and speeded up the degenerative processes which were free of signs and symptoms prior to the accident, but have become painful and disabling since the accident.

C. The injuries to the ligaments, facia, cartilages, tendons and muscles of the undersigned's back have weakened the same and made it more susceptible to injury from slight trauma.

7. Such injuries are permanent, painful and progressive in nature, have caused the undersigned to suffer great mental anguish, emotional disturbance and physical pain, and will in the future cause the undersigned to so suffer.

8. The undersigned has, in addition to all of the foregoing, been prevented by such injuries from following her usual occupation and enjoying normal pleasures without hindrance, and from earning money that she would have earned but for such injuries, and such injuries will prevent her from following her usual occupation and enjoying normal pleasures and activities in the future without hindrance.

9. All of the foregoing injuries and resultant consequences

were due to the sole negligence and omissions of you, Marshall F. Ragsdale.

WHEREFORE, the undersigned moves the Circuit Court (Part Two) for the City of Newport News, Virginia, page 4 } for judgment against you at the time and place aforesaid in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00), plus the cost of this proceedings.

LELIA JONES
By FRANK H. PITCHFORD,
her atty.

Filed in the Clerk's Office the 8th day of August, 1958.

Teste:

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

* * * * *

page 91 } Virginia:

In the Circuit Court Part Two of the City of Newport News, Wednesday, the 2nd day of September, 1959.

* * * * *

This day again came the parties by their attorneys, and the jury heretofore empaneled in this cause again appeared and took their seats in the jury box, and after hearing fully the evidence of the plaintiff, the defendant, by his attorney, moved for a mistrial on the grounds that the Court had examined a witness to the prejudice of the defendant, which motion the Court doth overrule, to which ruling of the Court the defendant, by his attorney, excepted, whereupon the defendant, by his attorney, moved the Court to exclude certain hospital bills incurred in the latter part of September, 1958 in Tuckers Hospital, Richmond, Virginia, which motion the Court doth overrule and to all of which the defendant excepted, and the evidence, instructions of the Court, and arguments of counsel being fully heard, the jury retired to their room to consider of their verdict, and after sometime returned into Court having found the following verdict: "We, the jury render a verdict for the plaintiff and fix the damages

at the sum of twenty-five thousand dollars. T. Russell Mitchell, foreman."

Whereupon the defendant, by his attorney, moved the Court to set aside the verdict of the jury as being contrary to the law and evidence (and various other reasons assigned at the bar and urged for leave to argue same), and grant the defendant a new trial, which motion the Court doth overrule, to which ruling of the Court the defendant, by his attorney excepted.

Therefore, it is considered by the Court that the plaintiff recover against the defendant, the sum of Twenty-five Thousand Dollars ($25,000.00) with interest thereon at
page 92 } at the rate of six per centum per annum from the 2nd day of September, 1959 until paid and his costs in this behalf expended.

And the defendant having indicated his intentions to apply to the Supreme Court of Appeals of Virginia, for a writ of error, it is ordered, that execution be suspended upon the condition that the defendant or some one for him, enter into a suspending bond in the penalty of $2,000.00 or a *supersedeas* bond in the penalty of $30,000.00 conditioned according to law with surety to be approved by the Clerk.

* * * * *

page 100 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Marshall F. Ragsdale, by his attorney, hereby gives notice of appeal and makes the following assignments of error:

1. The Court erred in not permitting the witness Hubert Jones to answer question put to him by counsel for the defendant, as the witness was on cross examination, and the subject matter at issue had been opened by counsel for the plaintiff, and was proper under the law, said question being on page 48, line 21 through page 49, line 8 of the transcript.

2. The Court erred in injecting itself into the case and in refusing to permit the witness Hubert Jones to answer a properly propounded question to him by counsel for the defendant, on page 50, line 2 through line 20 of the transcript.

3. The Court erred in permitting the witness Suddreth's answer to a question, found on page 67, line 8 through line

23, to stand, as same was hearsay, and contrary to law.

4. The Court erred in permitting evidence to be taken as to drinking on the part of the defendant, found in the transcript, page 85, line 15 through page 86, line 15, for the reasons therein stated, and for the additional reason that such evidence was not germaine to the issue, and contrary to law.

5. The Court erred in instructing the jury to disregard testimony of the witness West that defendant's ability to operate an automobile was not impaired, found on page 92, line 12 through page 94, line 2 of the transcript, as same was contrary to law.

page 101 } 6. The Court erred in permitting the plaintiff to testify as to what she could do incident to the lifting of bags, found on page 102, line 11 through page 103, line 2, as to so do was contrary to law.

7. The Court erred in refusing to permit plaintiff to answer question put to her by counsel for the defendant relative to bills allegedly incurred by her, as she was on cross examination, and such action of the Court was contrary to law, found on page 125, line 13 through line 23 of the transcript.

8. The Court erred in permitting Dr. Coppola, a witness for the plaintiff, to read his written report while testifying on behalf of the plaintiff, page 142, line 18 through page 143, line 21, of the transcript, as to so do was contrary to law.

9. The Court erred in permitting Dr. Coppola to continue reading from his written report concerning the plaintiff while testifying on behalf of the plaintiff, page 144, line 16 through line 25, of the transcript, as to so do was contrary to law.

10. The Court erred in permitting issue of ruptured disc to go to the jury, as it was contrary to the evidence, page 160, line 2 through line 8 of the transcript.

11. The Court erred in injecting itself into the case and developing testimony clearly available to the plaintiff, as so to do was contrary to law, all to the prejudice of the defendant, page 170, line 3 through line 25 of the transcript.

12. The Court erred in permitting Dr. Beath, a witness for the plaintiff. to testify as to spinal fusion, as such operation was not performed by him, nor was there evidence to support such testimony, page 187, line 16 through page 188, line 9 of the transcript.

13. The Court erred in permitting evidence as to hospital bill covering period of hospitalizatoin at Tucker's from September 6 to September 16. 1958, and admittance of same in evidence was contrary to the law and evidence, page 197, line 8 through line 13 of the transcript.

page 102 } 14. The Court erred in permitting the witness Watterton, who testified on behalf of the plaintiff,

to testify as to hearsay evidence, page 207, line 5 through page 208, line 16 of the transcript.

15. The Court erred in permitting prejudicial remarks of counsel for the plaintiff concerning husband of the witness Sheffield being in Washington, as such remarks had no bearing in this case, and were calculated to influence and prejudice the jury, page 244, line 20 through page 245, line 8 of the transcript.

16. The Court erred in refusing to permit the testimony of the witness Hubert Jones showing bias and prejudice of the witness Suddreth, as such testimony should have gone to the jury, page 255, line 21 through page 266, line 18 of the transcript.

17. The Court erred in not granting counsel for the defendant's motion for a mistrial for reasons of misconduct on the part of the Court in injecting itself into the case, for the reasons set forth on page 215, line 6 through line 15 of the transcript, and for the additional reason that such action of the court was contrary to law.

18. The Court erred in granting plaintiff Instruction #1, over the objection of counsel for the defendant, as paragraph numbered 6 thereof made the defendant an insurer, and was amply covered by paragraph numbered 2, and was otherwise contrary to law.

19. The Court erred in granting plaintiff Instruction #3, over the objection of counsel for the defendant, as such instruction was not applicable to the facts nor suitable to the circumstances obtaining, and was contrary to the law and evidence.

20. The Court erred in granting plaintiff Instruction #10, over the objection of counsel for the defendant, in that such instruction made the defendant an insurer, overlooked proximate cause, and has the Court, in effect, telling the jury that the plaintiff has sustained an injury and should recover, and moreover, invades the province of the jury, and is contrary to law and evidence.

page 103 } 21. The Court erred in granting plaintiff Instruction #11, over the objection of counsel for the defendant, in that it presupposes facts which are not in evidence, and has the Court telling the jury certain conditions exist, which are conjectural and without having the qualifying phrase "if any," and moreover there was no evidence to support paragraph numbered 7 as to lessening of future earning ability, and to grant same was contrary to law and evidence.

22. The Court erred, over the objection of counsel for the defendant, in amending defendant's Instruction numbered

"A," for the instruction as drawn properly set forth the law and burden of proof of the plaintiff.

23. The Court erred, over the objection of counsel for the defendant, in amending defendant's Instruction numbered "C," and in refusing defendant Instruction numbered "C-1," as same plainly set forth the law applicable to the facts.

24. The Court erred, over the objection of counsel for the defendant, in refusing defendant Instruction numbered "G," as such instruction correctly stated the law as applicable to the evidence.

25. The Court erred, over the objection of counsel for the defendant, in refusing defendant's Instruction numbered "L," dealing with the treatment of the doctrine of sudden emergency, as such instruction was applicable to the evidence and facts.

26. The Court, over the objection of counsel for the defendant, erred in refusing defendant's Instruction numbered "M," as said instruction was a proper statement of the law as applicable to the facts.

27. The Court erred, over the objection of counsel for the defendant, in refusing defendant's Instruction numbered "P," as said instruction was a correct statement of the law, as applicable to the facts, and left to the jury the determination of such issues of fact.

28. The Court erred in refusing to sustain the defendant's motion to set aside the verdict for the plaintiff on
page 104 } the grounds that it was contrary to the law and the evidence, and for other reasons assigned; or, in the alternative, grant the defendant a new trial.

29. The Court erred in overruling the defendant's motion to set aside the verdict for the plaintiff on the grounds that such verdict was excessive and shocked the conscience of the Court.

It is certified that a copy of this notice of appeal and assignments of error was mailed to Frank H. Pitchford, attorney of record for the plaintiff, at his office in the Law Building, Newport News, Virginia, this 20th day of October, 1959.

LEWIS H. HALL, JR.
Counsel for defendant.

Filed October 20, 1959.

GEO. S. DeSHAZOR, JR., Clerk

Hubert Jones.

* * * * *

page 10 }

* * * * *

HUBERT JONES,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:

* * * * *

page 11 }

* * * * *

Q. All right, now I direct your attention to July of 1958. Were you and Mrs. Jones and the boy involved in an accident on that day?
A. Yes, sir.
Q. At what place did the accident occur?
A. James River Bridge intersection.

* * * * *

page 13 }

* * * * *

Q. Tell us in your own words, if you will, what occurred when you reached the intersection of Route 60 and Bridge Road?
A. Well, I was going—north, to go north on Warwick Road. I stopped at the intersection for a red light. The red light changed to green. I was going to make a left turn to Warwick, going north. I pulled out in the intersection. There was traffic coming down from the left lane of the intersection turning toward Newport News. As I go into the intersection, the through lane, the right lane coming off of the bridge from Jefferson Avenue was clear. No one was in it so I kept

on my way to complete my left turn. Just as I had made almost a full left turn, a car coming off the overpass switched out of the left lane into the through lane or right lane. I never did know exactly which way he was going. After he pulled out of the left lane, about—he ran up behind about two cars that was making the left turn to Newport News. Then I tried to stop to avoid the accident which I had made a full—practically a full left turn and this car that switched out of the left lane into the through lane or right lane struck me in the side, right-hand side of my car.

page 14 } Q. Now, were there any street markings or anything to indicate the course that you were to follow in making a left turn?

A. There were arrows there on the street.

Q. Now Mr. Jones, I have here a picture that has been admitted in evidence as Plaintiff's Exhibit Number Two showing two wrecked automobiles with people standing around them. Would you please hold this up, if you would, and point to the jury your automobile?

A. The Oldsmobile over next to the curb (indicating).

Q. That was next to what curb?

A. That was next to—in other words, it was the right lane curb coming from Warwick to Newport News at the intersection where my car is sitting now (indicating) from the wreck.

Q. Is that where you car came to rest?

A. To rest, yes, sir.

Q. After the impact?

A. That's right up against the curb right in the (indicating)—kind of rounded part of the curb.

Q. Of which curb?

A. The curb coming from Warwick in the right-hand lane and through lane, coming from Warwick. There's three lanes coming from Warwick; one right lane and one left lane.

page 15 } Q. Was your automobile blocking any of the southbound traffic lanes?

A. That would be coming towards Newport News.

Q. Yes.

A. South. It was blocking all the right lane to turn to go over James River Bridge and part of the through lane, extreme right through lane to Newport *New,* yes.

Q. All right now. The other wrecked automobile shown in that picture, would you point that out, please?

A. That's this Ford here (indicating). That was in the

Hubert Jones.

wreck (indicating).

Q. Was that the car with which you had an accident?

A. Yes, sir.

Q. Now how far—approximately how far, as best you can recollect, was that car sitting from the island dividing the two lanes?

A. Well, it was approximately three or four foot from the —from the island, end of the island headed towards James River Bridge. It had the left lane coming from Warwick that you turn and go or the overpass partly blocked. It also had—small amount of the lane of the aisle of the other side blocked.

* * * * *

page 16 }

* * * * *

Q. Mr. Jones, I hand you another picture that has been admitted in evidence as Plaintiff's Exhibit Three, which is a picture taken by the Police at the scene of the accident and ask you if that shows the damage to your automobile as it appeared at the scene of the accident?

A. The Oldsmobile, yes, sir.

Q. Does it also show the damage to the Ragsdale automobile as it appeared at the scene of the accident?

A. Front end, yes, sir.

* * * * *

page 17 }

* * * * *

Q. Now this, Mr. Jones, is Plaintiff's Exhibit One that has been admitted in evidence as such. In order for you to better understand the drawing, let me explain this to you. This is towards Williamsburg, towards me (indicating). Towards you is Newport News (indicating). Down this way towards the floor is the James River Bridge (indicating). That is the part that goes over the water. Up here is the bridge going over the railroad (indicating) and we have arrows within the intersection (indicating). Now can you, with your finger or

Hubert Jones.

page 18 } this ruler, first point out where you brought your automobile to a stop for a red light when you reached the intersection of Bridge Road and Route 60?

A. Right here in the left lane.

Q. Is that marked left lane?

A. Yes, sir, it is.

Q. All right. Now—

Court: Let me ask you, for the record, do you wish that to be identified in some way?

Mr. Pitchford: I think it would be a good idea if we may.

Court: Just mark it.

Mr. Pitchford: But it's another witness involved. We'll have to have two of the same. May we do that? We have got several copies of the same one. Let the other witness mark it.

Mr. Hall: It's agreeable with me. You can superimpose his mark on there. It's all right. Each witness can mark it.

Court: Just mark that point one.

Mr. Pitchford: Mark that point one and, "J" by that so the jury will know you marked that.

(At this time the witness complied with the request of counsel).

By Mr. Pitchford:

page 19 } Q. All right now, when the light changed from red to green show us the course by a little zig-zag line, if you will, that you took so as to go to your home on Todds Lane.

A. These arrows here, these arrows are put here to go by for a left turn.

Mr. Hall: I object to that, if your Honor please. The question was what did he do.

A. Well, I was getting to that.

By Mr. Pitchford:

Q. Let's do it this way, if we may, Hubert, please. I ask you to draw a little line like that with your pencil to show which course your automobile took.

Hubert Jones.

Mr. Hall: I object to counsel indicating on the diagram any course that he may or may not have taken, if your Honor please. It's leading and is not condusive—

Court: I think the witness had already indicated that he did follow those things. Go ahead. Mr. Pitchford, if you would, refrain from leading.

Mr. Pitchford: I didn't realize I was leading him. I'm sorry, sir.

Court: Go ahead.

By Mr. Pitchford:

Q. I'll ask you, Mr. Jones, to indicate from the point you indicated as one "J" the course of your vehicle
page 20 } after you started.

A. Well, the light changed to green. I left from the light going north to Jefferson—to Warwick (indicating) and I entered the intersection as arrows are directing to make the turn and this is the left lane going to Warwick, Virginia, going towards 524 Todds Lane.

Q. Now would you indicate on this diagram please, at approximately what point you were when you first observed the Ragsdale automobile?

A. Well, I was past the through lane when I saw the Ragsdale car pull out of the left lane about the end of the island. In other words, there was—several cars that made a left turn and there was two more making a left turn and the Ragsdale car come from the overpass and come straight out about the end of the island here for either through turn—either through lane or right lane. I couldn't tell, being where he had planned to go and trying to stop to avoid the accident, the Ragsdale car hit my car in the side. I was stopped approximately along here or stopping (indicating).

Court: Would you mark that point Two, the point you stopped.

(At this time the witness complied with the request of the Court).

By Mr. Pitchford:

Q. Now Mr. Jones, would you indicate in some
page 21 } manner on the diagram where you were when you first observed the Ragsdale automobile?

A. Well, when I paid attention to it is when it swayed out

Hubert Jones.

of the left lane into the through lane approximately along here (indicating).

Q. Would you indicate that point by putting the figure, "J-Three" beside it?

(At this time the witness complied with the request of counsel).

By Mr. Pitchford:

Q. Now would you indicate by marking some mark on the drawing showing where the Ragsdale automobile was when you first saw it?

A. Well, when I first paid attention to it, it was right along in here (indicating).

Q. Would you put a, "J-Four" by that?

(At this time the witness complied with the request of counsel).

By Mr. Pitchford:

Q. And when you first paid attention to it, in what lane was he traveling?

A. The left lane.

Q. Was there any traffic in the right or through lane?

A. Not at the time, no, sir.

page 22 }

* * * * *

Q. Now Mr. Jones, after the accident occurred, what did you do?

A. Well, I got out of the car as soon as possible.

Q. Did you observe your wife?

A. Yes, sir, my wife was laying across my boy. He was—seemed to be hurt pretty bad and she was knocked out. I couldn't set her up or do anything with her and then a gentleman came up, helped me set her up in the car and get the baby out from under her. She was still knocked out and I asked him to watch my kid until I go make a call and call the Police. So I go over to the telephone booth at Bill's Restaurant and call the Officers to come to the wreck. My wife was hurt bad and the kid was hurt.

page 23 } Q. Did you get the name of that man that came over and helped with your wife?

Hubert Jones.

A. The fellow who came over and helped me? Yes, sir, I did.

Q. Is he here today?

A. Yes, sir, he is.

Q. Now did the ambulance come?

A. Yes, sir, a little dis—just a little bit after the Officers come.

Q. All right, what was done in connection with the ambulance and your wife?

A. Well, they—someone, I don't remember who, taken her and put her in the ambulance, her and my boy and I got in the ambulance with them and left and went to Riverside Hospital.

Q. Were either of them admitted as a patient to Riverside Hospital?

A. I don't remember for sure how long—they were in there for several days from Wednesday night I believe it was until Sunday morning.

Q. Was Wednesday the date of the accident?

A. I believe Wednesday night. In other words, it was the 9th of July. I wouldn't—be sure of the day but the date I remember was the 9th of July.

Q. Did the hospital doctors permit your wife to
page 24 } go home on the Sunday following the accident?

A. Yes, sir, they did.

Q. And when she got home, how did she get along?

A. Well, she was pretty bad off. She got real sick. She was sick in the beginning but she got real bad off and—

Q. What could you see and observe about her to make you believe she was real bad off?

A. Well, the way she carried on, her nervousness, she had a terrific headache and her neck was bothering her pretty much. She had been there just a few minutes, she passed out and she stayed out for just a few minutes before I could get her to sit back up and could talk with her.

Q. Did you have any preference with reference to a doctor?

A. Yes, sir, Doctor Beath, in Richmond.

Q. What did you do about Doctor Beath?

A. I called Doctor Beath and he told me to have her up to his office Monday morning by nine o'clock. I believe that's the—the time that he said.

Q. Did you get her up to Doctor Beath's office at the appointed hour?

A. I got her up to Doctor Beath's office as soon as possible, as soon as I could get to see him.

Hubert Jones.

Q. As soon as you could do what?

page 25 } A. As soon as I could see him, which was about nine o'clock Monday morning, the best I remember.

Q. Did Mrs. Jones dress to go to the doctor's office?

A. No, she wasn't able to dress. We didn't have anyone right at the time to help me dress her so she just went in her housecoat up to Doctor Beath's office.

Q. Now when she got to Doctor Beath's office, what occurred?

A. The first thing he did is put her to bed and—

Q. Put her to bed where?

A. In his office.

Q. All right.

A. After he examined her, he put her in the Retreat for the Sick Hospital there in Richmond.

Q. Were some other doctors called in to treat her?

A. Doctor Shield was called in to see her.

Q. Now how long was she a patient at the Retreat for the Sick, as best you can remember now?

A. I'll say several days. I don't know exactly how many days.

Q. When she left the Retreat for the Sick, where did she go?

A. To the Tucker Hospital, in Richmond.

Q. And approximately how long did she stay

page 26 } there?

A. As I say again, several days there. I'm not too good on dates and days. I didn't pay much attention to that.

Q. What then occurred?

A. Well, she seemed to be getting just a little better and they sent her to—sent her back home. The doctors agreed for her to come back home and she was home for several days. She got real bad off again and I called Doctor Beath around I guess nine o'clock or something at night and told him the shape she was in and as near as I could how bad off she was and he said, "well, don't wait until morning. Bring her on now as soon as you can get her here" so I put her in my car and they accepted her in the Tucker Hospital around eleven or twelve o'clock that night.

Q. How long did she stay that time?

A. A week or ten days I think. I'm not for sure how long she stayed.

Q. Then what occurred?

Hubert Jones.

A. Well, she went back home again after she stayed with the doctors for a while in the hospital.

* * * * *

page 27 }

* * * * *

Q. What did you observe about how your wife got along?
A. Well, I couldn't see where she was getting along much better. She quieted down a little.
Q. What do you mean, "quieted down"?
A. She was awfully nervous, disturbed and she couldn't get around too much. Her back was giving her right much trouble. Her leg give her right much trouble. Her leg and neck and her head hurt her about all the time.

Court: Obviously you are in no position to state whether her head hurt her all the time. You may state what complaints she made; if she hollered, "ouch" or something of that kind, if you saw her fall but you are not to state an opinion that her head was hurting or back was hurting.

By Mr. Pitchford:
Q. Did she complain to you of any pain or disability?
A. That's where I was probably getting ahead of myself. That was her complaints at the time.

page 28 } By Mr. Pitchford:
Q. Was she, during that period of time, trying to do her housework or any other type of work?
A. Well, at the time she wasn't able to do any housework. She tried a little but very, very little bit. She would try.
Q. All right, did you take her back to the hospital subsequent to the second trip?
A. We taken her—yes, sir, she went back to the Tucker Hospital again.
Q. How many trips altogether, stays in the hospital that you can remember?
A. Three, off-hand.
Q. Three, offhand. After her hospitalization in the Riverside, Retreat for the Sick and then Tucker's Hospital, did she continue to complain about pain and disability?
A. Yes, sir.

Hubert Jones.

Q. Did she continue under the care of Doctor Beath?
A. Yes, sir.
Q. Did she continue under the care of Doctor Shield?
A. Yes, sir.
Q. Did you take her to some other hospital or University in an effort to find out what was wrong with her?
A. Doctor Coppola here in Newport News.
Q. Who referred her to Doctor Coppola?
page 29 } A. Doctor Beath.
Q. Was she sent to any other doctor in Newport News by Doctor Beath?
A. I'm not positive about that. I'm not for sure about that.
Q. Did you ever at any time take her to Charlottesville?
A. Yes, sir.
Q. Where did you take her in Charlottesville?
A. To the University Hospital in Charlottesville.
Q. Was she admitted as a patient there?
A. Doctor—Doctor Crutchfield I believe was his name, examined her there. I'm not positive about the name.
Q. You're not positive about the name?
A. No, it seems like it was it.
Q. All right now, do you recollect about when she went to Doctor Coppola for the first time?
A. The dates, no, sir.
Q. Did she see Doctor Coppola—did you take her to see the Doctor?
A. Yes, sir, I took her to see Doctor Coppola.
Q. Was that at a hospital or at his office?
A. At his office.
Q. Sometime following the visit to his office, was she admitted to some hospital for—to be treated by
page 30 } Doctor Coppola?
A. Well, the second time she went to see Doctor Coppola he had her put in the hospital.
Q. What hospital did he have her put into?
A. Mary Immaculate.
Q. Was that the old Buxton Hospital?
A. Yes, sir.
Q. Did you visit her while she was in the hospital?
A. Yes, sir, I did.
Q. Tell us what you observed about her condition as you visited her from time to time?
A. Well, the first day I couldn't tell much about it because

she didn't have very much to say. The second day she seemed to be pretty sick and then on from that—

Q. Did she have some type of operation while she was in the hospital?

A. Yes, sir, she had a disc operation, disc taken out of her back by Doctor Coppola.

Q. Approximately how long was she in the hospital?

A. I don't remember how many days she was in the hospital.

Q. Did you bring her home from the hospital with the doctor's permission?

A. Yes, sir, I did.

page 31 } Q. Now tell us, if you will, in your own way how she got along when she got home after this operation, disc operation, so far as you could observe and so far as her complaints went but not your opinion.

A. She seemed to be right much better by her right leg and arm at the time, the best I remember.

Court: Is this based on some observation of your's, her complaint?

A. Her complaints.

Court: Just tell us—

A. As near as possible I mean. I tried to answer it as nearest I know how. If I'm wrong—I'm sorry.

By Mr. Pitchford:

Q. Did she thereafter complain about pain in her leg, right leg?

A. Yes, sir, she did.

Q. Did she complain about pain about any other part of her body?

A. Well, her back, she complained with and once after the operation, the best I remember she had an awful blackout spells, passed out, pretty sick with her head.

Q. Tell us, did you see this blackout?

A. Yes, sir, I did then.

Q. Tell us what you observed in connection with the blackout?

page 32 } A. Well, I came in the house she was laying in the bed and I tried to talk with her and she couldn't sit up or say anything back and after moving

Hubert Jones.

around for a minute or so, two minutes, she came to and started crying, talking, telling me her neck and her head was hurting her bad (indicating).

Q. All right, how recently did that happen, the best you can recollect?

A. That was several days after the operation. I say I don't remember too much about days. I wasn't paying too much attention about dates. It was after the operation she had it.

Q. Between the time of the accident and the date of the operation, did you observe your wife doing or trying to do any type of work?

A. Well, after the wreck she tried to work on our ice cream truck a few times. I don't know how many. Sometimes one would lay out or something, she would try to carry on the part. The usual thing she went back to the house sick. One time I remember she got bad off. The boy brought her in at eight o'clock, eight thirty, something like nine, pretty early. Put her to bed. She passed out that night. Went clean out with her head. She told me her head and neck was hurting her pretty bad.

Q. Was that before or after the operation?

A. That was before the operation.

page 33 } Q. Now have you seen her do or attempt to do any work since the operation?

A. Yes, sir, she has tried.

Q. Have you seen her try?

A. Yes, sir, I have seen her try to work.

Q. Tell us what you have observed about her trying to work?

A. Well, the best I can do that would be is to say she go out on the truck just to serve one—not pick up anything. The doctors told her not to pick up anything.

Q. Wait, you can't say what the doctors told her.

A. I'm sorry about that. Anyway, she wasn't supposed to pick up anything or do any bending but she drop any money in the floor, the driver would have to pick her money up. The driver would have to do all her lifting.

Mr. Hall: Objection. Did you see this, Mr. Jones?

A. Sir?

Court: What he is stating, Mr. Hall, is what the doctor

told her what to do. If you object to it, the objection is sustained.

Mr. Hall: I object to it and about she couldn't pick up money and I object to that.

Court: He's just saying what the doctor told her she wasn't supposed to do. If you'll just try to confine yourself to what you saw rather than what the doctor told, page 34 } we'll get along.

Mr. Hall: I understood about she couldn't pick up money and the driver would pick it up for her.

Court: No, she wasn't supposed to.

Mr. Hall: I misunderstood. I object to it.

* * * * *

page 35 }

* * * * *

Q. Now how long have you been in this ice cream business?

A. March of '58. March of '57. Let's see—this March was a year ago.

Q. This past March was a year ago?

A. This past March was a year ago.

Q. Now who worked on the truck up to the time of the accident?

page 36 } A. Lelia worked on it most of the time, her and I.

Q. What—were Lelia's duties on the truck?

A. Lelia did anything there was to be done on the truck. She drove the truck; she handled her own mix. She served the window. In other words, anything that was to do in the truck before the accident, she was able to do it, she did do it.

Q. Was she having any back trouble at all she complained about?

A. No, sir, not as I know of. She never complained with me about it.

* * * * *

CROSS EXAMINATION.

* * * * *

By Mr. Hall:

Q. Now as I understood your testimony, and correct me if I

Hubert Jones.

am in error Mr. Jones, that when you first saw the Defendant, Ragsdale's automobile, it was up here where you
page 37 } have drawn a little mark and have put, "J-Four" by it.

A. That is where I said that I first paid attention to it.

Q. All right, sir. Where was he when you first saw him?

A. In the left lane coming down the overpass.

Q. Well, whereabouts would you place him on the Bridge Road?

A. I'm not positive whereabouts. As I say, I wasn't paying him any attention particular where he was at, no more than I was the rest of the line of traffic in the left lane.

Q. Well, my question is, where was he when you first saw him. Can you tell us that?

A. When I first saw him, he was up about here in the left lane, behind the line of traffic.

Q. Would you draw a little mark there, the same as you have drawn here, please?

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. And would you put by it, "J-Five"?

(At this time the witness complied with the request of counsel).

By Mr. Hall:

page 38 } Q. Now at that time where you have placed the mark "J-Five" when you first saw the Defendant, Ragsdale, where was your car?

A. Well, the line of traffic was clear when I pulled out here along in here. The bridge itself comes downhill.

Q. Yes, sir. Where was your car when you first saw him?

A. Making the left turn (indicating).

Q. All right, where you have your finger?

A. Approximately along there.

Q. Would you mark that please, sir?

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. And would you put, "J-Six" there, if you will?

Hubert Jones.

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. All right, now do you—do you know the distance from "J-Six" to "J-Five," Mr. Jones? Can you give us the distance there?

A. What do you mean, from—from here—

Q. Yes, sir.

A. To here (indicating)?

page 39 } Q. Yes, sir.

A. I'd say approximately 150 foot.

Q. About 150 feet?

A. Now I don't know about that. I don't know.

Q. And can you give us the distance from the curbline where my finger is to—strike that question Mr.—

Mr. Pitchford: Mr. Hall, if I may interrupt. Here is a rule and it's drawn to scale if you want to use it.

Mr. Hall: All right, sir.

By Mr. Hall:

Q. What does Three represent that you have there, Mr. Jones? Three, what does that represent?

A. When I was here, the line of traffic in the right lane and through lane was clear.

Q. And what does number Two represent?

A. Where I was sitting approximately when the Ragsdale car hit me in the side.

Q. You were in a stopped position when you were struck?

A. I was trying to stop in a stopped position. In other words, I was trying to stop to avoid the accident.

Q. Were you stopped or moving when the accident occurred?

A. It happened so fast, I don't know but I was—

page 40 } I say I was still trying to stop to avoid the accident.

Q. Number Two then represents the location of your car when the impact occurred?

A. Where the car was hit, yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And that is completely out of line of the—

A. Right—

Q. Inside or outside traffic lane, is it not?

Hubert Jones.

A. Approximately, yes, sir.

Q. Completely out of line?

A. Not altogether out of line but almost out of line. With the left and through lane.

Q. All right, sir. Where was Ragsdale's car when you next noticed it? Now you—you paid attention to it up here at "J-Four." Where was it when you next noticed it?

A. When I next noticed it?

Q. Yes, sir.

A. Let me say this. Anybody doing a tremendous speed, you don't do much noticing in that length of distance. After he swayed out of that left lane, I saw him all the time. I couldn't tell when he come out of the left lane into the through lane whether he was going to keep right or whether he was going to keep left but the next attention I paid is when I saw the headlights flaring at me in the side of my car.

page 41 } Q. Where was his car when you next saw it?

A. Next saw it—I saw it from the time it left this lane until it hit me.

Q. Then you were looking at his car constantly?

A. From the time he swayed out of that left lane.

Q. If you let me finish my question, please.

A. O. K.; sorry.

Q. You were looking at his car constantly from the time where you have indicated "J-Four" to Number Two?

A. That's right.

Q. Looking at it constantly, is that correct, sir?

A. That's right.

Q. All right sir, and he swerved right out of the left lane into the—which lane?

A. Which lane? You tell me. He swayed out of the left lane.

Q. I wasn't there. You were there, Mr. Ragsdale.

A. He covered—he covered part of the right lane and the through lane when he swayed out.

Q. Just suddenly burst right out?

A. That's right, come right across this corner here.

Court: Mr. Pitchford, do you have any redirect examination concerning this diagram?

Mr. Pitchford: No, sir. I want to use the dia-

page 42 } gram with another witness.

Court: All right.

Mr. Hall: You may have your seat, Mr. Jones.

Hubert Jones.

(At this time the witness then resumed his seat in the witness chair).

By Mr. Hall:

Q. You remember, Mr. Jones, making a statement to the Police Officer following the accident?

A. Yes, sir.

Q. And you remember telling him that when you saw the Ragsdale car it was coming straight through?

A. No, sir.

Q. Did you make this statement to the Police Officer, "I stopped for the red light and then it turned green. The cars were turning left coming off of the overpass. I approached to make a left turn and I saw this car coming straight through. I tried to stop as quick as I could but couldn't avoid it." Did you make that statement?

A. There were an error made in that statement of what I said.

Q. Well, I just asked if you made that statement to the Police Officer, Mr. Jones.

A. Well, ain't no way I can answer that but one way.

page 43

Q. Well, what is the way?

A. All the statement was made but the straight through part.

Q. You did not say then that he was coming straight through?

A. If I recollect right, that is the statement that Ragsdale said he was going straight through. I didn't say I was going straight through.

Q. Let's talk about your statement now.

A. That's true.

Q. Do I understand you to say you did not state to the Police Officer that this car was coming straight through?

A. I didn't tell the Officer the car was coming straight through.

Q. All right, sir. Now Mr. Jones, you made the phone call to make the appointment with Doctor Beath?

A. Yes, sir.

Q. For your wife?

A. Yes, sir.

Q. Any particular reason that you selected Doctor Beath?

A. Yes, sir.

Q. All right sir, what reason was it?

A. Because I know Doctor Beath. He has been my doctor

Hubert Jones.

once.

page 44 } Q. Your doctor when you had a lawsuit up in Warwick and Mr. Pitchford sent you to see him up there, isn't that right?

A. No, sir, Mr. Pitchford didn't send me to see him.

Q. Didn't?

A. No, sir.

Q. Doctor Shield saw you too?

A. Doctor Shield; not only Doctor Shield. Doctor Wheeldon.

Q. And that's when you had a lawsuit up in Warwick not too long ago?

A. That's when I had an accident.

Q. That's right. That's right. Now what was your wife's condition prior to this accident?

A. It upset her a little.

Q. No, sir, I don't think you understood me. What was your wife's condition before the accident of July 9, 1958?

A. She was working every day.

Court: Answer as to her physical condition. Was she complaining or suffering from anything that you know of?

A. July 9?

Q. Before the accident.

A. Before July 9?

Q. Yes.

page 45 } A. She had been sick but at the time she had been working. She wasn't sick and out of work.

Q. Well, how long had she been working with you?

A. Since March of—the 15th of March.

Q. And then before that where was she working?

A. Before that she worked at the Bag Factory.

Q. Arkell?

A. Arkell Bag Factory.

Q. And did she lose any time from her employment at Arkell?

A. Some, yes, sir.

Q. Well, what do you mean by, "some"?

A. Well, as I said a while ago I'm not too good on dates. I didn't pay much attention to the dates. I still say she lost time.

Q. During the period of time she was at Arkell, she went down to Duke Hospital, saw Doctor Ruffin, down there, didn't she?

A. That's right.

Hubert Jones.

Q. And during the time that she was at Arkell on—to be specific, on October 20, 1953, while eating an apple turnover she stated she got a piece of glass imbedded in her gum. Isn't that true?

A. In her gum?

Q. In her gum.

page 46 } A. I don't know about what she stated.

Q. Did she complain to that doctor that a dentist removed a piece of glass from her gum?

A. She did that.

Q. Didn't she at that time claim that she also swallowed some glass and she vomited blood and she had headaches and that she couldn't work at Arkell?

A. She said she ate some glass and she was sick at the time.

Q. And didn't she bring a lawsuit here in Newport News concerning that matter?

A. Yes, sir, she did.

Q. And went to Duke—went to Duke Hospital and saw Doctor Ruffin May 18 and 19, of '54?

A. Well, the dates I'm not sure but she did go see Doctor Ruffin.

Q. Yes, sir. Now prior to—prior to Doctor Beath seeing her, hadn't Doctor Peirce been treating your wife?

A. I don't know about that.

Q. Here in Newport News?

A. I'm not positive about that.

Q. And can you give us the approximate dates that she was in Tucker's Hospital, Mr. Jones?

A. Tucker's Hospital?

Q. Yes, sir, up in Richmond.

page 47 } A. No, sir, I can't. As I say, I was interested in my business and interested in her health and in her shape but I wasn't paying no attention to the dates. I couldn't hardly tell you how many times she went.

Q. On one occasion she was in such bad condition that you couldn't dress her and you took her up to Richmond in her—

A. That's right.

Q. In her housedress or something of the sort, kimona or something of that nature?

A. That's right.

Q. And did you call a local doctor to give her aid and comfort at that time?

A. No, sir. We called the doctor that had been attending her.

Q. You didn't call Doctor Peirce or Doctor Baggs?

Hubert Jones.

A. I don't remember—no.
Q. Doctor Baggs?
A. Not for the time I taken her to Richmond, no.
Q. Doctor Baggs had treated your wife too, hadn't he?
A. Not for this, no.
Q. But he had treated her, had he not?
A. Doctor Baggs had treated her.
Q. And operated on her?
page 48 } A. This was a different operation. This was a different treatment.
Q. I said he had treated her?
A. Sure he had.
Q. Now the second time that she went to Tucker's, can you give us the approximate date of that?
A. No, sir, the dates I can't give you. I can give you anything else you ask for.
Q. But on—every time—that she went up to Tucker's, she went because of this accident, is that true?
A. That's true.
Q. Every time she went to Tucker's?
A. Yes.
Q. Did you go with your wife to Charlottesville?
A. Yes, sir.
Q. Mr. Jones?
A. Yes, sir.
Q. And she saw, while up there, Doctors Frankel and Crutchfield, isn't that true?
A. Yes, sir.
Q. And they told you that they couldn't find any objective findings as to your wife's condition, isn't that true?

Mr. Pitchford: Objection to what the doctors
page 49 } told him.
Court: Objection sustained.
Mr. Hall: I have him on cross examination, if your Honor please, and he's the one that has injected the question of the trip to Charlottesville into evidence.
Court: Objection sustained.
Mr. Hall: Exception to your Honor's ruling. Excuse me just a minute, if you will, please sir.

By Mr. Hall:
Q. Mr. Jones, were there many cars turning left going towards Newport News?
A. It was eleven o'clock at night and I would say just

some—minimum traffic. It wasn't no heavy traffic and you couldn't exactly call it a light traffic.

Q. Let's not talk about the hour. Let's talk about what you saw that night. Were there many cars turning left, turning left going towards Newport News?

A. There were several cars turning left.

Q. How many would you approximate?

A. I don't know. I don't have no time to count them. I say several cars turning left to go towards Newport News.

Q. There was none in the outside lane?

A. None in the through lane.

Q. None in the through lane at the time?

page 50 } A. No.

Q. Notwithstanding that fact, you stated to the Police Officer there was this car coming through the through lane?

Court: He denied that he made that statement.

Mr. Hall: I understand that. I have him on cross examination, if your Honor please.

Court: I am aware of that.

A. Now what is your question?

By Mr. Hall:

Q. I asked you a question. We'll get the Reporter to read it.

Court: Mr. Hall, I rule that question is improper because it presupposes something he denies. There's no need for him to answer the last question.

Mr. Hall: I except to your Honor's ruling. I have him on cross examination. I think the question is perfectly proper to test his credibility.

By Mr. Hall:

Q. What speed were you traveling, Mr. Jones?

A. Oh, ten, twelve miles an hour.

Q. At the time of the impact?

A. At the time I didn't get over twelve miles

page 51 } an hour; maybe fifteen from the time I left the light, I mean—what I am trying to say, I wasn't in no big hurry. I didn't need to be in no big hurry.

Q. You were almost home, weren't you?

A. Yes, sir, sure was.

Hubert Jones.

Q. And you remember—do you remember making a statement to a lady passenger in Mr. Ragsdale's car that you were almost home and that you were sorry that had hurt her?

Mr. Pitchford: Objection.

By Mr. Hall:
Q. And that you didn't see Ragsdale's car until the impact?

Mr. Pitchford: Objection.

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

Mr. Pitchford: The question is predicated on facts that are not in evidence.
Court: Did you make a statement to a woman passenger in the other vehicle? Did you talk to a woman?

A. I spoke to her, the lady that was in the—in his car.

Court: What did you say?

A. I don't remember off-hand what was said. It wasn't just a few words said. I told her I was sorry she was hurt.

page 52 } By Mr. Hall:
Q. Didn't you have a conversation with her in the corridor up at the Riverside Hospital, Mr. Jones?
A. No more than the Officer asking questions.
Q. And didn't you on two occasions state to her that you were sorry that you had hurt her?
A. No, sir. One time the best I remember.
Q. Sir?
A. One time the best I remember.
Q. One time you stated to her you were sorry you hurt her?
A. One time I was sorry she was hurt.
Q. Didn't you state to her you were sorry you hurt her?
A. No, sir.
Q. Didn't you also state at the same time you did not see Ragsdale's car?
A. No, sir.
Q. You did not make that statement?
A. No, sir.

Mr. Hall: I have no further questions at this time. Any redirect?

Mr. Pitchford: Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Pitchford:

page 53 } Q. Now Mr. Jones, Mr. Hall has developed on his cross examination that your wife complained of eating glass while working for the Arkell Bag Company, on October 20, 1953. Do you remember that episode?

A. Yes, sir.

Q. Was she sick and hospitalized for a while following that episode?

A. She was sick for a while. I don't remember about the hospital.

Q. Did you take her down to see Doctor Ruffin at Duke University because of that?

A. Yes, sir.

Q. Did she recover from the effects of having eaten this glass in the applejack or pie?

A. Seemed to, yes, sir.

Q. Did she work thereafter?

A. Yes, sir.

Q. Did she have any complaints?

A. No, sir.

Q. At what different places did she work after that glass eating business of October 20, 1953?

A. Well, she worked for Ray's Barbecue on Jefferson Avenue—I don't remember off-hand where she worked.

Q. Now have you and Mrs. Jones adopted a child since this glass eating business?

page 54 } A. Yes, sir.

Q. Were you investigated by the Welfare people?

Mr. Hall: Objection, if your Honor please.

A. Yes, sir.

Mr. Hall: What has that to do with this accident?

Court: What's the relevancy of adopting the child?

Mr. Pitchford: The relevancy, if your Honor please, in all adoption cases the adopting parents are investigated very fully and carefully.

Mr. Hall: Yes, and over in Hampton they investigated

one that gave a favorable report to a man that had been convicted of a felony and Judge Kearney wouldn't approve the adoption.

Court: Mr. Hall—

Mr. Hall: He's attempting to get that before this jury and I want to show them it is not proper, if your Honor please.

Court: I sustain your objection.

Mr. Hall: That shows how thoroughly they investigate these things.

By Mr. Pitchford:

Q. Now Mr. Hall has also made some reference to your being involved in an accident. Were you laid up
page 55 } any time because of that accident?
A. Yes, sir.

Mr. Hall: Objection, if your Honor please. What has that got to do with this case?

Mr. Pitchford: I want to show that this lady took care of him and worked at the same time; that she was in good health and active.

Court: That's perfectly all right to show that she took care of him at some time but let's not get into what accidents he had.

Mr. Pitchford: I don't want to try the accidents but may I not show he was bed-ridden and he was—

Mr. Hall: You mean in the other accident?

Mr. Pitchford: The other accident, not this one.

Court: You may proceed.

By Mr. Pitchford:

Q. From your other accident were you laid up in bed for a while?

A. Yes, sir.

Q. Who took care of you, moved you about and waited on you while you were laid up?

A. My wife.

Q. Over what period of time?

A. Well, I was in the bed for several weeks. I
page 56 } was out of work for ten months but I couldn't help myself for several weeks.

Q. Did she look after you and take care of you all that time?

A. Yes, sir.

Q. Did she complain or have any difficulty in doing that?
A. No, sir.
Q. Did she work out in addition to that?
A. Yes, sir.
Q. Had she been to see any doctor or had any medical care or treatment that you can recollect between the time you took her to see Doctor Ruffin in May of 1954 and the occurrence of the accident in question in July of 1958, four years later?
A. Off-hand, I don't.

Mr. Pitchford: That's all, Mr. Jones.
Mr. Hall: Excuse me a minute.

RE-CROSS EXAMINATION.

By Mr. Hall:
Q. Mr. Jones,—
A. Yes, sir.
Q. I show you Plaintiff's Exhibit P-Two, and ask you if that is the location of your automobile and the Ragsdale automobile following the accident?
A. Yes, sir.
page 57 } Q. I also show you Plaintiff's Exhibit P-Three, and ask you if that depicts the location of your vehicle and the Ragsdale vehicle immediately after the accident?
A. In other words, that's where—where it rest at.
Q. And they had not been moved when these pictures had been taken?
A. No, sir.
Q. Either of them?
A. No, sir.

Court: Is there anything else, Mr. Hall?
Mr. Hall: Yes, sir.

By Mr. Hall:
Q. Mr. Jones, give me the—give the approximate distance from "J-One" to point number Two. This is "J-One" that you have marked to over here.
A. I couldn't do it because I haven't measured it.
Q. Can you give me an approximation?
A. No, sir. For distance, no, sir.
Q. You can't give us an approximation?
A. No, sir.

Jay Suddreth.

Q. You think it's as much as three car lengths?
A. I—as I say, I don't know.
Q. Ten car lengths?

A. I wouldn't say it was twenty or not. I just
page 58 } don't know.

Q. How long have you been driving a car, Mr. Jones?
A. I'm thirty-five. I started when I was about twenty.
Q. About fifteen years?
A. Yes, sir.
Q. Don't you—aren't you called upon some to estimate distances when you drive your automobile?
A. Distances, yes but I never have measured from that there.
Q. When you see vehicles meeting you or approaching you or turning, don't you—aren't you called upon to judge distances some and—
A. And I know I got time to do what I want to do or what I intend to do, distance but as far as measurements are concerned—
Q. But you can't give us an approximation of this distance?
A. No, sir, I don't know how wide it is across there.

Mr. Hall: I have no further questions.

* * * * *

page 59 }

* * * * *

JAY SUDDRETH,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 60 } By Mr. Pitchford:

* * * * *

Q. Were you summonsed to come to Court today?
A. Yes, sir.
Q. Now I direct your attention to the night of July 9, 1958 at the intersection of Bridge Road and Route 60. Did you

witness an accident at that point on that night between an automobile driven by Hurbet E. Jones and another automobile driven by Marshall Ragsdale?

A. Yes, sir.

Q. Come around here, if you will please, Mr. Suddreth. We have here a drawing to scale.

(At this time the witness then left the witness chair and stood in front of the jury).

By Mr. Pitchford:

Q. Of the intersection.

page 61 } A. Yes, sir.

Q. Now would you indicate on this drawing, if you will, where you were when the accident occurred?

A. I was sitting right here (indicating).

Q. Were you in an automobile?

A. Yes, sir.

Q. All right. Would you put your initials at that point, if you will, please?

(At this time the witness complied with the request of counsel).

By Mr. Pitchford:

Q. And put the figure one there, please.

(At this time the witness complied with the request of counsel).

By Mr. Pitchford:

Q. Why were you sitting at that location?

A. I just left the cafe just about half a block up here. I had come back from a hunt club late at night and I stopped at this cafe to get something to eat and I just left there and came down and as I got here, the light had changed to red at my side and I was sitting here when the impact happened.

Q. All right, now tell us in your own words, if you will, what you saw.

A. I was sitting here waiting for the red light to

page 62 } change so I could make my left-hand turn to go back across this way down Bridge Road to go down Military Highway to go home and there was a car, this green Oldsmobile was sitting here.

Jay Suddreth.

Q. Put your initials and figure "Two" there, if you will, please.

(At this time the witness complied with the request of counsel).

A. And this green Oldsmobile was sitting here and as the light caused me; there was three cars came to make a left-hand turn and this Oldsmobile pulled out across here (indicating) and was going towards Warwick and this three or four cars were coming this way.

Court: When you say, "this way" you mean going towards the James River Bridge?

A. They were making a left-hand turn going towards Newport News.

By Mr. Pitchford:

Q. Would you indicate on the diagram please, sir, how the cars were turning?

A. They was turning left coming—off this bridge up here and it was an incline and they were coming down and going this way and going to make a left-hand turn going towards Newport News and along before he hit this two lane highway, another car come behind them and whipped out and came this way (indicating). There was—it was a '57 Ford,
page 63 } kind of dark brown and a tan come out this way and swerved around at a very good rate of speed and so I don't know whether he was going to make a left-hand turn or going straight through and he was crowding this way and I didn't know whether he was going to hit me or go this way and he went to this section and that's when he had the accident.

Q. Put your initials and the figure, "Three."

(The witness complied with the request of counsel).

By Mr. Pitchford:

Q. Now would you indicate on that diagram approximately where this automobile that came over the bridge was involved in the impact was when you first took—took any notice of it?

A. It was along in here just about where this highway started dividing (indicating) and so he run across up behind

these and then—he went in behind them. He turned out and came in to this lane here and more or less crossed this little isle that's painted white and come mostly across there into here (indicating) and I didn't know whether he was going straight through there or going across. He was coming almost head into me and I got straight and I thought he was going to hit me and he hit this automobile in here and turned completely around and in this curb and blocking this lane (indicating).

Q. Mark the diagram, the location of the Olds-
page 64 } mobile.

A. Around here (indicating).

Court: The point you are marking is after impact?

A. That's after impact.

Court: Will you put a number there?

A. Number Four.

By Mr. Pitchford:

Q. That was after the impact, number Four?

A. Yes.

Q. Wait, Mr. Suddreth. Put the number there. Is that the Four there?

A. Yes. Then after the impact, this other car it looked like it went maybe a car length and almost into this here and he was blocking this lane here and sticking out this way more or less (indicating). He was blocking the inside lane going towards Warwick or Williamsburg and the back end of his car had that blocked.

Q. Was any part of this lane, the southbound left-hand lane blocked?

A. This lane was blocked and this lane here, this car was the front end was sitting in here partially had this lane partially blocked (indicating).

Q. Approximately how far was this—what kind of car was that?

A. It was a V-8 Ford.

page 65 } Q. How far was the V-8 Ford approximately from the island, as best you recollect?

A. I'd say maybe six or eight feet.

Q. Describe to us, if you will, the manner in which the Olds-

mobile was driven into the intersection and before the impact occurred?

A. I don't understand you. When you leave here?

Q. Yes, sir.

A. He was making a complete left-hand turn so he was—had it almost made when this guy come out and whipped into him.

Q. That tells us how far he had gotten. Tell us how he was driving as he came around?

A. He done cleared this lane here (indicating) and in other words, he was coming this way and they come down and they practically met (indicating).

Q. What I want to know was he driving fast or slow?

A. I'd say maybe five or ten miles an hour.

Q. Did he have his lights on?

A. Yes, sir. Everybody had their lights on and this was pretty well lighted here too.

Q. What were the weather conditions?

A. It was raining. It had been raining mostly all day.

* * * * *

page 66 }

* * * * *

Q. Now do you recollect what part of the Oldsmobile was damaged?

A. It was the front—right front fender and the door and—and just a little bit of the back door—back panel past the door post.

Q. Does this picture depict the damage to the Oldsmobile as you remember it?

A. Yes, sir (indicating on photograph).

Q. Now what part of the V-8 Ford was damaged?

A. His—mostly his front end. All his was on page 67 } the front end.

Q. Do you recollect the Ford being damaged on either side?

A. No, I didn't. Very little. All his was in the front grill. The hood was knocked up—knocked out of portion and was raised up and—

Q. After you—witnessed the occurrence of this accident, what did you do?

A. I got out and when I seen this Oldsmobile after the im-

pact had swung around and was going almost in the same direction he came from, I heard his—the little baby crying and screaming and I thought maybe she was pretty badly hurt and the lady was in the car was laying over the baby and they was crying so this guy was driving the Oldsmobile, he got out and I said, "you want me to help get her out"? He said, "no, just help me get her off the baby and leave her." He wanted a doctor to look at her before anybody touched her. At that time he said, "will you watch her a little bit while I go over here and call an ambulance and a Policeman to come up there."

Mr. Hall: I object to the hearsay, if your Honor please.
Court: I think that comes in as part of the *res gestae.* Overrule the objection.
Mr. Hall: Exception.

A. So I stayed with the car with the lady and the baby and he was still screaming and his arm was held
page 68 } down and looked like it was broken and so I stayed there and he went up there and made the phone call and traffic was coming in fairly good and so this guy then he gave him—in the meantime I asked him if there was anything I could do to help him. He said no, the doctor would take care of the thing and so I gave him my name and address and told him if anything I could *go* to help him, to call me. I helped kind of direct traffic to swing around in between the two cars and pulled on away from the accident and then it was raining pretty bad and I wanted to get out of the rain.
Q. Is that all you know about it?
A. Yes, sir.

Mr. Pitchford: Cross examine.

CROSS EXAMINATION.

By Mr. Hall:
Q. Mr. Suddreth, were you there when the Policeman arrived?
A. Yes, sir, I was pulled out and crossed over there and stopped and just about the time I pulled over, the ambulance and the Police car had got there and so they got—
Q. You were there when the Police Officer arrived to investigate the accident?
A. Yes, sir.

Jay Suddreth.

Q. Did you give him your name and address?
A. No, sir, I didn't.
page 69 } Q. He was clearly available to you, was he not?
A. Yes, sir. We had everything under control so I got in my car and went on.
Q. I say, the Police Officer was clearly available to you. You could have given him your name and address?
A. I could have.
Q. Nothing to prevent you from it?
A. That's right.
Q. Now Mr. Suddreth, what's your address in Buckroe?
A. 1936 Rawood Drive.
Q. Rawood Drive?
A. That's right.
Q. In Buckroe?
A. That's right, about a mile or maybe a mile and a half this side of Buckroe. What they call Washington Gardens.
Q. Now let's look at this diagram a little, Mr. Suddreth. With your Honor's permission, may he step out of the box?

Court: Yes.

(At this time the witness then stepped down from the witness chair and stood in front of the jury box).

By Mr. Hall:
Q. Now would you indicate on here—would you indicate on here, Mr. Suddreth, where Mr. Ragsdale's auto-
page 70 } mobile was when you first saw it?
A. When I first saw it?
Q. That's the Ford I believe.
A. That's right, I would say he was about half-way from the top of the bridge part, that's the incline, to where it comes into this place in here (indicating).
Q. Would you mark—make a mark as your best approximation of where it was, please, sir?
A. I'd say it was right along here (indicating).
Q. And would you put your initials by it and number it?
A. I believe four was the last one.
Q. Four, the last one. Make that five then, please.

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. And would you—was it at that time behind the other traffic?

A. That's right. He had run right in behind the traffic and left-hand turn traffic.

Q. All right, mark where he was when you saw him in the through lane?

A. I'd say he was right here (indicating).

Q. And would you—

A. Mark that?

page 71 } Q. Yes, sir.

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. That would be six I reckon?

A. Yes.

Q. Now may I have that pencil, please. I'd like to indicate—

A. Yes, sir.

Q. Back here, Mr. Suddreth, where you have marked number five.

A. Yes.

Q. That is a two lane highway there, isn't it? One way for westbound and one for eastbound?

A. It shows—but both sides, this side and this side, there are room enough from the top of the hill but it's real close where two cars can come down at the same time and go up but there's not but one center line—that's right.

Q. That's right, there's a lane for eastbound traffic and a lane for westbound traffic. That's true, is it not?

A. That's true.

Q. As one progresses further to the westward on Highway 258, the road branches out or widens, does it not?

A. Comes into three lane.

page 72 } Q. And then cars desiring to turn right or northward—

A. Yes, sir.

Q. Take the extreme outside lane?

A. Yes.

Q. And cars desiring to go straight through take the center lane?

A. Yes.

Q. And cars making a left turn take the inside lane?

A. That's right, these two lanes. You can go straight

Jay Suddreth.

through or left turn. There's nothing to prevent you from going straight through.

Q. And Mr. Ragsdale, when you saw him back here is when he changed his lane of travel?

A. That's right.

Q. Is it not back in here?

A. That's right.

Q. Any other vehicles stopped here by you, Mr. Suddreth?

A. No, this car here (indicating), the Oldsmobile had these two lanes blocked and this lane here was partially blocked. It was enough room.

Q. Maybe you misunderstood my question.

A. O. K.

page 73 } Q. When you were stopped here for the red light, I understood you to say you were stopped for the red light?

A. That's right.

Q. Were there any other cars likewise stopped for the red light?

A. As far as I remember, I don't remember it but they had—after the wreck I noticed there was quite a few traffic that came in and that's when I pulled out.

Q. My question was pointed as to whether or not there was any stopped with you?

A. I don't remember.

Q. Were there any cars stopped headed north over here on 60?

A. I don't remember that either.

Q. What were the weather conditions?

A. It had been raining off and on all day and at that time it was misty and it was starting—it was falling weather at that time. It wasn't too awful bad. It wasn't enough for windshield wipers to be turned on.

Q. Mr. Suddreth, I show you Plaintiff's Exhibit Number Two and ask you if that depicts the location of the two vehicles involved after the impact?

A. That's right.

Q. Now there's an arrow. You see the arrows shown on this picture?

A. Yes, sir.

page 74 } Q. Are you familiar with this intersection?

A. Yes, sir.

Q. There are two arrows at that location, are there not?

A. I think so.

Q. Now do you know whether this arrow is the most south-

ward arrow or the most northward arrow (indicating Exhibit Two)?

A. I'd say—

Q. In other words, what I am asking is this, Mr. Suddreth. It might be clearer. Is this arrow there this arrow as shown on this diagram or this arrow (indicating)?

A. Well, Lawyer, if I am not mistaken, I may be corrected, I believe these arrows starts—some arrows starts in here after.

Q. We're dealing with these two here now, Mr. Suddreth, these two.

A. I would believe it would be this one right here (indicating).

Q. Would you mark that, please?

(The witness then marked Exhibit One as requested by counsel).

A. Initial it?

By Mr. Hall:

Q. Yes, sir, if you would and that would be page 75 } seven I suspect.

(The witness complied with the request of counsel).

By Mr. Hall:

Q. Did you—when you looked around following the impact, Mr. Suddreth, did you observe glass and debris and that sort of thing?

A. Yes, sir.

Q. Along the line that is depicted there?

A. Yes, sir, there was quite a bit of it. Mostly I was—

Q. Sir?

A. There was quite a bit of it on the street but I was more or less concerned about the lady and—the woman was screaming and everything and I was more concerned with that than I was about the car.

Q. Did you see the lady in the other car? Was she injured?

A. I noticed them. They was in the car but he hadn't gotten out and he was—and he was still sitting in the car after I run over to this other car and they wasn't no commotion or anything in the Ford.

Q. Did you see the ambulance take the other lady away?

Jay Suddreth.

A. Yes, and—

page 76 } Q. Sir?

A. What was the question, please?

Q. Did you see the ambulance take the other lady away?

A. Well, the ambulance was there and the Policeman was there when I left. They—was getting—

Q. Had the ambulance taken the people to the hospital when you left?

A. No, sir, I don't think so. I don't remember them leaving.

Q. When the ambulance came, why you left?

A. That's right.

Q. And—

A. I figured they knew more about that what they were doing than I did.

Q. I understand that and you didn't give your name to the Police Officer. Did you speak to him at all?

A. No, sir, I didn't.

Q. You didn't address him at all?

A. No, sir, I didn't.

Q. You knew he was investigating the accident, didn't you?

A. Yes, sir.

Q. And you knew that he was interested in finding witnesses, didn't you?

page 77 } A. He never said anything about it.

Q. Well, how was he to know you were a witness?

A. Well, there were people start ganging up there. He could have asked.

Q. And—

A. If he wanted witnesses.

Q. You just left, didn't you?

A. I looked at it this way. If he wanted witnesses, he could have gave the Policeman my name. He said he had a witness. I figured after I done what little I could, I was ready to go home.

Q. Mr. Jones could have given him your name?

A. That's right.

Q. You were by yourself, Mr. Suddreth?

A. Yes, sir, that's right.

* * * * *

page 79 }

* * * * *

RANDOLPH T. WEST,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Sarfan:

page 80 } Q. Will you state your name to the jury?
A. Randolph T. West.

Q. On July 9, 1958 were you a Police Officer assigned to the Newport News Police Force?

A. Yes, sir, I was.

Q. Since that time, have you terminated your employment with the Police Department to attend college?

A. Yes, I have.

Q. And where are you now attending college?

A. University of Richmond, Richmond, Virginia.

Q. Now I direct your attention to July 9, 1958 and you had an occasion to investigate an accident that occurred up at Bridge Road and Route 60, did you not?

A. Yes, sir.

Q. On this particular night, what time were you called to investigate the accident?

A. Approximately 11:30 p. m.

Q. And when you arrived at the scene, what were the weather conditions?

A. It was raining very hard.

Q. Were the automobiles still blocking the highway when you arrived?

A. Yes, sir, they were.

Q. Would you state to the jury the direction—well, let me go back a little bit. Did you determine who was

page 81 } driving the automobiles involved in the collision?
A. Yes, sir, I did.

Q. Did you determine the automobile driven by a Hubert Jones?

A. Yes, sir.

Q. What type of automobile was that?

A. 1958 Oldsmobile.

Q. Did you determine who was the driver of the other vehicle?

A. Yes, it was Marshall Franklin Ragsdale, 1957 Ford.

Q. Now in your investigation did you determine from the drivers what they were doing just prior to the accident, the direction they were traveling in?

A. Yes, sir, each gave me a statement in the presence of one another.

Randolph T. West.

Q. Prior to the time of taking the statement or if it is in the same statement, what direction did Mr. Jones say he was traveling?

A. Mr. Jones stated that he was traveling west on Bridge Road attempting to make a left turn on to Route 60.

Q. And what direction was Mr. Ragsdale traveling?

A. Mr. Ragsdale was traveling east on Bridge Road or coming off of the James River Bridge overpass and was headed toward the James River Bridge.

page 82 } Q. Now at the time you arrived, could you describe to the jury the location of the automobiles?

A. I can give you an approximate location of the vehicles. As I said, it was raining very hard that night and there were no skidmarks left and it was only an estimation as to the approximate point of impact. The car driven by Mr. Ragsdale which in my report was filed as vehicle number one, was headed in a northwest direction in approximately the center of the highway, approximately twelve feet from the island on the north side of 60.

Q. And in what direction was the Jones car then facing?

A. The Jones vehicle was also facing a northwest direction or more west than the Ragsdale vehicle was. It was blocking the two driving lanes of the southbound traffic on Route 60.

Q. Now did you determine whether the vehicles had been moved before you arrived?

A. It was impossible for the vehicles to have been moved.

Q. In other words, they were in the position immediately after the accident at the time you arrived?

A. Yes, sir.

Q. I hand you two photographs marked Exhibit P-Two and Exhibit P-Three. Have you ever seen these photo-

page 83 } graphs before?

A. Yes, sir, I have two small ones right here, very similar or exactly like that, only they're on a larger scale.

Q. During the course of the investigation were these pictures taken by the official photographer of the Newport News Police Department?

A. Yes, sir, they were taken by Sergeant Garman.

Q. Do they accurately reflect the location or the location of the two vehicles at the time of your investigation and at the time immediately after the accident?

A. Yes, sir.

Q. Where they came to rest?

A. Yes, sir.

Randolph T. West.

Q. Now I hand you Exhibit P-Two, which shows the Ford automobile. I believe you testified that that vehicle was approximately twelve feet from this island (indicating). In other words, you referred to the location of the vehicle as being twelve feet from the island. Is that this island here you are referring to?

A. Yes, sir.

Q. And you had it in the approximate middle of the island?

A. Yes, sir.

Q. Now the Oldsmobile was blocking I believe you said these two lanes?

A. Yes, sir.

page 84 } Q. Middle?

A. That's right, two driving lanes. There are four lanes headed south. He was blocking approximately the two driving lanes.

Q. Now this debris seems to be centrally located, what would appear to be immediately behind the Ford.

A. That's right. In my estimation the debris and all I could gather, my point of impact was approximately at this left rear wheel, in that general vicinity.

Q. And that was determined from the debris?

A. That's right.

Q. Now at the time you made your investigation, it was raining rather hard, wasn't it?

A. Yes, sir.

Q. And it was very difficult in trying circumstances to attempt to make an investigation in the sense of getting out and pacing—

Mr. Hall: Objection to the leading, if your Honor please.

Court: The question is leading.

Mr. Sarfan: It is leading. I withdraw the question.

By Mr. Sarfan:

Q. Now at the time you arrived, what were the conditions of the occupants in the Ragsdale vehicle, if there was

page 85 } one?

A. There were two people in the Ragsdale vehicle; Marshall Franklin Ragsdale, who was driving the vehicle and Freda Sheffield, a white female, aged twenty-eight. Mr. Ragsdale had injuries—abrasions of the right arm and right leg.

Mr. Hall: Objection to that, if your Honor please. Mr.

Randolph T. West.

Ragsdale is not being tried. No useful purpose—
Court: Is that material?
Mr. Sarfan: No.

By Mr. Sarfan:
Q. You say there was a—a witness in the Ragsdale car by the name of Freda Sheffield?
A. Yes, sir.
Q. Did you determine in your investigation whether any of the parties to the accident had been drinking?
A. I asked both drivers.

Mr. Hall: Objection, if your Honor please. There's no allegation in the notice of motion concerning it. The allegata and the probata must coincide.
Mr. Pitchford: If the Court please, I believe Mr. Hall's point is well taken. It is not alleged to be driving under the influence.
Mr. Hall: Nor was he under the influence.
page 86 } Court: Well, if you want to—if you wish to debate that point, I'll have to permit the question.
Mr. Hall: I wish to debate it since it has been raised.
Court: Go ahead and proceed with the question.

By Mr. Sarfan:
Q. Officer, did you determine anyone involved in the accident had been drinking?

Mr. Hall: I except to the Court's ruling in permitting this type of testimony and permitting it to be injected into the case. It is to the prejudice of the defendant because there's no substance in it.

A. At the time of the investigation I had both drivers and I asked them both in the presence of one another if they had been drinking. Mr. Jones stated he had not been drinking. Mr. Ragsdale said he had had something to drink but he did not state how much.

By Mr. Sarfan:
Q. Did you ask—did you determine from the odor of alcohol whether Mrs. Sheffield—did you talk to Mrs. Sheffield?
A. I did not talk to her, no, sir.
page 87 } Q. She was in the automobile with Ragsdale?
A. Yes, sir.

Mr. Hall: Objection to anything concerning Mrs. Sheffield. Move that it be stricken. It has nothing to do with this case.

Mr. Sarfan: You brought it in.

Court: Except for the fact she might testify as a witness.

Mr. Hall: Then—if she testifies and if there's a question as to whether or not she's in the position to testify or to give testimony, that's one thing but at this particular time it certainly is calculated to be prejudicial to inject any such testimony at this time.

Mr. Sarfan: I would assume that she would certainly testify, being an occupant of the car and I want to show her condition.

Mr. Hall: Well sir, I object to it if your Honor please, whether she's drunk or sober.

Court: I believe that if you want to insist on it, you'll have to let the Officer wait until the lady has testified and then show whether she was drunk or sober.

By Mr. Sarfan:

Q. All right. Officer, what was the address page 88 } given by Ragsdale as his home address?

A. 5108 East Princess Anne Road, Norfolk, Virginia.

Q. That's Norfolk, Virginia?

A. Yes, sir.

Q. Do you have his occupation there?

A. No, sir, I don't.

Q. Now what was the address of Freda Sheffield who was riding in the vehicle? Do you have that?

Mr. Hall: Objection, if your Honor please. What does that have to do with this case?

Court: What are you attempting to show by that?

Mr. Sarfan: I want to know whether she's familiar with this area or not.

Mr. Hall: She wasn't driving the car. What in the name of conscience has that got to do with it?

Court: Objection sustained.

By Mr. Sarfan:

Q. Officer, let's go back to the pictures here and discuss damage. This is the Oldsmobile which you have identified as the Jones vehicle. The damage would appear to be on the side. Is that accurate?

A. That's right.

Randolph T. West.

Q. And the damage on the Ragsdale vehicle—

page 89 } Mr. Hall: Objection, if your Honor please. The pictures speak for themselves. The testimony is uncontradicted that they reflect the automobiles after the impact.

Mr. Sarfan: If your Honor please, the photograph here cuts off the Ragsdale car and I wanted to take care of that damage that's not shown.

Mr. Hall: It's been said a picture is worth a thousand words.

Court: If you will wait until he finishes the question, I'll be able to rule on it. Repeat it.

By Mr. Sarfan:

Q. The photograph we have been discussing, apparently it cuts off the small portion of the Ragsdale vehicle or the Ford, does it not?

A. Yes.

Q. Could you verbally perhaps add to the damage which is not shown in the photograph? You made some field notes?

Mr. Hall: Objection, if your Honor please. There are abundant pictures that have been introduced showing damage to both vehicles, fully and completely.

Court: Objection overruled.

page 90 } Mr. Hall: Here they are, all kinds of pictures showing all kinds of views.

Court: He's entitled to testify, regardless of the photographs.

A. Parts of the vehicle damaged to Mr. Ragsdale's automobile was the left, right and front fenders, the grill, left door, the chassis and the hood.

By Mr. Sarfan:

Q. In other words, this—there was some damage over there on the right side which is not shown in the picture?

A. That's right.

Mr. Sarfan: That's the only thing I'm trying to bring out, Mr. Hall.

By Mr. Sarfan:

Q. Did you talk to both parties?

A. Yes, I did.
Q. And where did you talk to them?
A. At the Riverside Hospital.
Q. Now did you take a statement from Mr. Jones?
A. Yes, sir.
Q. And what essentially did he tell you?
A. Mr. Jones gave me this statement. "I stopped for the red light and it turned green. The cars were turning left coming off the overpass. I approached to make a left turn and I saw this car coming straight through. I
page 91 } tried to stop as quickly as I could but couldn't avoid him."
Q. Now did Mr. Ragsdale make a statement?
A. Yes, he did. Statement by Mr. Ragsdale. "The light was green and there was a car turning left and I was going straight through. By the car turning in front of me, I didn't see his car cutting across in front of me."

Court: Will you say that again?

A. "The light was green and there was a car turning left and I was going straight through. By the car turning in front of me, I didn't see his car cutting across in front of me."

By Mr. Sarfan:
Q. Now on the night you took these statements, you didn't go into great detail as to every implication?

Court: Can't you just ask him a question, did he go into detail, rather than say didn't he.

By Mr. Sarfan:
Q. Did you go into great detail in taking these statements?
A. I just wrote down what they told me at the Riverside Hospital. I asked each for a statement and this is exactly what they told me at the hospital.
Q. Now in your investigation did you determine whether Mrs. Lelia Jones was injured?
A. Yes, her extent of injury, as far as I found it
page 92 } at the time was laceration of the right arm and at the time it was not determined as to a possible concussion.

Mr. Sarfan: Thank you. Answer Mr. Hall's questions.

Randolph T. West.

CROSS EXAMINATION.

By Mr. Hall:

Q. You smell any odor of alcohol on Mr. Ragsdale?

A. Yes, sir, I did.

Q. Would you state to the Court and jury whether the odor was slight or heavy?

A. In my opinion it was slight.

Q. Will you also state to the Court and to the jury whether or not you felt that his ability to drive was impaired in any way?

Mr. Pitchford: Objection; that calls for a matter of opinion, conclusion on the part of the Officer.

Court: So far as the questions of insanity and intoxication and so forth, the witness may express an opinion.

Mr. Hall: Yes, sir.

A. It is my opinion that his ability was not impaired by his drinking.

By Mr. Hall:

Q. Odor was slight and ability was not impaired page 93 } in your opinion?

Court: Wait a minute.

A. Yes, sir.

Court: Wait a minute. Perhaps going that far as to ability—let me ask you this. In your opinion was he under the influence of intoxicants?

A. No, sir, he was not.

Mr. Hall: I think we have a right to pursue it further, if your Honor please, as to whether his ability was impaired to drive a car.

Court: Well, I think I was in error in so ruling. I misunderstood the point of your objection. Gentlemen, I instruct you that his opinion as to whether he was intoxicated or not is perfectly admissible but I think to go further and say his ability to operate a car, I believe is taking it too far and I sustain the objection as to that and instruct you to disregard it.

Mr. Hall: Exception to the Court's ruling as the evidence is perfectly proper and it's on cross examination and the plaintiff raised the question here of intoxication and drinking and now I have a right on behalf of this defendant to adduce evidence as to whether or not his ability
page 94 } was impaired to drive. That's the issue.

Court: The Officer said he was not intoxicated. Let's go ahead.

Mr. Hall: I know but I want to preserve this record, if your Honor please. This is an important case to my client and I think that this is a matter of grave importance as to whether or not his ability was impaired to drive when the issue is raised by the plaintiff.

Court: The Officer has testified the man was not intoxicated.

By Mr. Hall:

Q. Now Mr. West, I wonder if you would on this sheet of paper here, if we can get it tacked, do you object if I temporarily tack it over your's?

Mr. Sarfan: We have got another board.

Mr. Hall: You have got another board? Thank you old friend. I appreciate that.

By Mr. Hall:

Q. Mr. West, would you look at this drawing here and orient yourself. If you have any questions, why we'll try to answer them for you.

(At this time a plat was handed to the witness).

page 95 } A. All right, sir.

By Mr. Hall:

Q. Now would you—do you have a pencil?

A. Yes, sir.

Q. Now would you place the automobiles in that intersection as you found them to be? Is that sharp pointed?

A. Yes, sir.

Q. All right, this one is sharp too; as you found them to be when you arrived at the scene of the accident.

A. Yes, sir.

Randolph T. West.

(At this time the witness complied with the request of counsel.)

By Mr. Hall:

Q. And on the Ragsdale car would you put an "R" please, sir and on the Jones car a little "J"?

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. Now did you take any measurements there that night, Officer?

A. Yes, sir, the only measurements I have from this island to the rear of the Ragsdale car was twelve feet. The Ragsdale car was approximately from here to here, was approximately three feet (indicating).

Q. Now were you able, Officer, to determine the page 96 } point of impact?

A. I just approximated the point of impact. There was no definite point because of the rain.

Q. Well, could you give us your best approximation.

A. My approximation of the point was at the left rear wheel of the Ragsdale vehicle.

Q. All right, sir. Would you make—you have indicated, if I followed you correctly, the impact by an X mark on the diagram?

A. That's right, sir.

Q. Will you place an "I," if you will, beside that or "IM" if you will, please, sir.

(At this time the witness complied with the request of counsel).

By Mr. Hall:

Q. Now did you take any other measurements, Officer?

A. That's all the measurements I took.

Q. Now on vehicles proceeding westerly on 258 in the direction of the James River Bridge, would you state what the speed limit is, please, or what was it at that time?

A. If my memory serves me correctly, it was twenty-five over the overpass.

Q. But—isn't there a marker there showing thirty-five mile speed, Officer?

Randolph T. West.

A. I don't believe there is on the overpass,
page 97 } sir.

Q. Have you been over it lately?

A. Not lately.

Q. Isn't there one right there today showing it?

A. Now, I haven't been over there since January any way so I don't know.

Q. All right, sir. Would you care to, after you leave the witness stand, would you care to make any investigation about what the speed limit was at that time over at the Police Department? Perhaps they have some information. Would you like to do that for us?

A. If asked by the Court, I'll be glad to do it.

Mr. Hall: Would the Court permit him to do it, if your Honor please?

Court: Can't you all stipulate what the speed limit is if you looked it up?

Mr. Hall: Thirty-five.

Mr. Pitchford: I have no objection to stipulating it. This man wants to go back to school. We can get the information if it's over there.

Mr. Hall: Perfectly agreeable.

By Mr. Hall:

Q. Officer, can you approximate the distance from the rear of car number two to the front of car number one?

A. I'd approximate that distance to be approxi-
page 98 } mately—approximately twenty feet, somewhere in that vicinity.

Mr. Hall: I have no further questions, if your Honor please.

RE-DIRECT EXAMINATION.

By Mr. Sarfan:

Q. Now Officer, the view coming down the bridge, it's obvious that you are approaching an intersection. It's very open, is it not?

A. Yes, sir.

Q. In other words, the view Ragsdale would have coming down, he would see that it is an intersection?

A. Yes, sir.

Q. And it was raining that night?

A. Yes, sir.
Q. It was raining at the time of the accident, do you know?
A. Yes, sir.

* * * * *

page 100 }

* * * * *

LELIA JONES,
called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:

* * * * *

page 101 }

* * * * *

Q. What, if anything, did you do in connection with that business?
A. I operated the ice cream truck. I drove the truck.
Q. I didn't quite understand you. Say that again.
A. I drove the truck and worked it and worked the back.
Q. What kind or what type of work did that require of you?
A. Well, it required me to lift five gallon containers of mix, pour it in machines and it required me to mop up and clean up the floors when it got dirty and to keep the truck clean and wait on the windows.
Q. Have you ever, prior to that time, worked in other places requiring physical activity?
A. Yes, I had.
page 102 } Q. What places can you presently recollect having worked at?
A. Well, I worked in the zipper plant and I worked at Arkell Bag Factory. I worked at the Doughnut Shop. I worked in Peoples Drug Store and I worked in a restaurant.
Q. Now at the Arkell Bag Plant, what did you do there?
A. I was sewing machine operator.

Lelia Jones.

Q. As a sewing machine operator, what were you required to do?

A. Well at times we'd have to lift our own bags and put them on the machines in order to have them there to be sewed.

Q. What was the approximate weight of those bags?

A. I don't have any idea the approximate weight.

Mr. Hall: Objection, if your Honor please. What does this have to do with our case?

Court: I presume he's trying to show some difference in her ability to lift before.

Mr. Hall: I contemplate that but she's testified that—prior to this accident such and such. Now is it proper to go into *ad infinitum* all of her life chain?

Court: I don't think he's exceeded any reason-
page 103 } able bounds at this time.

Mr. Hall: I'll except to the Court's ruling.

By Mr. Pitchford:

Q. Now Mrs. Jones, while you were working at the Arkell Plant, is that what you called it?

A. Arkell Bag Factory.

Q. Arkell Bag Factory, you lifted bags?

A. Yes, I lifted bags.

Q. You estimated it weighed fifty pounds?

A. Yes, sir, I did.

Q. Did you, during the year 1953 swallow some glass in an apple pie?

A. Yes, I did.

Q. Were you sick for a while from that?

A. Yes, I was.

Q. Did you recover from those injuries?

A. Yes, I did.

Q. After recovering from those injuries, what kind and type of work did you do?

A. Well, at that time I adopted a little boy and they requested me to quit work and take care of the boy so I stayed home and take care of the baby because it was the request of the Welfare that the mother be with the baby. Then—

Q. Go ahead.

A. Then when Hubert was hurt, he was laid up
page 104 } and I had to go back to work.

Q. And you went back to work doing what?

A. I went back for work as a waitress.

Lelia Jones.

Q. At what places?

A. I worked at Ray's Barbecue and I worked at Peoples and I worked at the Doughnut Shop.

Q. Now were you involved in an automobile accident on July 9, 1958?

A. Yes, sir.

Q. Where had you been?

A. We had been down to Carolina to see his Daddy. He had just got out of the hospital.

Q. Who made the trip to Carolina?

A. My husband, my baby and myself.

Q. All right now, did the accident happen going or coming back?

A. Coming back.

Q. Where did the accident occur?

A. At James River Circle.

Q. The Circle or the intersection?

A. Intersection.

Q. Now how were you seated in the automobile?

A. I was seated in the right-hand side of the door, leaning against the door just like that (indicating).

Q. Who was driving?

page 105 } A. Hubert was driving.

Q. Where was the baby?

A. The baby was sitting in my lap.

Q. Now tell us, in your own words if you will please, what you recollect of what happened when your husband, Hubert, approached the intersection of Route 60 and Bridge Road?

A. Well, we stopped for a red light. We had the green light to go. They was cars turning left towards Newport News but no cars in the through lane or in the right lane. We turned to go left and just before we entered into the left-hand lane I saw this flashing light and I grabbed hold of the baby.

Q. Do you recollect anything else that happened at the intersection?

A. No, I don't.

Q. When do you next remember something?

A. Well, I don't know when it was but I remember a girl holding the baby and telling me the baby's arm had been broken but it seemed like a bad dream. It didn't seem like it had actually happened.

Q. When you came to your senses, so to speak—

A. I guess—

Q. Where were you?

A. I was in Riverside Hospital.

Lelia Jones.

Q. Had you been admitted to the Riverside
page 106 } Hospital as a patient?
A. I don't know. All I know I was in the hospital.

Q. Did you have a room or were you in the emergency room?

A. I don't know.

Q. Did you stay in the Riverside Hospital for several days?

A. I stayed in Riverside Hospital from the accident until Sunday.

Q. On what date *date* did the accident happen?

A. On a Wednesday.

Q. Did the doctors at the hospital permit you to go home?

A. On Sunday, yes.

Q. Do you have—what do you remember about that hospital stay?

A. I don't remember too much about it. Some of it I do and some of it I don't. I remember somebody asking me questions but I don't remember what I said.

Q. All right now, how did you get from the Riverside Hospital to your home on Todds Lane?

A. My husband and a friend of his come and got me, took me out in a wheelchair out to the car and put me in the back seat of the car and when they put me, started putting me in the car I was so sick, I started crying.

page 107 } Q. Did they take you home anyway?
A. They took me home anyway.

Q How long did you—when you got home, did you go to bed?

A. Yes, they carried me in the house and put me in bed.

Q. And how long did you stay in bed?

A. I stayed in bed until the next morning. I asked my husband to get in touch with the doctor.

Q. Did you have any particular doctor in mind?

A. Yes, I wanted him to get Doctor Beath.

Q. Why?

A. Because I felt like he was better qualified to tell me how bad I was hurt.

Q. Were you concerned about your condition?

A. Yes, I was.

Q. Now did your husband comply with your request by getting in touch with Doctor Beath?

A. Yes, he did.

Q. After your husband got in touch with Doctor Beath, were you carried to see him?

Lelia Jones.

A. Yes, on Monday morning my husband carried me to Richmond to see the doctor.

Q. Did you dress to make that trip?

A. No, I weren't able.

page 108 } Q. Now what occurred when you got to Doctor Beath's office?

A. Well, my husband and a friend helped me get in the office and Doctor Beath told my husband that I was a very sick woman; that I better go in the room.

Mr. Hall: Objection, if your Honor please.

Court: Objection sustained. Just relate what you know and not what someone told you.

By Mr. Pitchford:

Q. Don't tell what the doctor told you. Just what the doctor did.

A. They put me in a room and let me lay down on a stretcher or bed, whatever you call it and then the doctor examined me and he put me in the Retreat for the Sick.

Q. Where is that hospital located, in what city?

A. In Richmond.

Q. And how long did you stay in the Retreat for the Sick?

A. I don't know actually the days. I stayed there—I believe I went into the Tuckers on Saturday. From Monday until Saturday. I'm not sure but I believe that's—

Q. While you were in the Retreat for the Sick, what doctors treated you?

A. Doctor Beath and Doctor Shield.

Q. Can you recollect what they did for you or to page 109 } you while you were in the Retreat for the Sick?

A. They gave me some pills. They gave me X-rays.

Q. And when you left the Retreat for the Sick, where did you go?

A. To the Tuckers.

Q. Is that a hospital?

A. Yes, it is.

Q. Is that in Richmond also?

A. Yes, it is.

Q. How long did you stay in Tuckers?

A. I don't know, the first time.

Q. Did you give us the approximate time?

A. No, I'm afraid I couldn't. I don't know the exact time.

Lelia Jones.

Q. Did you commence feeling better while you were in the Retreat and then the Tucker Hospital?

A. Yes, they gave me therapy treatments in the Tucker Hospital and they gave me pills and one time the doctor gave me a shot but I don't know what the shot was for.

Q. Now did the doctors finally release you from Tuckers?

A. Yes, they did.

Q. Had you ever been to Tuckers before?

A. No.

Q. When you were released from Tuckers, page 110 } where did you go?

A. I come home.

Q. And what did you do when you got home?

A. I didn't do anything much; just laid around.

Q. Why didn't you do anything much?

A. I tried to do my work but I just wasn't able.

Q. What, if anything, was bothering you?

A. Well, my back hurt; my ankle was swollen, my neck hurt and I had those severe headaches and sometimes blackouts.

Q. Describe a blackout that you mentioned.

A. Well, maybe I would be moving around a little bit and my head would start hurting and usually when my head started hurting, I sit down or lay down somewhere because I didn't know what was going to happen and then one time I sit down on the couch and I blacked out and I don't know how long I was blacked out.

Q. Had you ever had any trouble with blackouts before?

A. No, sir.

Q. Had you ever had any trouble with your back before?

A. No, sir.

Q. Had you ever had any trouble with your leg page 111 } before?

A. No, sir.

Q. How about your neck?

A. No, sir.

Q. Now after being released from the Tucker Hospital the first time and you came home and you said you couldn't do your work, how long did you stay home before you went back to the hospital?

A. About seven days. I won't say for sure but about seven days.

Q. Then what occurred?

A. I just seemed to get worse, just seemed to get sicker.

Q. How did you get worse? How did you feel?

Lelia Jones.

A. Well, I was nervous. My head hurt, my back hurt; my ankle hurt an awful lot.

Q. What was done about that condition?

A. Well, I went back to Tuckers Hospital and they gave me therapy treatments. I guess that's what it is. Anyway, they give me massages and gave me pills.

Q. About how long did you stay in that time?

A. I stayed in that time approximately two weeks. I'm not sure but I think that's it.

Q. Did the doctors release you to come home again?

A. Yes, he did.

Q. When you came home that time, how did you
page 112 } get along?

A. Well, the trip home from the hospital made me sick but seemed like for a day or two I felt pretty good and then I started getting back in the same condition and I got bad off. My husband come in from work and I was in bed, bad off and he said he better get in touch with the doctor.

Mr. Hall: Objection, if your Honor please.

Court: Objection sustained.

A. Anyway, I went back to the Tuckers Hospital and they put me back in the hospital.

Q. How long did you stay that time?

A. I don't know; about two weeks I guess. I'm not sure.

Q. How many trips did you go back in the hospital altogether?

A. To Tuckers?

Q. Yes.

A. I was in Tuckers three times.

Q. All right, after your several trips to Tuckers, did you continue under the care of Doctor Beath and Doctor Shield?

A. Yes, sir.

Q. Approximately how often did you see them?

A. Well, I don't know. I can't say for sure; quite often. As often as—

page 113 } Q. Did you go up to the University of Virginia?

A. Yes, I did.

Q. What was your purpose in going up there?

A. Well, I wanted to go up there to see—get their opinion of what my condition was.

Q. Did you continue to go to Doctor Beath?

A. Yes.

Lelia Jones.

Q. After you had gone to Doctor Beath for some time, were you sent to some other doctor in the Newport News area?

A. Yes, he told me to—

Q. You can't say what he told you. Did he send you to another doctor?

A. I went to Doctor Peirce and Doctor Coppola.

Q. Had you ever been to Doctor Peirce or Doctor Coppola before?

A. No, sir.

Q. Neither one of them had ever treated you?

A. No, sir.

Q. Now how many times did you see Doctor Peirce?

A. Oh, four or five times.

Q. Did he send you to one of the local hospitals for some type or kind of treatment?

A. Yes, sir, to Riverside to take electric massages on my back.

page 114 } Court: Take what?

A. Electric massages.

By Mr. Pitchford:

Q. About how many of those treatments did you take?

A. About fourteen.

Q. Did your condition get better or worse?

A. It seemed to get worse.

Q. Now, when you saw Doctor Coppola did he examine you?

A. Yes.

Q. Did he arrange for you to go into some hospital?

A. Yes.

Q. To what hospital did you go?

A. To Buxton.

Q. For what purpose did you go to the hospital, if you know?

A. To take a myelogram.

Q. Now, how many days did you stay in the hospital before the myelogram was taken?

A. I stayed in the hospital approximately a week before the operation because I weren't able to take the operation of the myelogram.

Q. Now, how long did you stay in the hospital altogether?

Lelia Jones.

A. Somewhere around two weeks or a little
page 115 } more.

Q. Now, let's back up a little, if we may. Did you at any time between the date of the accident of July 9, to the date of the operation on March 12, attempt to work on the ice cream truck?

A. Yes, I tried to work.

Q. How did you get along then?

A. I just got sick and have to call my husband to come take me off the truck and bring me home.

Q. Did you restrict your activities or movement in working on the truck between the date of the accident and the date of the operation?

A. Yes, I did. I wore a brace which is very stiff. I didn't stoop. I didn't mop the floor. I just waited on customers that come up to the window, run cones and made milkshakes and sundaes.

Q. Who took care of your house in the meantime?

A. I had a maid who come in, colored woman to come in and clean for me.

Q. Now, when you left the hospital after your disc operation on March the 12th, did you have instructions from your doctor as to what you were or were not to do?

A. Yes, I did.

Q. Did you follow those instructions?

A. Yes, I did.

Q. Did you finally reach a point where you
page 116 } went back and tried to work on the truck?

A. Yes, I did.

Q. About when did you try that?

A. Well, he told me to—

Q. You can't say what he told you. When did you go back?

A. A month after I come out of the hospital I was able to drive a car; I was able to move around. I weren't able to bend. If I wanted to pick anything up off the floor, I had to go down on my knees to pick it up.

Q. Did you try driving the car?

A. Yes.

Q. Could you do it?

A. Not as good as I did before. I had difficulty.

Q. What difficulty did you have?

A. In my right leg.

Q. How was your right leg effected?

Lelia Jones.

A. It don't have the action in my right leg that I have in my left leg. There's a difference.

Q. I wonder, if I may, could you turn around and show the jury what you mean—is it in your ankle or in your leg itself?

A. It's in my ankle.

Q. Show the jury what you mean, if I may. May she do that, Judge?

page 117 } Court: You may.

(At this time the witness then left the witness box).

A. Is it all right if I sit here (indicating)? See, this ankle has got plenty of action. I can do it pretty well. I can bend it up and bend it down (indicating). This ankle I can turn it either way, it hurts and I push it down and do that, it hurts. When I drive, it—raise my foot to go up on the brakes, it hurts. It don't have the action it should have. It's kind of stiff. I'm just holding that up and it's shaking but this one, I can hold that one up and it don't shake (indicating).

Mr. Pitchford: All right, now would you sit back—can you get back up there?

(At this time the witness returned to the witness box).

By Mr. Pitchford:

Q. Did you have that kind of trouble before the operation?

A. No, sir.

Q. It did develop afterwards?

Q. Now approximately how much have you tried to work on the trucks since the accident?

A. Well, since the operation—

page 118 } Q. I mean since the operation.

A. I tried driving the truck. I drove it a little but I just couldn't handle it. I just couldn't handle the truck at all because I didn't have no confidence in the right leg and that's the leg you use on the brakes so—

Q. Have you tried to work in the back part of the truck any?

A. Yes, I tried to work in the back. I didn't lift anything. I didn't mop the floor. I just waited on the people, breaking somebody in, break somebody in that could handle the truck.

Q. Did you lift or strain at anything in doing that?

A. No, sir.

Lelia Jones.

Q. Now, did your condition generally get better after the operation for a while?

A. For a while, yes.

Q. And then what occurred?

A. Well, it seemed I started having pains in my hip and my ankle begin to get worse.

Q. When did that condition commence?

A. It's been about a couple of months. It's been gradually getting worse.

Q. What change have you noticed in the use of your hip and ankle and the pain during the last two months?

page 119 } A. Well, I have a burning in the bottom of my heel, bottom of my foot and my ankle swells at times and at times it don't feel like—like it feels numb. Don't have too much use in it. I can walk but yet it's not like my left leg. I don't have the movement in it.

Q. Did you go to the doctors about these new developments?

A. Yes, I did.

Q. To what doctors did you go about that?

A. I went to Coppola. I told Coppola about it. I went back to Doctor Beath.

Q. So you consulted with both of them about this new development?

A. Yes, I have.

* * * * *

page 121 }

* * * * *

Mr. Pitchford: Mr. Hall, can we stipulate the bills aggregate twenty-two thirty-one? Twenty- two thirty-one fifty-eight?

Mr. Hall: Whatever they tally up.

Mr. Pitchford: I offer all the bills in evidence as Plaintiff's Exhibit Number Thirteen.

page 122 } (The bills were received and marked Plaintiff's Exhibit Number Thirteen).

CROSS EXAMINATION.

By Mr. Hall:

Lelia Jones.

Q. Mrs. Jones, who treated you when you were in the Riverside Hospital?
A. Doctor Parker.
Q. Beg your pardon?
A. Doctor Parker.
Q. Do you know his initials, his first name?
A. Donald.
Q. Donald Parker?
A. Yes.
Q. And did he treat you the entire time that you were in the Riverside Hospital from Wednesday until Sunday?
A. No, there was another doctor was with him.
Q. Who was he, do you know?
A. I don't know. I don't remember his name but they have offices together.
Q. And did they discharge you from the Riverside Hospital?
A. Yes, sir.
Q. Now, did I understand you to say in answer to Mr. Pitchford's question you didn't recall what went on too much in the Riverside Hospital while you were there?
page 123 } A. I didn't.
Q. Beg your pardon?
A. I didn't.
Q. Does that mean that the doctors discharged you from that hospital while you were in an unconscious condition or something?
A. They discharged me on Sunday.
Q. Beg your pardon?
A. He discharged me on Sunday. I had been in there from Wednesday until Sunday.
Q. Didn't I understand you to say that you didn't know what transpired during your period there?
A. That's right, I didn't.
Q. So when the doctors in the—hospital authorities discharged you, you were in a comitose or dazed condition?
A. Well, when he discharged me I knew he was talking to me and he asked me if I was able to go home and I told him that I weren't able to go home but I preferred to go home because I felt that he weren't treating me because he didn't know my condition as well as he should have.
Q. You didn't feel this doctor then was treating you properly, is that right?
A. That's right, and—
Q. Did you tell him you wanted someone else to treat you

or for him to call in some other doctor?

page 124 } A. No, I didn't.

Q. You didn't ask him to get an associate?

A. No, I didn't.

Q. Now when you went to Tuckers, they massaged your back?

A. Yes, sir.

Q. Up there. Is that what they did for you?

A. They gave me pills.

Q. Pills and massaged your back. Now I believe you went up to Tuckers in September of 1958. Isn't that true, Mrs. Jones?

A. I don't know the dates. All I know, I went to Tuckers three times.

Mr. Hall: Where are the bills, Frank?

Mr. Pitchford: They're up on the Judge's desk.

(At this time the bills were handed to Mr. Hall).

Mr. Hall: Thank you, sir.

By Mr. Hall:

Q. On September 16, 1958 from—until September 25, 1958 you were in Tuckers I believe. Is that true?

A. I don't know the dates. I was in Tuckers—

Q. Can we—

A. Three times.

page 125 } Q. Can we agree you were up there sometime during the fall of 1958? Let me phrase it another way. If this bill that you have introduced into evidence covering the period from September 16, 1958 to September 25, 1958, in the sum of $311.50 from Tuckers, can we agree that's the period of time that you were in there in September?

A. I suppose so.

Q. Now were you up there on that occasion because of the grippe or the flu?

A. Not as I know of.

Q. Beg your pardon?

A. Not as I know of.

Q. Did any of the physicians who treated you up there tell you that you had the grippe or the flu?

Mr. Pitchford: Objection. That's what he has been ob-

jecting to all day. She can't say what the physicians tell her.

Mr. Hall: She's on cross examination.

Court: Objection sustained.

Mr. Hall: Testing her about the bills.

Court: Objection sustained.

Mr. Hall: Exception to the Court's ruling. The bills have been put into evidence.

Court: That doesn't let hearsay evidence come
page 126 } in.

Mr. Hall: Subject to the causal relationship and it's the figures of the Defendant that I have a right to inquire into the causal relationship.

Court: Proceed with the examination.

By Mr. Hall:

Q. Did you have the grippe or the flu in September?

A. Not as I know of.

Q. When you went to Tuckers?

A. The doctors didn't tell me what was wrong with me.

Q. Now Mrs. Jones, when you ate this apple-turnover or flap-jack or whatever it was in the restaurant—

A. I beg your pardon, it weren't in a restaurant. It was in the Arkell Bag Factory.

Q. In the Arkell Bag Factory?

A. In the lunch room.

Q. Mam?

A. In the lunch room.

Q. In the lunch room in the Arkell Bag Factory and you got a piece of glass that stuck in your gum?

A. Yes, sir.

Q. And you swallowed a piece of glass?

A. Yes, sir.

Q. And thereafter did you lose time from your
page 127 } employment at Arkell?

A. Some, yes, sir.

Q. How many days did you lose as a result of that experience?

A. I couldn't say.

Q. As a matter of fact, you lost forty-two days, didn't you?

A. I couldn't say. I lost some time, yes, I lost some time.

Q. Would you—would you state that forty-two days is an incorrect number of days from your work?

Lelia Jones.

A. I don't know. I couldn't—I wouldn't say or know because I don't know.

Q. And you were greatly upset?

A. Yes, I was upset.

Q. And you went to several doctors?

A. I went to a couple, yes.

Q. And you had difficulty doing your work around your house?

A. Yes, some at that time.

Q. Isn't that true?

A. At that time I had some trouble, yes.

Q. And you had headaches?

A. No, I never had the headaches like I have had them the last—

page 128 } Q. You had headaches then though, didn't you, following this incident I'm speaking about?

A. Well, just normal headache once in a while, the normal headache but the headaches that I have now are not normal headaches.

Q. Now Mrs. Jones, when you were twenty-three years of age didn't you undergo a very serious operation?

A. Yes.

Mr. Pitchford: If the Court please, I think that's taking her back entirely too far, twelve or fourteen years ago.

Court: I'll permit it. Objection overruled.

A. Yes, I had an operation.

By Mr. Hall:

Q. When you were twenty-three?

A. Yes.

Q. And what was the nature of that operation?

A. I had a cyst removed.

Q. Well, wasn't there more removed than a cyst?

A. Well, if there were, I weren't told.

Q. It's not my intention at all to embarrass you at all but we're in the trial of a lawsuit and I feel that developing this evidence will give a full picture of the case and it is for that reason I'm asking you these questions.

A. I understand.

page 129 } Q. Now you did have, I say, this serious operation. As a matter of fact, you had one of the ovaries were removed, were they not?

A. I don't know.

Lelia Jones.

Q. And then isn't it true that about six years later the other one was removed?

A. I had a cyst removed in operation.

Q. Then isn't it also true that the uterus was removed?

A. Well again, you asking me something I don't know because the doctors use large words and I don't understand them.

Q. Well, when—when you went to see Doctor Ruffin at Duke Hospital in May of '54, you told him about these operations, did you not?

A. He examined me completely all over.

Q. And I say you gave him a history?

A. I told him as much as I knew.

Q. And when you saw Doctor Read, you gave him the history of these operations, did you not?

A. Doctor Read?

Q. Don't you remember seeing Doctor Read, Doctor William Read of this City?

A. No, sir, I don't.

Q. Don't you remember when the bakery people

page 130 } had you examined by him?

A. Doctor Read?

Q. Yes.

A. No, sir, I don't remember. I went to see a doctor for them but I don't remember his name.

Q. Now Mrs. Jones, as I understand it, you had been down North Carolina with your husband?

A. Yes, sir.

Q. And you were returning home?

A. Yes, sir.

Q. You came over the James River Bridge?

A. Yes, sir.

Q. And what happened when you got to the intersection of 258 and 60?

A. We stopped for the red light. The light was red.

Q. What happened then?

A. Then we proceeded to turn left. There was traffic coming over the bridge turning left going towards Newport News. There weren't any traffic in the through lane or the right lane. We had almost completed our turn and I saw this flashing light coming towards us and I grabbed the baby and held the baby.

Q. Did you—

Lelia Jones.

A. That's all I could do.

page 131 } Q. The first time you saw the flash of lights was when they were right on you?

A. I don't know how close they were. All I seen was the flash of lights and I thought then was my baby.

Q. You felt the impact. You didn't see—you didn't see this car then prior to the impact, is that right; prior to the collision?

A. Nothing except the flash of lights, all I seen.

Q. So you don't know where the Ragsdale car was as you were making your trun?

A. I know where our car was but I don't know where the Ragsdale car was.

Q. Just one other question, Mrs. Jones. You have been nervous, upset ever since these operations of which we have discussed a while ago, have you not?

A. No, sir.

Q. Beg your pardon?

A. No, sir.

Q. You have not been?

A. No, sir.

Q. Upset and nervous?

A. No, sir.

Q. Since the operations of which we mentioned?

A. Only when I ate the glass I was upset then but—

Q. You were upset for a long time after you

page 132 } ate the glass, were you not?

A. Wouldn't you be if you ate glass?

Court: Just answer the question and don't ask him any questions.

By Mr. Hall:

Q. As a matter of fact, didn't the doctors tell you it was of no consequence, the eating of the glass? Weren't you advised by every doctor you saw that it was of no consequence?

A. Well, they kept treating me for it anyway.

Q. Were you advised that it was of no consequence?

A. I don't understand you.

Q. You went out to—you went out to Mary Immaculate Hospital after you had eaten the glass, isn't that where you went?

A. Yes, sir.

Q. And you saw Doctor Evans out there, didn't you?

A. Yes, sir.

Lelia Jones.

Q. And there was a Mr.—what was his name, Humbold, perhaps down at Arkell. Who was the man that assisted you in going out to the Mary Immaculate, that is made the arrangements for you to go out there to be treated? What was his name?

A. I don't know.

Q. Anyway, you were advised and he was advised by Doctor Evans that the eating of the glass was of
page 133 } no consequence, were you not?

A. He told me to go home and take it easy and if I had any more difficulty, to come back and see him; Doctor Evans did.

Q. And told you that if the glass was in the intestines, it was working in the tube, didn't he?

A. Yes, he said it would cut it open and heal it back up.

Mr. Hall: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Pitchford:

Q. In spite of that, did the glass episode upset you?

A. Yes, it did.

Q. Did you continue under the care of doctors from that time up until May, 1954 when you went down to Duke to see Doctor Ruffin?

A. Yes.

Q. Did you see any doctors between the time you saw Doctor Ruffin in 1954 and the happening of this accident in 1958?

A. No, sir.

Q. Did you enjoy good health during that period of time?

A. Yes, I did.

page 134 } Q. Were you conscious of any nervousness or disability of any kind or description?

A. No, I wasn't conscious of any.

Q. Did you do your work including your household work with difficulty of any sort?

A. Yes. Yes, sir, I done my household work.

Q. Did this nervousness brought about by the operation or by the eating of the glass cause your back to hurt?

A. No, sir.

Q. Your legs?

A. No, sir.

Q. Your neck?

A. No, sir.
Q. Head?
A. No, sir.
Q. Now Mr. Hall has made some reference you had an operation about twelve years ago. Did you do all of this heavy work that I went into a while ago subsequent to that operation?
A. Yes, sir.
Q. Did you run the sewing machine and lift the bags subsequent to that operation?
A. Yes, sir.
Q. Both operations?
page 135 } A. Yes, sir.
Q. Did that give you any trouble?
A. No, sir.
Q. Did it make you nervous?
A. No, sir.

* * * * *

page 140 }

* * * * *

DOCTOR ARMANDO RALPH COPPOLA,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:
Q. State your name, please.
A. Armando Ralph Coppola.
Q. What is your occupation or profession?
A. Neurological surgeon.
Q. Is that one of the medical specialties?
page 141 } A. Yes, sir.
Q. From what medical school did you graduate, Doctor?
A. John Hopkins in 1943.
Q. What post-graduate work have you since taken to engage in your specialty?
A. I had three years of general surgery; following that, two years of general practice and then I was in Cincinnati for my specialized training in neuro surgery from '46 to '51;

Doctor Armando Ralph Coppola.

in the Army at Camp Pickett as Chief of Neuro surgery from '51 to '53 and I have been in neuro surgery private practice in Newport News from '53 to the present time.

Q. Are you on the staffs of any of the local hospitals?

A. Yes, sir, all of them.

Q. Have you been acting in an consulting capacity in any of the Military Installations?

A. Kecoughtan Veterans Hospital.

* * * * *

page 142 }

* * * * *

A. I first saw this lady on November 5. At that time the patient stated that she had been injured on the night of July at about eleven o'clock in the evening. The car in which she was a passenger, she stated was struck on the right side near the right door.

She was sitting on that side. She stated that she was thrown about; didn't remember what happened and was seen at the—was taken to the Riverside Hospital. She
page 143 } stated that her husband stated that she was crying at the time and did not know where she was. She was hospitalized for several days under the care of Doctor Donald Parker and Doctor Fred Thompson and was said to have sustained a bruise of the scalp and a concussion injury. She was discharged from the hospital but failed to improve and because of the headache, the neck pain, generalized body pain and pain on her back—

Mr. Hall: Excuse me a minute, please; are you reading from your report, Doctor?

A. Yes, sir.

Mr. Hall: If your Honor please, I object to the reading from the report. He can refresh his memory as to his notes and testify but to read—

Court: What he has read so far isn't improper. Is this some notes of your's?

A. This is a letter sent to Mr. Pitchford and copy to Doctor Beath.

Doctor Armando Ralph Coppola.

Mr. Hall: I object to the reading.
Court: Overrule the objection.
Mr. Hall: Exception.

By Mr. Pitchford.:
Q. Go ahead, Doctor.
A. May I add, this is simply, Mr. Hall, the history as the patient told it to me the first time.

page 144 } Mr. Hall: I understand sir, but my objection is your reading from the letter.
Court: Don't argue the objection to him. I overruled it.
Mr. Hall: All right sir, and I except to it.

A. She then consulted Doctor Beath and has been under his care. She complained very much of pain in the right leg, back and inability to draw up the toes of her right foot. She stated that there was a tendency for her toes to draw down. She also had pain in her right calf and about the right knee. Her headaches had become less severe although they were still present. She was bothered also by pain in the left sacro-iliac region which is low down in the lateral surface of the hip and the backbone and in the left pelvic area which is the bone at the bottom of your spine (indicating).

She also had pain in the back and right leg, as I say. She was extremely concerned because her husband had been hurt in this accident and she had a small child to take care of. Doctor Beath—

Mr. Hall: If your Honor please, I object to that, the relevancy of it, the reading of the report concerning subject matter that's not at issue here. I have a duty and a job in the defense of this case, if your Honor please, and I must insist that that evidence is not relevant.

page 145 } Court: Mr. Hall, you needn't inform me of your duties. I'm aware of what your proper duties are. Mr. Pitchford, if you would, ask the Doctor what the history was, what her history was. If you have any other questions, you may ask him.
Mr. Pitchford: All right, sir.

By Mr. Pitchford:
Q. Now Doctor, after taking this history and recording her complaints did you then proceed to make what doctors call a neurological examination?

Doctor Armando Ralph Coppola.

A. Yes, sir, I did.

Q. Would you explain to us so we can understand please sir, what a neurological examination such as you did on Lelia Jones involved?

A. Well, in brief one examines the nerves of the brain as well as one can by objective methods and by the—by using the cooperation of the patient as well, of course. What one does is look in the eyes; have the patient open her mouth, look in the ears, check hearing, check the reflexes which one does with the hammer, check sensation with the pin, ask the patient to stand, ask the patient to walk and move the extremities. Now the coordination of all these findings together represent the neurologic examination. I'm making it as elementary as I can.

page 146 } Q. Thank you, sir. I know it's a very complicated subject. Now after completing that neurological examination did you then form some opinion as to what injuries, if any, she had?

A. Yes, sir.

Q. And what opinion did you then form?

A. At that time I thought after examining this patient as Mr. Pitchford has said, by means of a neurologic examination and in view of the fact that this patient had a—not only a series of injuries to her head, neck, back, leg and so on, the fact that she was a very nervous, high strung person, on the basis of the examination and findings thereof which consisted of some changes in the reflexes, I could not at all be certain that this patient had any injury to her disc in her back. A disc is a ruptured—a disc is a cartilage between the bones of the back. I could not be positive at all at that time that this patient had a ruptured disc and on the basis of one examination felt that she might only have sustained a series of muscular bruises and strains. That was at that time in November.

Q. Did you have occasion to observe and examine her further?

A. Yes, I suggested at that time however, that because of the problem involved with the backache, numbness of the leg and she had numbness of the entire right leg

page 147 } which does not in itself fit a ruptured disc lesion at all, that usually is more on the order of a nervous reaction to an injury or to a stress or strain but I did recommend that she enter the hospital for X-rays of her spine and for a myelogram which is a spinal test to determine whether or not she might have a ruptured disc.

Doctor Armando Ralph Coppola.

Q. Did she enter the hospital at that time?
A. No, sir.
Q. Did you sometime later get her into a hospital?
A. Yes, sir.
Q. And to what hospital was she taken?
A. She was admitted to the Mary Immaculate Hospital in March of 1959.
Q. Do you have the dates she was admitted?
A. No, I do not. I believe it was probably March—March 7 or 6.
Q. March—
A. I have a note of March 7. It may have been a little earlier than that.
Q. March 7. For what purpose was she admitted to the Mary Immaculate Hospital by you?
A. She was admitted for the purpose of studying to determine whether or not she did have a ruptured disc by more objective means than simply the examination of the—of my own examination. I—is it appropriate to explain
page 148 } a myelogram?
Q. Go ahead. That was the next question I was going to ask you, what a myelogram is and how it is performed and what you accomplish by it.
A. A myelogram is a spinal test. It is very much the same as the spinal puncture. With this test, one puts medicine into the spine and is able to study the normal appearance and abnormal appearance of this material under the X-ray machine and pictures can be obtained of this. The test is not one hundred per cent reliable because patients may very occasionally have a ruptured disc and it may either be overlooked by us who do the examination because the detail is small or we don't think it's significant and occasionally the myelogram may be normal and yet the patient may have a ruptured disc. A myelogram was performed, this spinal test on this patient which did demonstrate a ruptured risc.
Q. At what level, Doctor?
A. L-Five S-One, the last interspace in the back.
Q. Doctor, would you look at this and show the jury what you mean by the L-Five and S-One disc, where it's located (indicating skeleton)?
A. This is the sacrum. This is the pelvis that we talked about before. This is the sacrum and these are the lumbar vertabrae and these are the thoracic cervical. The *The* L-Five

Doctor Armando Ralph Coppola.

S-One is here and between here and the disc
page 149 } protrusion is where you see these blue rings.
These are I suppose demonstrations of the disc substance in general, the way it would be between the bones (indicating). These discs occur all the way up from the neck right down.

Q. Now where do you—

A. This would be the disc that was involved and the rupture of the disc is usually not in this direction. This is the back of the spine. If I turned around and face you and hold it up this way, this is the back of the spine and the protrusion of the disc is usually out this way towards my back (indicating). This is facing—the patient facing that way, this protrusion is here and it pinches the nerve coming through the opening (indicating). Shall I go on and describe the operation?

Q. Yes.

A. I think the operation was several days later, about the 12th and what we did in operation, these bones are the spines and we make incision through the skin and come down along the spine, separate the muscles away, expose the little ligament. It's just a little fibrous tissue that occurs between the bone here and this bone here and the surface (indicating). We remove that. The next step of course, the nerve lies right here and we see the nerve, move the nerve over and the protrusion of the disc is usually right here. There may be a
tear. This looks quite smooth and that's the way
page 150 } the disc normally looks, not colored like that of
course but when we open—when we see the ruptured disc, sometimes it's a tear right over the surface of the disc and a piece of disc may protrude. That protrusion of disc may be very small or it may be extremely large. This lady had a very large disc that bulged actually not to one side alone but almost in the middle. There was a tear in it and it was protruding and there was no question there was an injury to the disc and that the disc had been injured and ruptured and it actually pushes out of place and pinches the nerve. The mere fact the disc is ruptured in itself, if it didn't pinch the nerve, it would probably be of little concern to us. It is because it pinches the nerve, it causes not only the back pain but also the leg pain.

* * * * *

page 151 }

* * * * *

Doctor Armando Ralph Coppola.

Q. Did you see her in your office following the operation?

A. Yes, I have seen her pretty much monthly intervals since then and in April, about a month after her operation, she was getting along quite well. She wanted to go back to work and I think she told me she works on an ice cream truck and I advised her at that time which was about a month after the operation, to wait an additional two weeks and then to go back but not to do heavy lifting until—be sensible about what she did.

Q. Doctor, has she continued to improve since you saw her in April?

A. She did very well until I'd say about two months ago perhaps and at that time she began to have more trouble with her back and with her leg so that at the present page 152 } time I saw her last, perhaps a week or ten days ago and she is not doing as well now as she did six or eight weeks after her operation.

Q. What is the nature of her present trouble now?

A. Pain in her back, discomfort in the leg.

Q. Is that an aftermath of the operation?

A. Well, it sometimes can be, Mr. Pitchford. I'm not prepared to say this patient has another ruptured disc or another fracture that is ruptured at the interspace or at that point she has to have or will need subsequent operation but on the other hand, I can't say she is completely well either.

Q. Is she getting along as well as you expected her to get along?

A. She's not getting along as well as I would like her to, no, sir. I should add that when one removes a disc, as you saw it on these, may I have that skeleton once more?

Mr. Pitchford: Yes, sir.

(At this time the witness was handed the skeleton).

A. I think this is an important thing because people wonder why discs come back and all and it's probably our fault that they do but let me show you up here. What one does is make a little opening. That opening that one works through is about probably that big (indicating), and through that opening one, the neuro-surgeon sees the nerve and also page 153 } the disc. Then one takes an instrument, knowing his anatomy, takes it and in there takes out the torn fracture of disc. Then you take that instrument just as you would my pencil and you reach inside in all directions

Doctor Armando Ralph Coppola.

and you get out every bit of disc you probably can reasonably and safely. I add that because not only must one protect the nerve which lies on each side and it is important to do that during the operation but in removing this disc, if one on the left side goes too deep, right anterior in front of this series of bones down low here is the big aorta, which is a big blood vessel in the body and neuro-surgeons in trying to get every bit of disc and this is not an infrequent *occurence,* fortunately doesn't happen once a year to a neuro-surgeon and even less to some, you can make a hole in that blood vessel. If you do, then you may not even recognize it but the patient can go into shock and he can die and deaths have occurred that way from being too vigorous, trying to get every bit of the disc out. On the other side, on the right side there's another big blood vessel which we call the vena cava. It's a big vein like the jugular vein and unfortunately both these big blood vessels lie on each side. Most neuro-surgeons want to get all the disc out they can. They want to get all the blue material out they possibly can. They don't want another piece to come out and pinch the nerve. One has to temper discretion with what they want to do. One has to sometimes stop short of what would be the most desirable.

page 154 } It is my purpose to try to remove all the disc I can safely and quickly. Sometimes there may be a little disc left. That little cartilage with time and stress and with movement, it can possibly also push out once again.

Q. Would such a condition account for her present back pain?

A. I wouldn't say that, that such a condition could or might but I'll not say she has another ruptured disc, no sir.

Q. Doctor, in disc injury cases do symptoms always appear immediately after the injury?

A. No, it depends on what you mean by symptoms too. I think that if I may say so, one of the Judges was in an automobile accident, had a back injury and he recovered. He had a sprained back and felt all right and I think he's fine but that injury from which he has made a complete recovery could conceivably have injured a disc and he could still have disc trouble from that injury because while we don't know—certainly don't pretend to know everything there is about discs or disc injuries, what must happen we think is that there are small tears that occur in the covering over the disc which is the ligament and those tears as time goes on, the more stresses placed on these tissues that are damaged may be minimal to begin with. They may give a little more and give

Doctor Armando Ralph Coppola.

a little more and then this disc which is cartilage
page 155 } and is under tremendous pressure from the
pressue of one bone against the other against it
will squeeze out a big piece. Now often patients will have symptoms immediately and those symptoms will be back pain and often leg pain doesn't occur immediately. The presenting symptoms is usually back pain. Like this lady, one thinks very often unless there are other things, it's muscular sprain or strain, muscles have been pulled or bruised and even some of the ligaments may have been torn and when there are no other findings other than just backache and back pain and soreness of the back, one doesn't usually make a diagnosis of the ruptured disc. Later on as the disc extrudes and actually touches the nerve, then the patient begins to have pain referred further down. Sometimes the pain may ease up and completely disappear. The pain may refer to the thigh and back of the leg and down into the toes. This patient's problem, when I first saw her, was extremely difficult because she had many things that concerned her of a nervous nature.

She was a nervous person. One is reluctant, on the basis of having a patient who hurts in her head, neck, back and head, is numb from about the groin all the way down the leg, to make a diagnosis of a ruptured disc and there was nothing characteristic in my opinion that would make one say she had a ruptured disc when I first saw her and the best policy was to watch her and to wait but in view of her
symptoms and that she had not improved from a
page 156 } period of July to November, that she had been
followed by someone who felt she had a ruptured disc, I felt myelography would help clarify the diagnosis at that time.

* * * * *

page 157 }

* * * * *

Q. Now Doctor, do you have an opinion as to whether there is a causal connection between the accident of July the 9th and the ruptured disc you found on March 12?

A. I think Mr. Hall will jump all over me. I can only say this, in all honesty, this patient had an acute ruptured disc. It was not—she didn't have—I don't want to be too technical but this was not a disc that had been injured perhaps five or

ten years before but I think that even if there had been an injury five or ten years before, there was a recent
page 158 } recurrence of a ruptured disc. It is perfectly compatible with the history she gave me that as a result of her injury she could have sustained this ruptured disc. It would be my opinion from the history she gave me that it is but I can't say it was and I say this. There's no evidence to support it. She might have had a back injury, just had back pain and a month before I saw her she could have bent over and sustained this type of ruptured disc but there's nothing in the history from my—my history to substantiate that and added to that is the fact that she was followed all along by Doctor Beath prior to my seeing her, who felt all along that she had a ruptured disc. I didn't feel as strongly about it as he did even when I first saw her in November. I don't know whether that answers your question.

* * * * *

CROSS EXAMINATION.

By Mr. Hall:

Q. Doctor, I—am I correct in stating that the practice of medicine like the practice of law is not an exact
page 159 } science?

A. That's right, sir.

Q. And the margin of error exists in the practice of medicine?

A. Yes, sir.

Q. Now was a fusion done in connection with this disc, Doctor?

A. No, sir.

Q. Fusion would have been of a more serious nature, would it not?

A. It would have—it would add to the amount of surgery that would be done, yes, sir.

Q. Would have added to it?

A. And would carry added risks perhaps, yes, sir.

Q. And you gentlemen regard it in the light in which you have expressed yourself?

A. Yes, sir.

Q. Now—now Doctor, isn't it recognized in medical science that in a young woman who has both ovaries removed and

the uterus removed that it creates a tension and a high degree of nervousness?

A. Yes, it can.

Q. It precipitates menopause, does it not?

A. Yes, sir.

Q. And even in normal menopause there are on occasions high degree of nervousness and tension, is there

page 160 } not?

A. Yes, sir.

Q. Now Doctor, if I understood you correctly in answer to a question of Mr. Pitchford's, was that you could not state with medical certainty that the ruptured disc which you removed from this plaintiff came as a result of the automobile accident. It could have come from some condition that existed either prior or subsequent?

A. Yes.

Q. To the accident, could it not?

A. It could.

Q. And in the first paragraph in substance of the report from which you read when you initially took the stand, what you read from there was her complaints and history that she gave you, was it not?

A. Yes, sir.

Q. And the first paragraph that you read from was not a recitation of your objective findings, was it?

A. No, sir but I should add that that doesn't mean that the patient was not nervous and not apprehensive during the examination while in my office.

Q. Oh yes, I wasn't saying that but I was saying—

A. That's merely a statement of the history. Of the history just as any patient would give it to the doctor in the office.

Q. Objective findings I believe you gentlemen

page 161 } in the medical profession use that term when there's something tangible to support a subjective complaint or symptom, isn't that right?

A. Yes.

Q. Objective means something tangible?

A. Something that is there that the patient cannot pretend perhaps or—it's a finding that you as a physician can determine is there regardless of what the patient tells you.

Mr. Hall: Yes, sir. Thank you, sir.

Doctor Armando Ralph Coppola.

RE-DIRECT EXAMINATION.

By Mr. Pitchford:

Q. Now Doctor, this ruptured disc you found, that was an objective thing, wasn't it?

A. Certainly was.

Q. Couldn't be any mistake about that, could it?

A. No, sir.

Q. And the ruptured disc such as you saw would cause pain to radiate down the leg and foot?

A. Yes, sir.

Q. Isn't that what she complained of?

A. Yes, sir.

Q. And isn't it a fact that you doctors rely heavily on medical—on case history in making your diagnosis?

page 162 } A. Oh, certainly. If we didn't, why people could just call us up on the telephone and we could put them in the hospital and say they had a backache and we say you got a ruptured disc, go in tonight and I'll operate on you tomorrow morning. It's just as absurd as that of course. I think the point of taking a history is to try to get all the possible information the patient will spontaneously offer to help and guide you in your findings and evaluate the patient and helping the patient and you also examine the patient to pick up all the things that will be of further assistance to you and the patient.

Q. Isn't it true, Doctor, you can have disc injury sometimes without having real objective signs unless you performed a myelogram or something of that nature?

A. Unfortunately, yes. It is possible for a patient to have a complaint of back or leg pain and on examination and observe or let us assume he is a competent observer won't find very much to support the diagnosis of a herniated disc in his mind and then a myelogram is done and to the observer's surprise there is a herniated disc and one is also found in operation usually of course.

Q. So then the real test by which you find objective signs is the myelogram, isn't it?

A. No, no. I wouldn't go that far. I think that you depend—a doctor depends on everything put together and in the case of a patient, you see the patient once and

page 163 } perhaps you cannot be certain which is more important, the patient's history and his complaints or whether he has got something that is causing him serious trouble such as a disc but then as you follow the patient along

or as you can make up your mind on the basis of all the available evidence that a myelogram is supportive, if it shows a ruptured disc. Now the reason—I say I state it that way is this; that sometimes the patient will maintain a complaint of back and leg pain and as I stated earlier, after all ones findings the observer isn't positive that he has or has not got a ruptured disc. A myelogram is done and that may be normal, show no disc but as the observer continues to follow that patient he is then justified in explaining to the patient he could still have a ruptured disc even though all the available tests show that he doesn't have one and he should be operated on, an exploratory and that isn't done too often and one may find a ruptured disc just the same.

Q. Then the absence of objective definite signs on initital examination does not have any great conclusive significance?

A. In this patient?

Q. In this patient.

A. She had a lot of findings. She had numbness in the entire leg and all. It was very difficult to pin them down and they all fit in Doctor Coppola's mind that she has page 164 } a ruptured disc. All I could say was she might have a ruptured disc and a myelogram might be helpful.

Q. Did you say this ruptured disc was of recent origin?

A. Yes, sir.

Q. Could a premature menopause cause a ruptured disc?

A. No, sir. No, sir, not directly. There would be no connection.

Q. No connection at all?

A. No, sir.

Q. Now Mr. Hall asked you something about fusion. I didn't quiet get clear what you said to him about that. It was a more serious operation. I got that.

A. He asked me if a fusion was done I believe and I said no. He asked me if a fusion did not add to the seriousness of the operation and risk to the patient or words to that effect and I said yes, it did.

Q. I'll ask you this. Is it not a medical fact, sometimes a patient will have a disc removed and continue to have back trouble and then go in for fusion?

A. Yes, that of course brings us into another field which becomes a little more complicated. Some areas of the country and just as there is a divergence of medical opinion on many

Doctor Armando Ralph Coppola.

page 165 } things, there are some people who feel that a ruptured disc should never be operated on and the disc removed alone like I showed you but that a fusion should be done. Now a fusion is usually done by removing bone and actually a bone graft is placed there to try to make the bones solid and rigid. Many surgeons, neurosurgeons and bone specialists, orthopedists do not feel when a patient has a ruptured disc that the first time such a disc is operated on and disc removed that a fusion is necessary unless there is some other good medical reason. In this patient's case there was no good other medical reason for doing a fusion. All that seemed immediate and should be necessary in eighty-five or ninety-five per cent of the patients is removal of the ruptured disc. Even if the patient has a recurrence of the ruptured disc, it is still a matter of opinion whether a fusion should be done. It's thought by some people that a bone fusion adds to the stability of the back and prevents much motion of the back and prevents another ruptured disc occurring. That may and may not be true. I have had the experience of going in after a final fusion is done. The fusion has had to be reoperated on and one has to go through the tremendous mass of bone and remove a disc that has occurred under the fusion. On the contrary, patients have had a disc removed and have had no trouble. Patients have a disc removed and develop further trouble after, with or without fusion.

page 166 } Patients have had discs removed and fusion done and then the fusion hasn't worked. Many fusions do not become solid and if one takes X-rays, sometimes that bone is put in there and three months later is completely dissolved; no evidence of a fusion at all. So that one is—naturally tends to be rather conservative about when and how fusions are done and I certainly am very conservative. In other words, removing a disc once, twice or three times and doing a final fusion is no guarantee that you're either going to prevent a *recurrene* or you're going to completely cure the patient. It may be helpful. It may not, so that in this patient from the stand point of fusion, I don't think any fusion in my opinion was *necesary* because if I did, I would have suggested that an orthopedist do one. I think Doctor Beath who saw her felt it was a matter of choice.

* * * * *

page 168 }

* * * * *

Doctor Armando Ralph Coppola.

Q. Doctor, you spoke in response to Mr. Hall's last question about the percentage of total recovery. In those total recovery cases, does the patient apparently get along well for two or three or four months and then start to decline again?

A. No, sir, they usually go on. They may have complaints. I may get a—try to make it a rule in my office to try to follow patients for almost a year or close to a year for the benefit of my own knowledge and satisfaction. Patients will often complain after operation of soreness of the back and some *aching* in the leg, some disability that indicates there isn't complete recovery but as I follow them along over

page 169 } a period of six months to a year, there's usually gradual improvement and recovery unless there are other factors at work other than a herniated disc being when they don't improve and when they keep complaining, the only thing I can conclude, as I re-examine them and follow them is that their operation is not completely successful and they have not obtained the complete or good relief they should and sometimes it means that as I follow them I may have to bring them back in the hospital and repeat a myelogram and perhaps even repeat operation.

* * * * *

Court: Let me ask you, Doctor. You said

page 170 } that you gave her a myelogram. Is that the same visit to the hospital on which you operated?

A. Yes, sir, she was in the hospital and I did a myelogram which showed a ruptured disc and as I recall, your Honor, I didn't operate immediately because she was almost a hysterical person. She was very upset about being in the hospital, having trouble, the possibility of surgery and I waited for a few days to calm her down and we had to argue her into surgery and that she had trouble and required surgery.

Court: You said any medical expense was so indefinite in the future you couldn't estimate it. Did you say anything about whether she would have any future disability or not?

A. No, I did not except to indicate that she's not completely well and that she is still having trouble and I think Mr. Pitchford asked me if I could estimate I think what the cost would be if she had to have something done again and your

Honor, the only way I could answer that would be to my charge would be the same or less and the other hospital charges would be roughly approximated.

Court: What I was asking, will she have any difficulties in the future. Do you think she will recover or not?

A. She isn't recovered completely, your Honor.

Court: Any further questions?

page 171 }

* * * * *

DOCTOR THOMAS BEATH,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:

* * * * *

page 173 }

* * * * *

Q. Now are you a member of any of the medical societies?
A. Yes, I'm a member of the Richmond Academy of Medicine, The State Society of Medicine of Virginia, Virginia Medical Society and Medial Association, the *Amerian* Academy of Orthopedic Surgery, The Royal College of Surgeons of England, the Royal College of Surgeons of Canada and I think some lesser societies.
Q. Are you a Certified Board Member?
A. Yes.
Q. And what does a Board Member have to do to be certified?
A. Well, he has to demonstrate that he has trained himself or been trained in post graduate work in orthopedic surgery and certain allied subjects and then has to have an examination in two parts. There are two different examinations, pass one examination at one time and then he is required to

practice in active practice before trying the second examination, try the second examination and then be given a diploma certifying successful passage of his examinations.

Q. And when were you given such a diploma?

page 174 } A. In 1946, '47 I guess. January, 1947 I think.

Q. Now where is your office located, Doctor Beath?

A. In Richmond on Monument Avenue.

Q. Do you sometimes testify in Court in connection with automobile accident cases?

A. Yes, sir, I do.

Q. Have you testified in other cases in which I have been involved?

* * * * *

Q. Now did you have occasion during the month of July of 1958 to see Mrs. Lelia Jones?

A. Yes, sir.

Q. The lady sitting here?

A. Yes, sir.

Q. State where and under what circumstances you first saw her?

A. I saw her on July 14, 1958 in my office and the circumstances were that her husband, I think it was, called me and said that they had been in an automobile accident on July 9, and that she was in a bad way and he wanted bring her up for me to see her, see what was the matter with her. She came up and was seen in my office under those

page 175 } circumstances.

Q. Now, do you recollect when you first saw her in your office?

A. Yes, sir.

Q. Tell us what you then and there observed?

A. She came in and she was very much upset when she came in. She made this trip up, was dressed in a dressing gown; wasn't—some sort of robe. Apparently too ill emotionally and physically to get dressed to come up. She said that she had been lying in the back seat of the car on the trip up from here to Richmond. She was upset and in distress, and hard to get her story of the accident and physical condition from her. Is that the—

Q. That's what I want. What did you do for her right then, if anything?

A. Well, I had her lie down. I insisted on her lying down

on my examining couch. I thought she might pass one or have something drastic happen right away and I went over her to see whether there was any grave trouble needing some medical attention but didn't—couldn't indeed make a final total examination of her and feeling that she was very much upset emotionally, I arranged for Doctor Shield to see her I mean right away. She went down. Between the two of us we felt she needed sort of urgent care largely on account of her emotional disturbance so we hospitalized her as quickly as we could, the only place we could get her into a bed
page 176 } because of the urgency of the situation.

Q. Was she then and there admitted to a hospital?

A. Yes, sir.

Q. To what hospital was she admitted?

A. Retreat Hospital in Richmond.

Q. Do your records show approximately how long she stayed in the Retreat for the Sick?

A. Yes, she stayed there four or five days and then she was moved to Doctor Tucker's Hospital—Doctor Shield's Hospital, the Tucker Hospital.

Q. Now Doctor Shield, is he a specialist in some field?

A. Yes, sir.

Q. What is his specialty?

A. He's a specialist in neurology and psychiatry.

Q. Did you feel that she needed that kind of—type of treatment?

A. Did I?

Q. From a neurologist and psychiatrist?

A. Did I feel what?

Q. That she needed treatment at the hands of such a specialist?

A. I felt it was very urgent, yes, sir.

Q. All right, did you continue to see her in the Retreat for the Sick and in the Tucker Hospital?

page 177 } A. Yes, sir.

Q. Did you proceed with your examination from an orthopedic point of view?

A. Yes, I went into it still more while she was in the hospital.

Q. Tell us what you did by way of going into it more and what you discovered by your investigation?

A. Well, over a period of time the examination of say, my study of it from an orthopedic point of view or my specialty point of view was conducted over, you might say, a matter of

weeks, piecing things together but it was evident she had received a blow on the head; that she had had a sprain of the neck. Her neck was sore. She had a cut on one arm. She had a bruise on her leg and she had a bruise in the back of her shoulder, left shoulder region and her back was hurt, particularly the lower part of her back and she had a sprain of her right ankle.

Q. All right sir, did you and Doctor Shield release her from the Tucker Hospital after some time?

A. Well, after a period of time, really Doctor Shield released her though he spoke to me about it and we sort of agreed and concurred on her release, yes.

Q. After her release from Tucker Hospital, when did you next see her?

A. About ten days afterwards.

page 178 } Q. What—what were her complaints at that time, Doctor?

A. That she was involved in severe headaches and nausea, couldn't keep anything on her stomach, vomiting, general sickness and malaise along with continuing general bodily pain in the area, in the area of injury.

Q. Did you undertake any further examination at that time?

A. Yes, I reviewed her physical examination then and—and more or less confirmed what I had seen before, soreness in these areas. The pain was less in the neck, was less. The soreness from bruising from her body was less. As far as her general bodily soreness, it was gradually settling down to be more impressive as far as the back was concerned. The lower part of her back.

Q. Was she admitted to the hospital, Tucker Hospital from time to time?

A. Yes, she was again admitted on the third occasion in September again around about the latter part of September.

Q. Did you ascertain her then complaints?

A. Yes, she had some complaints in her neck. She had—let me—it's hard to remember just what her complaints were each time. If you'll just give me a moment.

(At this time the witness then perused some notes).

page 179 } A. My notes for September 21, says that she was seen at Tucker Hospital with flare up of neck—had a flare up of neck soreness, general aching and especially on the right side of her body. She had been com-

plaining for some time of pain in the right leg. That's a brief note.

Q. Did you make a further examination at that time?

A. Yes, sir, I saw her—examined her in the Tucker *Hopsital.*

Q. Now what objective signs did you find upon that examination?

A. Well, she had some stiffness and soreness in the movement of her neck. She had tenderness in her back, in the section that—say, is the thoracic region of the back. She had tenderness and difficulties, some loss of motion of the lower part of the back. She had some disturbance of sensation in her leg. She had diminished reflex of the right ankle.

Q. Now Doctor, what is the—what was the medical significance of the diminished reflex of the disturbance of sensation?

A. Well, at that time it was hard to—let's say interpret it as to significance as to what it was due to. At the time however, I felt that the reflex very well might have been—thinking now of September, have felt suspicious that it was sort of pointing to a condition known as a rup-
page 180 } tured disc in the back or at least some cause of pressure on the special nerve known as the first sacral nerve that runs down and activates the calf muscles. The symptoms and findings and feelings of her, however, were so multiple that it was difficult to interpret precisely what that meant. The disturbance and sensation in her leg pointed in the same direction. That, taken along with soreness in the back made for considerable suspicion at that time of condition of the ruptured disc in the back.

Q. Did you continue to follow through with the treatment of this lady?

A. Yes.

Q. Did you prescribe braces or corsets or anything of that sort?

A. Yes, I prescribed a corset type of back brace with strong stays to support her back.

Q. And what was the purpose and object of that, Doctor?

A. That was to try to decrease the amount of movement at the sore joint in the lower part of the back, the joint known as the lumbo sacral joint which is the joint in the lower part of the hollow of the back which impressed me as being a source of a good deal of her difficulty.

Q. Now tell us, if you will, how she got along or did not

page 181 } get along from the time you described in September up until the time you referred her to Doctor Coppola?

A. Well, she improved generally. She improved emotionally as far as I would judge it though I made no attempt to analyze her emotions in detail. It was just obvious that she had more control over herself emotionally. The soreness in her back improved. She was able to move it better. The complaints that she gave me were less as time went on. She had soreness in the—continuing in the middle of the back and one time I injected that for a dual purpose to attempt to eliminate soreness at that part of the back as the diagnostic test for the source of the soreness and that injection seemed to start that on the mend so that it became less troublesome but gradually the soreness in the lowermost part of the hollow of the back gradually become more definite, more positive, more distinctive and the features on examination and the symptoms that she described of numbness and coldness in her foot, pain running to her leg gradually became more definite pattern indicative of a ruptured disc. I felt rather fairly sure that she was involved in a ruptured disc by the end of the year and pretty positive and urged her at one time I think it was late in the latter part of the year, November or December, to place herself in Doctor Coppola's hands.

* * * * *

page 182 }

* * * * *

page 183 } Q. Now Doctor Beath, did you learn that Doctor Coppola by myelography actually discovered a ruptured disc and operated upon her?

A. I have a copy of his report to that effect, yes, sir.

Q. Have you, since the operation, examined Mrs. Jones from time to time?

A. I examined her on May 25, and again on August 24.

Q. All right, upon your May 25 examination, what did you find?

A. Oh, I found her very much improved. She had been relieved of a great deal of her difficulties. She was *temprementally* and emotionally much improved, getting

around easier, saying she was really feeling reasonably well and cheerful.

* * * * *

page 184 }

* * * * *

Q. Doctor Beath, before the short recess I believe you testified as to your examination of Mrs. Jones on May 25, 1959. Is that correct?

A. Yes, sir.

Q. I believe you testified earlier that you saw her again on August the 24th, 1959?

A. Yes, sir.

Q. Did you observe any difference in her physical condition between the examination of May 25, and the examination of August 24?

A. Yes, quite a little bit of difference.

Q. Will you please state for the benefit of the Court and jury what difference you did observe?

A. Well, as far as her emotional picture is con-
page 185 } cerned there's not much difference. As far as her neck is concerned, that's essentially the same. The upper part of her back essentially the same. The difference lay, came about in the question of the lower part of her back. That is in this ruptured disc old problem where the operation was. As far as that part is concerned, she was, during about a month prior to seeing her, that is to say about the last month or six weeks she was developing an increasing soreness in the back and aching in the right leg along with some tingling and numbness and weakness in the leg and the lack of close and precise control of the foot and the examination then showed a well marked tenderness in the back in the location of the back with some radiation of pain running into the buttock and thigh. There was then a distinct band of diminished sensation corresponding to the first sacral nerve running through the leg. There was diminished reflex to the right and there was some weakness in the calf muscle on the right. Those are the findings as they pertain.

Q. Now Doctor, let me ask you this. What is the medical significance of the sensory disturbance, the—and the other things you have named there?

A. Well, they all—

Doctor Thomas Beath.

Q. The reflex disturbance, the sensory disturbance?

A. They all point to the irritation of the first sensory nerve. That was the first nerve that was pressed

page 186 } upon by the ruptured disc.

Q. And the funcition of that nerve, Doctor, is what?

A. Oh, it's to carry feeling from the area of the leg and it's to activate the muscle in the calf muscle mainly. Of course the overall significance of these things is that with the symptoms increasing during the last month is to be *distincly* suspicious of some further rupturing of the disc and it's a very ominous situation from that point of view.

Q. Is there any way you can tell now definitely and positively that there is further rupturing of the disc?

A. It would be hard to be absolutely positive because even a myelogram which of course is a neurological procedure, X-ray and neurological procedure, even that may be distorted in its appearance by the surgery that was previously done. It would be pretty hard to be dead positive. Operation would go a long way to make it positive, yes.

Q. Now Doctor, from your examination and observation are you prepared to state with any degree of medical certainty what the future holds for Mrs. Jones with reference to this disc injury and the results thereof?

A. I think as I saw her, say covering all of the periods, seeing all the sequence and what's gone on, I think the future is gloomy.

Q. Why—what do you mean by "gloomy"?

page 187 } A. I mean gloomy in that I think there's a very strong liability, likelihood of increasing symptoms of backache and leg pain and disability associated with it, either resulting in re-operation or which will either result in reoperation or acceptance of pain and disability over a long period of time.

Q. Now, in the event re-operation actually becomes necessary and is performed, will that correct the disability she is now suffering?

A. We hope that it would correct it in part. It would be an exceptional thing if it relieved her of all her pain and disability and ordinarily shouldn't be counted on to do so. Operation, if it's done the second time, in my judgment should be exploration; the same as before and supplemented by a fusion of the lumbo sacral joint.

Q. What would be the advantage of doing a fusion?

A. A fusion would be—on account of the joint being dam-

aged by the rupturing of the disc, the deterioration of the disc—

Mr. Hall: If your Honor please, I object to this line of testimony. The physician who operated has testified concerning his operation and all phases of the subsequent condition and it seems to me that his testimony would be calculated to cover the phases that are now being
page 188 } put to Doctor Beath. Doctor Beath didn't perform this operation and it seems to me that any of his testimony now would be dealing in surmise and conjecture as to that phase of it because as I say, he did not perform the operation.

Court: The Doctor is entitled to express his opinion and the objection is overruled.

Mr. Hall: Exception.

By Mr. Pitchford:

Q. Go ahead, Doctor.

A. I think I nearly finished what I had to say, did I not?

Q. I believe you told us the reason for a spinal fusion.

A. No, I was just about to. When a joint is damaged as is known to have been damaged here by ruptured disc and if more damage occurs by more rupturing of the disc, then the joint is, even though the nerve is released of pressure by removal of further ruptured disc material, that joint is liable to be painful in its own—just by virtue of being a sore joint or a damaged joint and control of that pain may be accomplished at least in part and perhaps altogether by stopping the movement of the joint and an effective way of stopping it is to fuse it, solidify the joint.

page 189 } Q. Is fusion within the special field of orthopedic surgery?

A. Yes.

Q. Now Doctor, in orthopedic surgery are you concerned with the function of a disc, a normal disc?

A. Oh, yes.

Q. Now in your training and experience, have you had occasion to teach anatomy at any place?

A. Oh, yes.

Q. Where have you taught anatomy?

A. In the Medical College of Virginia.

Q. Have you had occasion over the years to explain disc and disc functions to your patients?

A. Yes.

Doctor Thomas Beath.

Q. Now would you please explain to the Court and jury what a disc is and the function of a normal disc?

A. Well, segments of the vertebra, the vertebra column or backbone is made up of a series of segments and these segments are flat on the face opposite each other. They are like a series of spools piled one on top of the each other and to allow these vertebrae to move on each other, a cushion of gristle material, flexible material, stiff sponge rubberlike material is placed between each of the bony segments. The flat surfaces of each of the bony segments and the pliability or springiness or rubberlike characteristics of this page 190 } cushion allow for the movement of the segments upon each other. The material is—these vertebrae are round, the bodies of the vertebrae are round and flat on their opposing faces so they're like a spool and this cushion or intervertebral disc is accordingly flat to match the two sides and is round in circumference; therefore it is a disc and between—because it's between the two vertebrae it's call an intervertebral disc and it just forms a pliable cushion like affair for the movement of the vertebrae on each other.

Q. Now the rupturing of a disc, does that effect that particular part of the back or the entire back?

A. Well, if there's pain it effects the entire back while there's pain. The muscles of the back and movements of the back all go together so that if there's pain causing the individuals to stop moving the joint, one joint on account of pain, he stops moving it all or movement of any part of his spine well, except say, the neck section, will cause certain amount of pain so that pain at one joint tends to effect the whole spine but release of pain by say, fusion operation releases and makes the rest of the spine movement more easily than it would if there was no pain.

Q. Now Doctor, considering the medical picture of Mrs. Jones as you know it, including her clinical picture, your examination, your findings and your conclusions, can you state with any degree of medical certainty whether or page 191 } not she has or has not any permanent disability?

A. Oh, there's no question she has permanent disability.

Q. Is it possible at this time to fix that permanent disability with any degree of mathematical certainty, percentagewise?

A. Oh, I suppose I might estimate it a little bit more accurately than a person not seeing her. I'd say she's perhaps disabled oh, some fifteen, twenty per cent.

Doctor Thomas Beath.

Q. Is that partial-permanent disability?

A. Yes, I think that would be a good expression.

Q. Now Doctor, do you have an opinion based on a reasonable degree of medical certainty as to whether or not these various injuries that you observed, namely the head, the neck, the shoulder, the arm, the low back and the leg is causally connected with the automobile accident of July 9, 1958?

A. Well, I have every reason to believe it is, yes, sir.

Q. Now was the various hospitalizations, namely the Retreat for the Sick, the several trips to the Tucker Hospital and the hospitalization in Mary Immaculate, in your opinion all a result or a consequence of the injuries she received in the accident of July 9, 1958?

A. Oh, yes.

* * * * *

page 192 }

* * * * *

Q. Now Doctor, will this lady in your opinion require further medical treatment and attention from you involving your specialty?

A. I think she's very likely to, yes, sir.

Q. Is there any way you can fix the cost of that page 193 } or approximate the cost of it?

A. The—the estimate hinges on whether, as I suspect, she well might, her condition would deteriorate and require further surgery. Should it deteriorate and require further surgery, I would think the cost, hospitalization and attendence and so on would be somewhere in the range of $1,400.00. If she does not require any further surgery, should she as I now think is rather unlikely, just to get along and put up with it, maybe another one hundred or one hundred fifty dollars would see her through this phase, maybe less.

Mr. Pitchford: Thank you, Doctor. Answer Mr. Hall's questions.

CROSS EXAMINATION.

By Mr. Hall:

Q. Doctor, in response to Mr. Pitchford when he asked you if you had testified in cases before for him and I believe your

response was in the affirmative that you had and then whether you testified in cases for me and your response was again in the affirmative that you had.

Mr. Pitchford: I object. He is not properly quoting the question.

Court: I think you misunderstood him. He asked had he testified in cases in which you were involved.

Mr. Hall: All right, sir.

page 194 } By Mr. Hall:

Q. Then the cases that you testified in which I was involved is when I was representing the Defendant like I am today, isn't that true?

A. Yes, sir.

Q. Yes, sir, and not testifying on behalf of the Plaintiff as you so regularly do for Mr. Pitchford?

A. Well, I guess you're giving that evidence.

Q. No, sir, every time I come to Court I see you.

Court: Mr. Hall, you may ask him questions but it's not proper, as you well know to make that statement.

Mr. Hall: He's asked me if I'm giving evidence, Judge.

By Mr. Hall:

Q. Now Doctor, in relation to this fusion that you are speaking of, I take it you subscribe to the fusion school?

A. I am a little you might say middle of the road on it. I don't subscribe to doing a fusion as a primary procedure where there is adequate, let's say, pressure, disc pathology found and moveable at a primary operation and as in this case as a primary operation, no. I would, if I found the disc as was described by Doctor Coppola, I would not do a fusion even though I were in the operation.

page 195 } Q. Now Doctor, how long were you teaching at the Medical College?

A. Five years.

Q. Five years. Now is medicine an exact science, Doctor?

A. No.

Q. Subject to human error there, aren't they?

A. Those of us in it rather consider it more an art than a science.

Q. And subject to miscalculations?

A. Yes, indeed.

Q. And diagnoses that are incorrect?

Doctor Thomas Beath.

A. Very often.

Q. And medical opinions that are inaccurate?

A. Yes.

Q. Now Doctor, isn't it recognized in medical science and by you gentlemen of the profession that the removal of the ovaries and uterus in a young woman creates nervousness and a high decree of tension?

A. Yes, we think that—it's getting a little out of my field but I think generally in medicine we think the removal of the ovaries in particular upsets an individual so that let's say they're a little more prone to emotional disturbances than otherwise would be so.

Q. It precipitates, shall we say, a premature
page 196 } menopause, does it not?

A. Oh, it does that, yes, sir.

Q. And even in normal menopause it's not unusual for that to create an upheavel?

A. That's quite true, yes, sir.

Q. In a woman?

A. It's well recognized, yes, sir.

Q. So then this precipitous menopause would create even more of an upheavel in a young woman, would it not?

A. I think that's right and proper thinking, yes, sir.

Q. That could account for a neuro-psychiatric—excuse me, neuro-psychiatric condition in a person?

A. Well, psychiatric condition, yes, sir.

Q. Psychiatric condition?

A. Yes.

Q. And mention is made I believe by you of that condition in Mrs. Jones and that could well account for that condition, could it not?

A. Well, I didn't feel that it accounted for it in her case as I saw it.

Q. Did you get the history that she had had the removal of the organs which we have enumerated?

A. I learned about that, yes.

Q. You got that history?

page 197 } A. Yes.

Q. Now Doctor, did you see Mrs. Jones on September 25, 1958?

A. Yes, sir.

Q. And I believe you saw her at that time on the occasion of her being dismissed from Tucker's Hospital?

A. Yes.

Q. And it was the feeling of Doctor Shield, was it not, that

her hospitalization during that period in Tucker's in September was due to the flu or the grippe?

A. I think he felt that an attack of flu or the grippe was accounting for some part of her symptoms, perhaps all.

Q. Now Doctor, is it not true that a herniated disc can be obtained or sustained shall we say, by one in stooping or bending or lifting an object?

A. Oh, yes.

Q. That's recognized, is it not?

A. Yes, and it may occur you might say without any particular occurrence. I have seen people wakened up in the bed in the middle of the night.

Q. Stepping off the curbing at the sidewalk perhaps could precipitate it?

A. Any sudden twist or even without it, yes, sir.

page 198 } Q. And as you stated, in the bed, the sudden twist in the bed could occasion it, could it not?

A. Yes, sir.

Q. Multiple reasons for the occurrence of it?

A. Yes.

Mr. Hall: Thank you, sir. I have no further questions.

* * * * *

page 202 }

* * * * *

MRS. ESTHER PAULINE WATTERTON,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:

* * * * *

page 203 } Q. When did you first become acquainted with Mrs. Jones?

A. I have known Lelia since about 1953.

Q. Were you and Lelia Jones neighbors living on the same street?

A. No, we didn't live on the same street. She lived on

Esther Pauline Watterton.

Rome. It was about two streets from me.

Q. About two streets from where you presently live?

A. Yes.

Q. In what year was that?

A. In '53.

Q. Did you become friendly enough with Lelia to visit in her home and she visit in your's?

A. Yes, we became very close friends and we were together I'd say on an average of at least four times a week.

Q. Now in this close association as far back as '53, did you observe anything about Lelia to indicate to you that she was physically handicapped in any way?

A. No.

Q. Did you observe anything about her to indicate that she was nervous or easily upset in any way?

A. No, except for the time that she was sick in '53.

Q. Tell us about that?

page 204 } A. Well, it was the incident about the glass and she did have stomach trouble and she was in the hospital.

Q. Approximately how long did that spell of sickness last?

A. Well, I don't know for sure. I'd say maybe three or four months. I don't know really how long.

Q. Did you continue to visit with her after she got over that spell of sickness?

A. Yes, I did. We went—went to the beach together and her husband and my husband, we all went fishing and we go to the movies and usually on Sundays we have dinner together.

Q. Was that done frequently?

A. No, not since they moved from Rome Drive.

Q. I mean right after the glass episode back in 1953?

A. Yes, yes.

Q. Now during that time did you see anything to indicate any physical handicap on her part?

A. None. She was a very good housekeeper. She kept her house very clean and she worked. She was working at the Bag Factory.

Q. Did you see anything about her to indicate emotional disturbance or nervousness?

A. No, she wasn't nervous.

page 205 } Q. And have you maintained your friendship, close friendship with her constantly since she got over this spell of sickness in 1953?

A. Yes, I have.

Esther Pauline Watterton.

Q. Have you visited fairly frequently in her home?

A. Yes.

Q. And has she visited fairly frequently in your home?

A. She did up until the accident. Well, up until she started to work, whenever they went into the ice cream business. Whenever she was working, naturally she wasn't able to visit me and whenever she had the accident, she was in the hospital. She hasn't visited me but before then she did visit in my home two or three times a week.

Q. And what did you observe about the general condition of her health up until the time of the accident?

A. Well, Lelia has always been even tempered and she's always had a lot of patience, especially around children and I haven't—she was never nervous or upset.

Q. Now has that condition changed so far as you could observe since the accident of July 9, 1958?

A. Yes, it has.

Q. In what respect has it changed?

A. I've noticed that Lelia has become very nervous. I have two small children and since the accident, page 206 } she had her operation, I have gone to her house with my two small children and I've noticed that they have made her very nervous and they upset her on different occasions. I have took them one time over to her house but I mean you could tell that the children running or talking would make her nervous and upset her so I don't take them to her home.

Q. Did the children ever upset her before the accident and operation?

A. No, she has always been very fond of children and always liked them and they never bothered her before.

Q. Did you at any time help to take her to any of the doctors before she had her accident?

A. Before she had her accident?

Q. Before she had her operation, I'm sorry.

A. Not before she had her operation, no.

Q. Have you taken her to doctors since she had her operation?

A. Yes, I have. I have taken her on two occasions to Richmond.

Q. And who did the driving?

A. I did.

Q. Why?

A. Because Lelia's right leg and ankle bothered whenever she drives and it would swell and I do—I done the driving

for her.

page 207 } Q. Have you made trips with her to other places than the doctor?

A. Yes, I have.

Q. To what places have you been?

A. Well, on one occasion I made a trip to North Carolina with her and which was I would say around 450 miles and she started out driving and she drove for a little while and then she asked me if I would drive because her ankle and her leg was bothering her and she—well, before I started to drive she was wearing sandals and she asked me if I would unbuckle her right sandal that she was using to drive with and you could see how it was swollen because the strap on her ankle had cut into it. Whenever she asked me to drive, I told her that I would get out of the car and go around and that she wouldn't have to get up.

Mr. Hall: Objection as to what she told, if your Honor please.

Court: I don't think the truth of the statements are in issue. I overrule the objection.

Mr. Hall: Exception.

A. I told her that. She said no, she didn't want to scoot over. She wanted to get out of the car.

Mr. Hall: Objection, if your Honor please to the hearsay.

Court: I think this is in the nature of a com-

page 208 } plaint if I understand her correctly. As soon as she finishes I shall rule on it.

Mr. Pitchford: That's correct.

A. She said she wanted to get out of the car and walk around so she could start the circulation in her leg and her ankle. She said she thought it would help her a little bit.

By Mr. Pitchford:

Q. Did she get out of the car and walk around?

A. Yes, she did and I walked around to get in under the driver's seat.

Q. Did you drive the rest of the way?

A. Yes, I did.

Court: On your—I overrule your objection because I feel it is in the nature of a complaint.

Esther Pauline Watterton.

Mr. Hall: Exception.

By Mr. Pitchford:

Q. Now who drove coming back?

A. I would say Lelia drove maybe about an hour and a half to two hours and I drove the rest of the way.

Q. Did she experience any difficulty in the return trip?

A. Yes, she did. Whenever we got to her mother's in North Carolina, Lelia had a terrible headache and her—

page 209 } Court: You don't know what she had. Would you just say what she complained of? Obviously you are in no position to know whether her head ached or it didn't.

A. She complained of her head aching and her leg bothering her and that night whenever we went to bed, that night she slept next to me in the same room and she was very restless. I'm a light sleeper and I could hear her during the night turning and tossing. Whenever she got up the next morning, she complained that she didn't feel well and we intended to leave that morning which we didn't. We didn't leave until about noon to start back.

* * * * *

page 215 }

* * * * *

(The Court and the attorneys for both sides then retired to the Chambers of the Court).

Mr. Hall: If your Honor please, I should at this time like to move the Court for a mistrial on the ground that the act of the Court in questioning Doctor Coppola in connection with whether or not any disability existed was not within the province of the Court in developing the Plaintiff's case and was eliciting evidence that was clearly available to the Plaintiff.

Court: Your motion is overruled.

Mr. Hall: Exception to the Court's ruling. Now I should like to move the Court to strike the evidence as to the hospital bill at Tucker's, dating from the period from September 6—September 16, 1958 to September 25, 1958 on the ground that

there is no causal relationship between that period of hospitalization and the accident in question. The evidence is that that covered an area when she had either the flu or the grippe.

Court: There was hearsay evidence to that
page 216 } effect but it was not objected to. It was not objected to.

Mr. Pitchford: My position is that Doctor Beath positively testified all of these hospitalizations were made necessary by reason of the injuries she received in the accident of July 9. I think we have established causal connection there. Furthermore, she has testified that all of the bills were incurred in connection with the injury she received.

Court: I don't know that her testimony on that point would be sufficient. Here's the problem we get into. Mr. Hall asked her—she was a bit evasive in her response but Doctor Beath is very clear. He asked Doctor Beath did not Doctor Shield say that the hospitalization was attributable to pneumonia or flu and Doctor Beath—

Mr. Pitchford: Grippe.

Mr. Hall: Grippe or the flu.

Court: Something like that and Doctor Beath replied that Doctor Shield indicated to him that he attributed that entirely to gripp or flu I believe is the words. That was hearsay evidence. If you had objected to it, I would have
page 217 } sustained the objection. It was not objected to and it's in evidence. I can't recall off-hand any testimony of Doctor Beath in which he attributed it to the accident.

Mr. Pitchford: I was under the impression that all of his testimony was to the effect that all of the hospitalization was made necessary by reason of the accident.

Court: Let's put it this way. I don't recall that. I will give you an opportunity to go through with the Reporter, sometime in his notes but unless you can find that somewhere in there where he expressed the opinion that it was because of something arising out of the accident, I shall sustain the motion. If he said that it was due to the accident and Doctor Shield said it was due to grippe, that's a jury question.

Mr. Pitchford: We will check that out before the day is out. Before it goes to the jury.

Mr. Hall: I have no further motions at this time, if your Honor please.

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

* * * * *

page 218 }

* * * * *

LIEUTENANT WILLIAM T. MORTON,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

Q. State your name, please, sir?

A. Morton; William T.

Q. And your occupation?

A. Lieutenant in the Traffic Division.

Q. Is that with the Newport News Police Force?

A. Yes, sir.

Q. Lieutenant, can you state to the Court and the jury what the speed limit was on the overpass that flows over what is known perhaps as Bridge Road or Highway Numbered 258, leading into the circle knows as the James River Traffic Circle, what that speed limit was on July 9, 1958?

A. Thirty-five miles per hour, sir.

Q. In that area there?

A. That's correct.

Q. All right, sir. Can you state to the Court page 219 } and to the jury, Lieutenant, whether or not the traffic lights or any of the arrows that are painted on the road at that intersection have been changed since July 9, 1958? In other words, are the conditions that obtain there today the same that obtained on July 9, 1958?

A. They are the same, yes, sir.

Mr. Hall: I have no further questions.

CROSS EXAMINATION.

By Mr. Pitchford:

Q. Now Lieutenant Morton, this thirty-five miles per hour is the maximum speed permitted at that intersection, isn't it?

A. That would be the maximum, yes, sir.

Marshall Franklin Ragsdale.

* * * * *

page 226 }

* * * * *

MARSHALL FRANKLIN RAGSDALE,
called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

* * * * *

page 228 }

* * * * *

Q. Would you state to the Court and the jury what you know about the accident that you have heard described here yesterday and today, please?

A. As I came off the circle headed towards the James River Bridge intersection, came over the overpass.

Q. That would put you headed in what direction?

A. Towards the bridge.

Q. All right, sir.

A. And as I came up over the overpass, the light was red and there was a line of cars in the left lane waiting to make a left turn towards Newport News and I began slowing down and I was possibly a fourth of the way down the hill, the light changed to green. So I proceeded to go straight through. The cars—in the left lane began making their turn towards Newport News and as I entered the intersection, this car made a sudden turn to the left directly in front of me and I swerved to the right but it was just not enough time. It was just so sudden that I swerved to avoid him but I couldn't do it.

Q. Now state if you can, and if you know, what part of your car came in contact with what part of the other

page 229 } car?

A. Well, it was more or less the front—front of my car and the right part of his car nearer the front.

Marshall Franklin Ragsdale.

Q. Now, state if you can, in reference to the intersection the approximate point where the impact took place?

A. Well, I would say it was a little bit to the right of the through lane, possibly just a little bit to the right but just the exact point I don't know.

Q. Now state to the Court and the jury, the speed that you were traveling as you came down the overpass and the manner in which you have described?

A. Between twenty-five and thirty I would say.

Q. What were the weather conditions?

A. It had been raining and it was still slight mist at the time, enough to have my wipers on, windshield wipers on.

Q. What was the condition of the road surface?

A. It was wet.

Q. Were your headlights burning on your automobile?

A. Yes, sir.

Q. Now, was anyone with you in your car?

A. Yes, sir, there was.

Q. Who was with you?

A. Mrs. Freda Sheffield.

Q. And how long had you known Mrs. Sheffield?

page 230 } A. Well, since—just before Christmas I suppose. November, I believe, the latter part of November.

Q. Christmas—November of what year?

A. It would have been '57.

Q. And state to the Court and the jury the circumstances in which Mrs. Sheffield was in your car?

A. Well, she worked at this drive-in and I came from Norfolk.

Q. What was the name of the drive-in?

A. The Little Southern and she was there; she wasn't working this night but she was there and she was about to—she was leaving to go home; must have been about eleven and I asked her if she wanted a ride up to this friend of mine's house. I had heard that he had just returned from North Carolina. He had been to a funeral and of course his family and my family are real good friends and I knew that I would know who it was and I was curious to know who it was and she was going to ride up with me just to see before I went back to Norfolk.

Q. All right, and what—what—did you know anyone that's related to Mrs. Sheffield?

A. Yes, sir, I was—going with her sister at the time and of

Marshall Franklin Ragsdale.

course I know her husband real well and her family her mother.

Q. And where did you meet her sister and
page 231 } through whose efforts did you meet her sister?

A. Through her. I eat most of my meals at this place when I was working over here and that's where I met Mrs. Sheffield. Her sister came down to visit her New Years. She was down for two weeks. Prior to her coming, Mrs. Sheffield asked me if I would like to date her. She wanted her to go out while she was here and she would like—she wanted to know if I would like to meet her and I told her yes, so she introduced me to her.

Q. And thereafter did you continue to see the sister?

A. Yes, sir. Well, of course I saw her the two weeks then and I went to—she's from New Jersey and I made the trip up there twice over a period of several months and she came down two or three times and of course we corresponded in the meantime.

Q. Now where does this friend live, at whose home you were going?

A. He had an apartment, 305 D-72nd Street, Newport News.

Q. And what is the gentleman's name?

A. Walter Garner.

Mr. Hall: Answer counsel's questions, please.

CROSS EXAMINATION.

By Mr. Pitchford:

page 232 } Q. Now Mr. Ragsdale, I understand from what you have said in response to Mr. Hall's questions that at the moment of impact you were going somewhere between twenty-five and thirty miles an hour on a rainy night, is that correct?

A. Yes, sir.

Q. I understand further that you say as you came over the crest of the bridge the light was red and there were cars in front of you making a left-hand turn, is that correct?

A. No, sir, they were stopped for the light. They weren't making a turn.

Q. They were stopped for the light?

A. Yes, sir.

Q. And you reduced your speed because of that condition?

A. Yes, sir.

Q. How much did you reduce your speed?

Marshall Franklin Ragsdale.

A. It would be hard to say. I was getting ready for a stop of course because the light was red and maybe five, ten miles an hour. As it turned green, of course I proceeded to go through.

Q. So you reduced your speed five or ten miles an hour and you were still going twenty-five or thirty when the accident happened?

A. Well, five or ten—in other words, I reduced
page 233 } until the light changed back to green, yes, sir. I wouldn't say five or ten. I don't know.

Q. When the light turned back to green, did you step on the accelerator and take off through the *interscetion?*

A. I wouldn't say I took off through, no, sir, but I proceeded to go through possibly increasing a bit, yes, sir.

Q. You did increase your speed. You were familiar with that intersection, weren't you?

A. Fairly so. I have been through the intersection before, yes, sir.

Q. You went through it many times during the several months you worked over here for Piedmont Airlines, didn't you?

A. It was Capital Airlines.

Q. Capital Airlines, sorry.

A. I wouldn't say so because I lived at Sedgefield Drive and of course the Airport is out on 168 and I didn't have too much occasion to be up through that part of it, no, sir.

Q. How often did you go to this friend's house, Walter Garner, who was living at 305-A 72nd Street?

A. He hadn't been living at that address very long. I had not been—

Q. You had never been to his house?

A. Not to this place that I was looking for this night, no, sir.

page 234 } Q. Now to get to 305-A 72nd Street, haven't you since learned that you go down Route 60 and turn off Route 60 and go towards the river? That's 72nd Street runs into Route 60?

A. Would you say that again, sir? I'm sorry.

Q. Have you not since the occurrence of the accident learned that 72nd Street runs right into Route 60?

A. It does, yes, sir, right.

Q. And haven't you since learned that the way to go there is to go down—make a left turn off the bridge and go down 60 and make a right turn on to 72nd Street?

A. Yes, sir.

Marshall Franklin Ragsdale.

Q. Now where did you intend to go on this night or what Route did you intend to follow to get to this 72nd Street address?

A. Well, as I say I didn't know just where it was but I thought it was the next turn, well, between the intersection and the bridge. There's a—there's a left street as you pass the intersection.

Q. You mean down Ferguson Park?

A. Yes, sir.

Q. So actually you didn't know how to get to the place you were going?

A. No, sir, I had the address but I wasn't sure where the address was.

Q. You were a little confused?

page 235 } A. I was looking for it, yes, sir.

Q. And this was what time of night?

A. About eleven o'clock; between eleven and eleven-thirty.

Q. In the middle of week, wasn't it?

A. Yes, sir.

Q. On a Wednesday?

A. Yes, sir.

Q. And when had you last seen Mr. Walter Garner, the man you were going to see?

A. I don't remember. It was probably two or three months.

Q. And you didn't actually know he was home, did you?

A. At that night?

Q. Yes.

A. No, sir.

Q. You were going to see if he was home?

A. Right, sir.

Q. Didn't Mr. Garner have a telephone?

A. No, sir.

Q. He did not have a telephone?

A. No, sir.

Q. Was there any particular reason for you to go to see him at that late hour?

page 236 } A. Yes, sir. As I say, I was in Norfolk. Well, I hadn't been transferred over too long, a couple of months and I didn't get over—well, I didn't get to see him as often as I had and I had heard just that night that one of his relatives had died and I was curious as to know who and I thought I would go by and if he was there I would find out.

Q. That was the reason you were going there?

A. Yes, sir.

Marshall Franklin Ragsdale.

Q. Now to go to Mr. Garner's house, you started out from the Little Southern Drive-in?

A. Yes, sir.

Q. And that is the place, is it not, located out in Hampton area—its' located at 39th and Aberdeen Road, isn't it?

A. Yes, sir.

Q. And it's a place where they sell food and beer, isn't it?

A. It's a restaurant, yes, sir. They do serve food and beer.

Q. What time did you get to the restaurant before you decided to make this trip over to see Mr. Garner?

A. Well, it must have been eight or eight thirty that I got there. I eat and left there approximately eleven o'clock, give or take five or ten minutes.

Q. What did you do besides eat while you were
page 237 } there?

A. I drank a beer as I eat and had one other.

Q. So you had at least two beers?

A. I had two beers.

Q. And who was your drinking companion?

A. Mrs. Sheffield was there when I got there and of course I know practically everyone there and there was—two or three other people there. I have forgotten now.

Q. You drink with all those people?

A. Yes, sir, we were sitting together.

Q. A great big table with all of them sitting around?

A. I was sitting at the counter.

Q. Now during this beer drinking, didn't Mrs. Sheffield say something about she wanted some Pizza pie?

A. Yes, sir, that was our purpose to begin with, right.

Q. Where were you going to get the Pizza pie at eleven o'clock at night?

A. The Town House.

Q. The Town House?

A. Yes, sir.

Q. And the Town House is located where?

A. Route 60, to the right, take a right and go to Route 60.

Q. And as you come off the bridge, in order to
page 238 } go to the Town House you would have to make a right turn, wouldn't you, to go toward Hilton Village?

A. To the Town House, yes, sir.

Marshall Franklin Ragsdale.

Q. Did you intend to eat the Pizza pie or go to see Mr. Garner first?

A. As I started to leave we were going to get the Pizza. As we started, five minutes before I left, this guy asked me if I had seen Walter Garner since he got back and that was the first I had heard of his—his funeral he had been to. So I asked her if she wanted to go up there and see him first so we were going by to see him first.

Q. You were going by to see Mr. Garner and then you were going up to see the Pizza pie, to get the Pizza pie?

A. Yes, sir.

Q. Now you say it was misting a little bit. Did that obstruct your view in any fashion?

A. The rain itself?

Q. Yes.

A. No, sir.

Q. Now, as you were coming down off the crest of the bridge downgrade, could you not see the entire intersection?

A. I was unable to see—well, the line of cars in my left lane kept me from seeing him, wherever it was that he was parked.

page 239 } Q. Let's show you—isn't it a fact that as you were coming down the hill that you were—your line of vision was above the cars making the left-hand turn?

A. Yes, sir, at the top of the hill.

Q. Yes, sir. And you could see down into the intersection and all cars standing there?

A. At the top of the hill I anticipated stopping because then the light was red at the top of the hill.

Q. Now—now Mr. Ragsdale, this is the direction you were coming looking, wasn't it? I'm handing you Plaintiff's Exhibit Number Five. You were going down hill this way, weren't you (indicating)? That's standing on the bridge?

A. Yes, sir.

Q. Looking towards the river?

A. Yes, sir.

Q. West?

A. Yes, sir.

Q. And you were going in this direction, (indicating), were you not?

A. Yes, sir.

Q. And in order to go up to get the Pizza pie, you would have to turn around this way, wouldn't you (indicating)?

A. That's right.

Marshall Franklin Ragsdale.

Q. In order to go across to go—if you wanted to go down Ferguson Park, you could go down this lane, couldn't you? Weren't there two lanes?

page 240 } A. Go down this lane, yes, sir. This is the through lane. It's marked, "through."

Q. It's marked, "through"?

A. It is a through lane, this one.

Q. Isn't this also a lane that you could go in?

A. This left lane?

Q. Yes.

A. No, sir.

Q. Weren't you in the left lane?

A. No, sir. Up here it's a single—it's only a one-way street—well, one lane going one direction and one lane going the other and here it branches off so—

Q. Let's talk—it fans out, does it not, Mr. Ragsdale, as the engineer has shown on his chart in case you haven't looked at it. This is the way you were coming. This is the river down here. This is towards Hilton Village and this is down 73rd Street way (indicating).

A. That's right.

Q. The way you were going and there are two lanes here, two lanes here?

A. Yes.

Q. And you got into this lane (indicating) when you say—

A. When this lane came into being, I got into it because my intention were going across. Up here it's single

page 241 } and here it's double. When it became possible to get into it, I did.

Q. Where were the cars standing that obstructed your view so you could not see traffic moving within the intersection?

A. In this lane, part of them were making the turn when I came in the intersection and as he comes out of nowhere, all of a sudden, and I could not see anything from here, naturally these cars making their turns.

Q. Where was Hubert Jones' car on this diagram when you first saw it?

A. Just barely to my left, almost in front of me.

Q. Barely to your left almost in front of you?

A. Yes, sir.

Q. And you were how close to him?

A. I couldn't say. Just a split second.

Q. Just a split second when you saw him for the first time?

Marshall Franklin Ragsdale.

A. Right. He was just barely to my left and almost in front of me.

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

A. Yes, sir.

Q. And you came up here you say. Now when you get to this point (indicating), even in that lane, is there
page 242 } anything to obstruct your view so that you can't see all of the traffic in the intersection?

A. When the street is full of cars, yes, sir.

Q. The street—the cars turning to the left here?

A. Cars making the left here.

Q. Would that keep you from seeing out in this direction (indicating)?

A. Certainly did. These cars making a left because there's an island here. These cars don't cut here. They come over here (indicating). This island comes out here.

Q. So those cars obstructed your view. You couldn't see—

A. That's right.

Q. Did you look, Mr. Ragsdale?

A. If I looked over there, I would see the cars to my left.

Q. I didn't ask you that, sir. I asked you, did you look?

A. I looked as I went through, yes, sir.

Q. Looked in what direction?

A. I usually look in what direction which I did.

Q. What did you do this time?

A. I looked.

Q. In what direction?

A. Both directions.

page 243 } Q. And you didn't see the Hubert Jones car?

A. No, sir.

Q. Until you were very, very close to it?

A. That's right.

Q. What was that car then doing?

A. He could have been going fifty or could have been sitting still. I say it was a split second, all at once out from in front of these cars.

Q. You don't know what he was doing?

A. In that matter of a second, no, sir.

Q. You just don't know?

A. No, sir.

Q. Did you ever put on your brakes?

A. I attempted to but I doubt if I had time to do any good. I couldn't say that they caught, no, sir. I attempted to and swerved.

* * * * *

page 248 }

* * * * *

RE-DIRECT EXAMINATION.

By Mr. Hall:

Q. Marshall, I show you plaintiff's Exhibit Seven—plaintiff's Exhibit Six, which is a picture of the location of the accident and is looking towards the bridge, the overpass, and some cars are lined up there either making left turns or preparatory to it and ask you if that is in some
page 249 } measure what you have been telling the Court and the jury as to the condition of the cars when you came down?

A. Yes, sir.

Mr. Hall: Would you gentlemen like to see the picture?

(At this time the photograph was handed to the jury).

By Mr. Hall:

Q. Was there—is that what you meant when you said that there was an obstruction to your vision of the cars there?

A. The cars in the left lane, yes, sir.

* * * * *

page 251 }

* * * * *

RE-CROSS EXAMINATION.

By Mr. Pitchford:

* * * * *

page 253 }

* * * * *

Q. Now Mr. Hall in redirect examination has called your

attention to plaintiff's Exhibit P-Six, and asked you if cars were turning in that fashion (indicating) at the time your view was blocked so that you could not see other traffic within the intersection and I understood from you that you said that about this condition obtained, is that correct?

A. Yes, sir, they were making the left turn

page 254 } going to Newport News, right.

Q. Now I'll ask you, Mr. Ragsdale, if your view was partially obstructed in this fashion, why didn't you reduce your speed of the car a little bit?

A. Well, I was within the speed limit. In fact, that was the speed limit and it seems to me if apparently these cars would obstruct his view too and why did he pull out where he couldn't see.

Q. You knew—

A. You can't make a left turn into another lane.

Q. You knew it was a thirty-five mile speed limit?

A. Yes, sir.

Q. Did you not also know that that was the maximum speed you could drive under ideal conditions?

A. Yes, sir.

Q. And these were not ideal conditions, were they? It was raining and your view was partially obstructed?

A. That's true, yes, sir.

Q. And you were still going to maintain the maximum speed, is that what you were doing?

A. No, sir, between twenty-five and thirty I would say.

Q. You were going to maintain the speed between twenty-five and thirty?

A. That's the speed I was making that night.

page 255 } Q. Even though it was raining, your view was obstructed and you were in a dangerous intersection, is that right?

A. That's right, sir.

* * * * *

HUBERT JONES,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

Q. Mr. Jones, yesterday when Court recessed at one

o'clock did you meet Mr. Suddreth down here on the southwest corner of 26th Street and Huntington Avenue?

A. Yes, sir.

Mr. Pitchford: Objection. That has no bear-
page 256 } ing on this case. It cannot have any relevancy. I don't know what it's leading.

Court: He's answered the question. Let me see what the next question is and I'll rule on it.

By Mr. Hall:

Q. Thereafter you went over towards Sears and Roebuck?

A. Went to his car.

Q. That was over in the Sears and Roebuck area, is that right?

A. No, sir, it's over here in the parking lot.

Q. Didn't you head in the direction of Sears and Roebuck's store?

A. Went to the corner and turned left.

Q. Didn't you walk across the parking lot in the Sears and Roebuck's store that leads to that?

A. He got his car and we met him on the corner.

Q. You met him on the corner. Both of you were afoot, were you not?

Court: Just a moment. Send the jury out.

By Mr. Hall:

Q. Mr. Suddreth had to leave and go to work?

Court: Mr. Hall.

Mr. Hall: Yes, sir.

page 257 } Court: I think you have been practicing law long enough when I send the jury out, it's for the purpose I'm not hearing a discussion. Now please don't prolong it.

(At this time the jury then left the Courtroom).

Court: What is the purpose of it?

Mr. Hall: The purpose of it, if your Honor please, to show bias on the part of Suddreth and prejudice. He said when he left here yesterday he asked to be excused. He wanted to get back to work. That was at an early hour and then they meet down here on the corner at one o'clock when the Court

recesses and head over there and I think that I have right to inquire into it. Certainly the witness, Suddreth, had not gone to work as he advised the Court he was going to do and about the relationship between these two—these two men.

Court: I have heard of people being impeached for prior inconsistent statements but never heard of one being impeached for failing to do something that they indicated they might do in the future.

Mr. Hall: Well, the witness gave his name
page 258 } and address to one party out there so he testified
to and that was Mr. Jones.

Court: I'll give you an opportunity to argue that to the jury. What I am trying to get at is what is the purpose of it?

Mr. Hall: The purpose is to show bias and prejudice on the part of the witness, Suddreth.

Court: Go ahead and complete your examination.

By Mr. Hall:

Q. Now then, weren't you all standing on the corner of the southwest corner of 26th and Huntington?

A. When I first saw Mr. Suddreth, we left out of here to go to lunch.

Q. When you speak of "we," who is "we"?

A. My wife, the lady over there, the other lady.

Q. That was at one o'clock?

A. That was at one o'clock to go to lunch. Mr. Suddreth had his car parked down to the parking lot. He came walking down the street, told me wait a minute he would take us to lunch so my wife suggested going over to Sears and Roebuck to eat lunch. So we went over there, come back to the corner. We couldn't get served, come back to the corner.

Q. Then you did walk in the direction of Sears and Roebuck,
across that parking lot like I suggested, did you
page 259 } not?

A. Yes, but I was trying to get to the point where we went and answer as near approximately as I could.

Q. Why did you deny then that you walked in the direction of Sears and Roebuck across the parking lot?

A. Well, the parking lot is where he picked us up to take us to lunch.

Q. Didn't you meet him at the corner that I suggested and walk with him across in the direction of Sears and Roebuck?

A. We met him at the corner. We walked to Sears and Roebuck.

Hubert Jones.

Q. Didn't just the two of you meet there, you and Mr. Suddreth?

A. No, sir.

Q. Didn't just the two of you walk across the parking lot?

A. No, the wife and ladies were with us.

Q. Did you go to lunch?

A. We went over there and it was such a crowd there, it was suggested to come back and we waited on the corner for him to get his station wagon and take us up town for lunch.

Q. Where did you go to lunch?

A. Up on Washington Avenue about 34th Street.

Q. Mr. Suddreth took you to lunch up there?

A. Yes, sir.

Q. How long have you been knowing Mr.
page 260 } Suddreth?

A. Since the wreck.

Q. Just—you just met him at the night of the wreck?

A. Yes, sir.

Q. Not before?

A. Not before.

Q. How often have you seen him since the wreck?

A. A couple of times.

Q. Just two times?

A. Just two times.

Q. Was yesterday the second time?

A. That's right.

Q. Where did you see him the first time?

A. I have seen him a couple of times in Mr. Pitchford's office. Yesterday morning I believe and—I'd say a couple of times.

Q. And the only time you have seen him has been in Mr. Pitchford's office since the wreck?

A. No. I have seen him one time besides that.

Q. Where was that?

A. He come to my ice cream truck.

Q. Where was your ice cream truck?

A. I don't remember now. I just remember seeing him and I asked him was he a witness, was he the one that saw me—saw the car wreck and he said yes.

page 261 } Q. How did he happen to come to your ice cream truck?

A. That's his business. I didn't ask him.

Q. Were you stopped?

A. Yes, sir.

Hubert Jones.

Q. Where were you stopped?

A. I don't remember exactly where we were at. We got several trucks. We work several routes but I don't remember where we were at.

Q. So then you had seen him the three times and nevertheless he waits for you on the corner down there and takes you to lunch on the day of your trial, is that right?

A. He brought me down here.

Q. He brought you down here?

A. He brought me down here.

Q. Yesterday?

A. Yesterday morning.

Q. In his car?

A. In his car.

Q. What's wrong with your car?

A. My wife had my car.

Q. She had your car yesterday?

A. That's right.

Q. Wasn't she down here?

A. Yes, sir.

page 262 } Q. Did she drive?

A. I don't whether she drove or Esther drove. I know they had my car.

Q. Who is "they"?

A. My wife and Esther.

Q. Just the two of them. Any reason why you couldn't come with your wife?

A. I didn't want to come with my wife.

Q. Why didn't you want to come with your wife?

A. I stayed back to the house waiting for a witness to come.

Q. Waiting for what witness?

A. Well, the one they called Tennessee. His name is Reese.

Q. Then Mr. Suddreth brought you and Tennessee down here?

A. No, he brought me. We give up waiting for him.

Q. Mr. Suddreth brought you?

A. Yes, sir.

Q. When were the arrangements made for Mr. Suddreth to come by and pick you up?

A. It wasn't arranged for him to come by and pick me up.

Q. He happened to come by to pick you up?

Hubert Jones.

A. He come by the house and then come to the
page 263 } office.

Q. How did he happen to come by the house?

A. I don't know what his reason was for coming by the house. He was either coming by the house or Mr. Pitchford's house. Either one he chose to do.

Q. So he came by and picked you up, brought you to Court and took you to lunch?

A. He came by.

Q. Now he gave you his name and address that night. Did you write it down?

A. I don't know whether he wrote it or I wrote it but he did give me his address.

Q. And then he accosted you when you were in the ice cream truck and you asked him if he was the witness?

A. Yes, sir.

Q. Is that the first conversation that took place between you?

A. That was the first time I had seen him since the car wreck.

Q. Mr.—Mr. Suddreth receiving any compensation to come here and testify?

A. No.

Q. You have not made any arrangements with him?

A. No.

Q. Are sure of that?

A. Yes, sir.

page 264 } Mr. Hall: I think, if your Honor please, there is a certain element in this testimony that shows that Mr. Suddreth has more than a passing interest in the case.

Court: I can't see all this amounts to anything.

Mr. Hall: I think that—

Court: I will refuse to permit the jury to hear it. Bring the jury back.

Mr. Hall: I would like to get my exception in the record.

Court: That's the reason I permitted you to examine him so you would have your exception.

Mr. Hall: I except to the ruling of the Court on the grounds that the evidence adduced here will tend to show bias and prejudice on the part of the witness, Suddreth in that he has an undue interest in the case. He comes by and solicits, takes the witness, Jones, brings him to Court, takes he and his family out to lunch.

Hubert Jones.

Mr. Pitchford: May I interrupt?

Court: Let him state his exceptions. The jury is about to come back in and hear all this.

Mr. Hall: I asked to state my exception. And

page 265 } that indicates more than an independent witness with no interest in the outcome of the case other than to see that the ends of justice are met and I think that that is testimony that should go before the jury in order that they may weigh the witness, Suddreth's testimony. It must be remembered that he is the only independent so-called eye witness to this accident and for that reason it would appear that his testimony should be viewed under all of the circumstances consistent with his actions and the jury should have the facts in order that they may weigh his testimony.

Court: Tell them to bring the jury back.

Mr. Pitchford: As long as we're making the record, I would like to make this observation even though the Court has ruled with me. It was I who stated that Mr. Suddreth wanted to go back to work. It was not Mr. Suddreth. He wanted to be excused.

Court: I still don't see the failure to do what he indicated he might do is sufficient inconsistency to contradict.

Mr. Pitchford: Will you instruct the jury to disregard the testimony they heard up to this time?

Mr. Hall: Beg your pardon?

Mr. Pitchford: I asked the Court to instruct

page 266 } the jury to disregard the testimony they already heard.

Mr. Hall: I object to that. Is the Court going to sustain that motion?

Court: I certainly am.

Mr. Hall: I except to that for the reasons heretofore assigned. I have no questions. No further questions of this witness.

Mr. Pitchford: Come down.

(At this time the jury then returned and resumed their seats in the jury box).

Court: When I sent you from the room, there was an examination of Mr. Jones concerning the meeting of another witness, Suddreth, and having lunch. I heard the evidence and I concluded it has no bearing on the case and I instruct you to disregard that portion of the testimony that you did hear.

* * * * *

FREDA SHEFFIELD,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

page 267 } Q. State your name, please.
A. Freda Sheffield.
Q. And how old are you, Mrs. Sheffield?
A. Twenty-nine.
Q. And are you married?
A. Yes.
Q. You live with your husband?
A. Yes.
Q. Do you have any family?
A. Three children.
Q. And what are their ages?
A. Two—two and a half, three and a half and nine.
Q. And where are you now living, Mrs. Sheffield.
A. In Gettysburg, Pennsylvania.
Q. Will you speak up, please?
A. In Gettysburg, Pennsylvania.
Q. And did you *did you* at my request come down here to attend this trial?
A. Yes.
Q. And isn't it also true that I arranged to pay your transportation down here and your—all of your expenses incident to your trip?
A. That's right.
Q. And also your salary while you were off

page 268 } from work?
A. Yes.
Q. Now Mrs. Sheffield, on July 9, 1958 where were you living?
A. I was living at 1908—
Q. Speak up a little, please.
A. 1908 Rawood Drive, in Hampton.
Q. Is that close to Buckroe Beach?
A. That's about two miles I'd say.
Q. Now at that time were living with your husband?
A. Yes.
Q. Where was he on July 9, of 1958, if you—
A. He was in Washington, D. C.
Q. And what occasioned him to be up there?

Freda Sheffield.

A. Well, he was working with Parsons, Brinckerhoff, Hall and MacDonald, Engineer here. He was working with the bridge tunnel and they had completed their work and he was transferred temporarily to Washington, D. C.

Q. I see. Now Mrs. Sheffield, have you known—prior to June—July 9, 1958 had you known Marshall Ragsdale for any period of time?

A. I knew him since November of '57.

Q. State the circumstances under which you met him, knew him and that sort of thing?

page 269 } A. Well, I worked at Little Southern Drive-in. It was on Pembroke Avenue in Hampton and he came in there every night after he got off work.

Q. What—what did he come in there for?

A. He came in to eat and drink and he had friends there so he—I don't know, he was friendly with me and we got to be friends.

Q. All right. Do you have a sister?

A. Yes. My sister came down and she lives in Asbury Park, New Jersey. She came down at Christmas time and I made arrangements for him to date my sister.

Q. And did he thereafter continue to see your sister, if you know?

A. Yes, he—she stayed a week that time and then they corresponded with each other. He went to see her—flew up to see her one week and she came back down here.

Q. When you speak of flying up to see her, where was that?

A. In Asbury Park, New Jersey. She worked there.

Q. Now Mrs. Sheffield, directing your attention to the accident of July 9, 1958 in which an automobile operated by Mr. Ragsdale and one operated by Mr. Jones were involved in an accident or collision at the intersection of Route Number 60 and Highway numbered 258 and in that circle sometimes referred to as James River Traffic Circle, tell the

page 270 } Court and jury what you know about that accident?

A. Well, it was about seven or so. I had gone over to the Little Southerner because I often went over there in the evening. So when I was there and after a while Marshall had came in and we sat there and talked a little while and it was about a quarter of eleven. We decided to go for Pizza but somebody had told him in the Little Southerner that one of his friends, there was a death in one of his friend's family so as we was driving towards Newport News,

he had suggested we go by his friend's house, Walter's house and he wanted to know who had died because they were close friends. They had lived in North Carolina together so we came up Military Highway and were going towards the James River Bridge at the intersection. We were coming down over the overpass and he was in the middle lane going—we were going straight through because where his friend lived it was a—straight down from the water, the next street. We had to make a left so as we were coming down, why the light was green and I had glanced out the window and I felt a sharp swerve to the right and I was laying on the floor and—

Q. You glanced out the window and what happened?

A. He swerved to the right and I was on the floor.

Q. You were in the floor?

A. Yes, sir.

Q. Did you or did you not feel any impact between two cars?

page 271 } A. Yes, there was an impact and I fell to the floor. My head was towards the steering-wheel and my legs were—under the dash.

Q. Under what?

A. Under the—under the floor, under the dash.

Q. Now, Mrs. Sheffield, state, if you know, whether or not Mr. Ragsdale had had any beer to drink out at the Little Southerner prior to you all driving off and if so, what quantity?

A. Yes, he did. I would say two but he also had his supper there too so he had the two with his supper because he always ate there.

Q. Now had you had any beer to drink there? If so, what quantity?

A. Yes, I had—I might have had one and a half. I probably had ordered two but I am a slow drinker and I was probably sitting there and I didn't have over two, if I had drink it all.

Q. Now after the accident—strike that, Mr. Reporter. If you can, Mrs. Sheffield, state to the Court and jury to your best ability the approximate location where the impact between the two vehicles occurred?

A. It was—about in the middle of the intersection.

Q. All right. State to the Court and jury, if you can, your best approximation of the speed of the Ragsdale

page 272 } car?

A. It couldn't have been over twenty-five and possibly twenty. I know we were not going fast.

Freda Sheffield.

Q. Now—strike that, Mr. Reporter. Did you go to the Riverside Hospital?
A. Yes.
Q. How did you go there?
A. In the ambulance.
Q. And did anyone else go in the ambulance with you?
A. All of us went that was involved.
Q. Who is, "all of us"?
A. Mr. and Mrs. Jones and their little boy and Marshall and I, in the ambulance.
Q. All of you in the ambulance together then?
A. Yes.
Q. Now did you have any conversation with Mr. Jones at the Riverside Hospital?
A. Yes.
Q. And where did this conversation take place?
A. It was in the corridor or nearby the exit after they had sewed my leg.
Q. After they had sewed your leg?
A. Yes, we were waiting for somebody to come by and pick us up and I don't think they had already attended to Mrs. Jones and he was there waiting.

page 273 } Q. All right, what statement, if any, did he make to you?

A. He said to me a couple of times he was sorry that he had hurt me and I said that it was all right, I understood, and he said—he said that he didn't see us. He was coming from North Carolina I believe he said and he was only five or six blocks from home.
Q. He said he didn't see you?
A. He said he did not see us.
Q. Now on how many occasions did he make that statement to you?
A. At least twice.

Court: Mr. Hall, I don't recall you examining the gentleman—the husband of the plaintiff relative to that statement. You asked him didn't he say he was sorry or something.
Mr. Hall: No, sir, I asked him if he made the statement that he did not see—made the statement that he did not see the car before he struck her.
Court: You asked him that question and he denied making the statement.
Mr. Hall: Yes, sir.
Mr. Pitchford: I don't remember the testimony.

Freda Sheffield.

Mr. Hall: I vouch the record.
page 274 } Court: I don't recall it.
Mr. Hall: I vouch the record.
Court: In any event, you have asked her now.
Mr. Hall: I have no further questions.

CROSS EXAMINATION.

By Mr. Pitchford:

* * * * *

page 278 }

* * * * *

Q. Whose suggestion was it that you go and get the Pizza pie?
A. Mine I guess.
Q. What time of night was that suggestion made?
A. Ten thirty.
Q. And where did you intend to go to get the Pizza pie?
A. In Newport News.
Q. What place in Newport News?
page 279 } A. I don't know.
Q. Didn't you know where Pizza pie was served at that time of night?
A. No, I didn't.
Q. So you just coming to Newport News looking for Pizza pie, is that right?
A. Yes, I have been in Newport News plenty of times and I often have seen signs if they have Pizza, they have a sign outside.
Q. Was anything said between you two about going to the Town House?
A. Not that I recall.
Q. Do you know where the Town house is located?
A. Yes, I know.
Q. Where is it?
A. It's about the A&P on—Jefferson Avenue.
Q. Jefferson Avenue or is it Route 60?
A. Route 60, one of the streets. I know it's above the A&P.
Q. Isn't it just as you go into Hilton on the right-hand side?

Freda Sheffield.

A. Yes, some place. I have been there. I know how to get there but I couldn't tell you the directions.

Q. You all hadn't talked about going there that
page 280 } night?

A. No.

Q. You just coming over to town looking for Pizza pie?

A. That's right.

Q. Now at what point in the trip did you decide that you would leave off the Pizza pie a little while and go to see Mr. Garner, who had been to a funeral?

A. Coming up Aberdeen Road to get on to Military Highway we discussed it.

Q. You discussed going to Mr. Garner's house?

A. Yes.

Q. And it was then about what time?

A. Well, I guess it was before eleven o'clock.

Q. Raining still?

A. I don't recall.

Q. You don't recall whether it was raining or not?

A. I knew that it had been raining but I don't recall if it was—if it was raining, I don't believe it was raining fast.

Q. But you can't be sure about that one way or another?

A. That's right. I wouldn't like to say.

Q. Now the two beers or the beer that you say Marshall Ragsdale drank, did that effect him in any way?

A. It did not.

page 281 } Q. You had seen him drink more at other times, hadn't you?

A. Yes.

Q. Now as you came around the traffic circle, that is before you started over the overpass, how fast do you think Marshall Ragsdale was driving?

A. I couldn't say but I'm sure it wasn't over the speed limit because we weren't going fast.

Q. Did you ever look at the speedometer?

A. I never looked at the speedometer, no.

Q. Do you drive an automobile at all?

A. Yes.

Q. Did you look at the speedometer at any time from the time you got into the car up until the happening of the accident?

A. I had no reason to look at the speedometer.

Q. So you did not look at it?

A. That's right.

Freda Sheffield.

Q. Now as he went up on the bridge, did he maintain that same speed you say within the speed limit?

A. Yes.

Q. Now as he went over the crest of the bridge, starting down towards Route 60, where the accident happened, do you know whether he increased or decreased the speed of the automobile?

page 282 } A. He decreased the speed of his automobile because there was the light was just changing.

Q. The light was just changing?

A. From red to green.

Q. As he came over the hump of the bridge?

A. Yes, sir.

Q. The light was changing from red to green?

A. Yes.

Q. And he changed the speed of his automobile in what respect?

A. Very slight.

Q. An increase or decrease?

A. He might have decreased five miles.

Q. He saw the light turn green as he came over the crest of the bridge?

A. Yes.

Q. And he slowed his automobile down, is that what you are saying?

A. I'm saying that he slowed his automobile down before the light had turned to green.

Q. I'm talking about, Mrs. Sheffield, as he came over the crest of the bridge where he could see down to the intersection, could you see the lights?

A. I seen the light when it was green.

Q. I understood from what you said it was just

page 283 } changing from red to green when that occurred, is that right?

A. At the crest of the—

Q. Bridge?

A. Yes.

Q. And the light was changing from red to green?

A. Yes, sir.

Q. And Marshall Ragsdale changed the speed of his automobile you said?

A. But when the light had turned to green, he increased his speed.

Q. Oh, he increased his speed?

A. Increased his speed.

Freda Sheffield.

Q. When the light turned?
A. After the light had turned.
Q. Increased his speed to what approximate speed, as best you can judge?
A. Twenty or twenty-five. It couldn't have been over twenty-five.
Q. You think it was twenty or twenty-five?
A. That's what I would judge.
Q. Now what did you observe in the way of traffic as he neared the intersection?
A. There was traffic to the left of us making left turns.
Q. How much traffic to the left of you?
page 284 } A. Several cars.
Q. Weren't you sitting up there, Mrs. Sheffield, with your eyes partly closed, not paying any attention to the driving?
A. I wasn't paying any attention to the driver and I had looked out the window. I was facing the window as we were in the intersection.
Q. Facing which window as you went into the intersection?
A. To the right but I could see. I seen the cars at the left as we were coming down and as we approached into the intersection I had turned my head.
Q. Turned your head to look towards which door, the steering-wheel side or the opposite side?
A. To the opposite side from the steering-wheel.
Q. From the opposite side from the steering-wheel?
A. Yes.
Q. So then you would be looking out of the right window?
A. Yes.
Q. And when did you turn around and start looking out of the right window?
A. After I had seen the line of cars on the left lane because I did see them. When, I don't know.
Q. And you turned around and stopped looking
page 285 } out of the left window?
A. Looking straight. I was looking—looking straight.
Q. You weren't looking out the window. You were looking straight?
A. I was looking out the window after we had got to the intersection.

Mr. Hall: I don't think you are accurately quoting her,

Freda Sheffield.

Mr. Pitchford. I don't think it is fair. She told you she was looking straight and turned to the right.

Mr. *Pitchfrod*: I didn't so understand the witness.

Mr. Hall: I think the record will show it.

Court: If you have any motion, address it to the Court. There is nothing for me to rule on.

A. Will you repeat the question?

By Mr. Pitchford:

Q. I want to be perfectly fair with you and I understand you have told me this. Correct me if I am wrong; that as you were approaching the intersection, you were looking out of the left window and that about the time you got to the intersection you turned and you were looking out of the right window. Is that correct?

page 286 } A. I don't recall of telling you that I was looking out the left window. What I recall, I recall of telling you that I did see the light being green and I seen the cars in the left lane but when—when we had gotten to the intersection, I had turned my head to the right.

Q. The car that you saw in the left lane, did you see him while you were looking straight ahead?

A. Yes.

Q. So you saw those through the windshield?

A. Yes.

Q. And then you turned to the right to look towards Hilton Village?

A. Yes.

Q. Why did you turn in that direction?

A. There was no reason to.

Q. No reason at all, was it?

A. No. It just happened at that time I had turned to look out that side.

Q. Did you ever see the Jones automobile before the impact?

A. No, I did not.

Q. You didn't see it at all?

A. I didn't see it.

Q. The first notice you had of the accident was about to happen or had happened was when you felt the impact?

page 287 } A. That's right.

Q. You had no warning of any sort?

A. Well, the swerve. I didn't know at the time that's what it was but I felt the swerve before the impact.

Walter A. Garner.

Q. You felt the swerve before the impact. The swerve in what direction?
A. To the right.
Q. How much later did you feel the impact?
A. Well, I couldn't say. Just a split second I imagine.
Q. Just a split second?
A. Yes.
Q. And then you felt the impact?
A. Yes.

* * * * *

page 289 } WALTER A. GARNER,
called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:
Q. State your name, please.
A. Walter A. Garner.
Q. And where do you live, Walter?
A. 611 Hilton Boulevard.
Q. And on July 9, 1958 where were you living?
A. 305 D-72nd Street.
Q. Do you know Marshall Ragsdale?
A. Yes, sir.
Q. How long have you known him?
A. Oh, eight or ten years.
Q. Sometime prior to July 9, 1958, shortly before July 9, 1958 had a relative of your's died?
A. Yes, sir, he was my Uncle. He got drowned.
Q. He got drowned?
A. Yes, sir.
Q. Did you have occasion to go to North Carolina to the funeral?
A. Yes, sir.

* * * * *

page 293 }

* * * * *

HUBERT JONES,

recalled as a witness in rebuttal by the Plaintiff, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pitchford:

Q. Now Mr. Jones, you have been in the Courtroom this morning and you have heard the testimony of Mrs. Sheffield and of Mr. Ragsdale with reference to some conversation that you are supposed to have had with her in his presence in the Riverside Hospital. What can you tell us about that?

A. Well, the lady was sitting over by herself; no one was around her and I walked over and told her I was sorry she was hurt and that's everything that was said or mentioned.

Q. Where was Mr. Ragsdale when that occurred?

A. He was over talking to a Police Officer at the time.

Q. Did you say that to her more than one time?

A. No, sir.

Q. Did you make any statement to her to the

page 294 } effect that you were coming from North Carolina just six blocks from home?

A. No, sir.

Q. Did you make any statement to her to the effect that you did not see the Ragsdale automobile?

A. No, sir.

Q. Were those items even discussed?

A. No, sir.

* * * * *

page 303 } INSTRUCTIONS.

PLAINTIFF'S INSTRUCTION NO. 1.

(Granted):

"The Court instructs the jury that as the defendant, Marshall F. Ragsdale, approached the intersection of Route 60 and Bridge Road in the City of Newport News, the following duties were imposed upon him:

"1. To exercise reasonable care in the operation of the vehicle he was driving.

"2. To keep a proper and efficient lookout for other vehicles then using the intersection and to take advantage of whatever an efficient lookout would disclose.

"3. To timely and seasonably apply the brakes of his vehicle when so to do would avoid a collision.

"4. To refrain from turning or partly turning from the lane in which he was traveling without first using reasonable and ordinary care to see that such movement could be made in reasonable safety.

"5. To drive at a careful rate of speed, not greater than was reasonable and proper under the circumstances then existing, having due regard for the traffic, surface and width of the highway or street, and all other conditions then obtaining.

6. To exercise reasonable care in approaching the intersection so as to bring his vehicle to a stop within a reasonable distance when traffic conditions existing in
page 304 } said intersection so required.

"The Court further instructs the jury that Hubert Jones, the driver of the automobile in which Lelia Jones was riding, had a right to assume that the defendant, Marshall F. Ragsdale, would discharge each and every one of the foregoing duties, and the Court further instructs the jury that if they believe from a preponderance of the evidence that the defendant, Marshall F. Ragsdale, violated any one or more of the foregoing duties and that such violation, if any, was the proximate or concurring cause of the collision and injuries resulting therefrom, then you must find your verdict for Lelia Jones against Marshall F. Ragsdale, and fix her damages in accordance with other instructions of the Court."

Court: Would you state your objection, please.

Mr. Hall: Counsel for the defendant objects to the sixth paragraph of Instruction Number 1 on the grounds that it makes the defendant an insuror and imposes a greater duty upon him than contemplated by law. We further object to Instruction Number 1 in that portion in the fourth line from the bottom, the phrase, "of or efficiently contributed to."

Court: Let's get the paragraph six. "To approach the intersection in such a manner as to bring his vehicle to a stop"—I think perhaps it would be better, "to exercise reasonable care in approaching the intersection so as to bring his vehicle to a stop."

page 305 } Mr. Pitchford: I would have no objection to that change.

Mr. Hall: Well, I don't believe the evidence justifies paragraph six, if your Honor please, and I don't believe the amendment cures the defendant's objection.

Court: I shall give as I have changed it.

Mr. Hall: Shall I state my exceptions to that?

Court: Go ahead and state your exceptions.

Mr. Hall: The defendant, Ragsdale, excepts to the granting of paragraph numbered six of plaintiff's Instruction numbered 1 as amended on the grounds heretofore assigned.

Mr. Pitchford: Would you read me the language so I can make mine conform? I reckon you want to make your's conform too, don't you?

Mr. Hall: Yes.

Court: I was going to delete the word, "approach" and put in there, "exercise reasonable care in approaching."

Mr. Pitchford: It would read, "to exercise reasonable care in approaching the intersection."

Court: Yes. All right, now let's get down to the next objection made by Mr. Hall. "Efficiently contributed to." That sounds more like a contributory negligence Instruction. Isn't it usually, "proximate cause and concurring cause" rather than, "efficiently contributing"?

page 306 } Mr. Pitchford: I got the concurring in another Instruction. Efficiently contributed to, that's all we have to show.

Court: I realize of course—I think it would be just concurring cause. I think it is proximate cause or concurring cause.

Mr. Hall: I think that's correct.

Court: I—I don't say that this is wrong.

Mr. Pitchford: I don't think it makes any difference one way or the other.

Court: Certainly I agreed with Mr. Hall, the usual language is to say, "proximate or concurring."

Mr. Hall: I say that's true.

Mr. Pitchford: "Was the proximate or concurring cause"?

Court: Yes.

Mr. Pitchford: And then you will delete—

Court: I will delete the words, "or efficiently contributed to."

Mr. Pitchford: I have no objection to the change.

Court: All right, granted.

PLAINTIFF'S INSTRUCTION NUMBER 2.

(Granted):

"The Court instructs the jury that the term, 'lookout' means to look when looking is effective and to see what is then

apparent and what an ordinary, reasonable,
page 307 } prudent person acting as such would see under
similar circumstances. To look and not to see what is apparent and within a proper range of vision in law is equivalent to not having looked at all, and such an act constitutes negligence."

Court: Any objection to two?

Mr. Hall: No, sir, I think that's—as a matter of fact, I have one I believe that is about identical to it.

Court: Granted.

PLAINTIFF'S INSTRUCTION NUMBER 3.

(Granted):

"The Court instructs the jury that whenever any highway has been divided into clearly marked lanes for traffic, drivers of vehicles are required to, as nearly as practicable, drive entirely within a single lane and not to move from one lane to another until the driver of such vehicle has, by the exercise of ordinary care and caution, first ascertained that changing from one lane to another can be made with reasonable safety.

"The Court further instructs the jury that if they believe from a preponderance of the evidence that the highway over which the defendant, Marshall F. Ragsdale, was driving was divided into clearly marked lanes for traffic and that Marshall F. Ragsdale moved from one lane to another without using reasonable care and caution to first ascertain that such movement could be made with reasonable safety, or without
using reasonable care and caution in making such
page 308 } a movement, and that such conduct on the part of
Marshall F. Ragsdale, if any, proximately caused or was the concurring cause of the collision and injuries complained of, if any, then your verdict should be for the plaintiff, Lelia Jones."

Court: I shall make the same change in this one, "proximately or"—"if any proximately"—

Mr. Hall: "Proximately caused" would cover it, wouldn't it, Judge? "Proximately caused the collision."

Court: I was just trying to work the word in. It doesn't seem to work in as well in this. What would you suggest to make it conform to the other? I'd like to be consistent throughout.

Mr. Pitchford: I would say, "proximately caused or was the concurring cause." Change the, "to" to "of." "Proxi-

mately caused or was the concurring cause of the collision."

Court: And you say you have an Instruction that defines the concurring cause later on, isn't that correct?

Mr. Pitchford: I didn't exactly—not that way but I did spell out that the joint and concurring negligence of the two of them, even though—she would be entitled to recover.

Court: That's the point.

Mr. Hall: We object to Number 3, if your Honor please. Its not applicable to this case. Whether or not

page 309 } the approach to Bridge Road was marked into a clearly defined traffic lane or not and whether or not this defendant swerved from one traffic lane to another as described by the witness, Suddreth is not applicable to this case because it was—it is not a question of the plaintiff proceeding in the same direction nor is it a question of the plaintiff proceeding in an opposite direction. It is comparable in some measure to the ruling that your Honor made in reference to the traffic light up here on 60 at—where the road bypasses and goes into Morrison, in the case that we tried as I recall, here some three or four months ago more or less in which there was a question of the light being red and I offered an Instruction and I think your Honor properly ruled that the traffic light was—was—didn't enter into it because my man didn't rely on it and it didn't actually have anything to do with the case.

Court: Here we have got a difference here because a man making a left turn there, if he sees vehicles approaching, they're clearly marked, one making a right-hand turn and one making a left, and one through, that if I were attempting to make a turn I would rely to a large extent on which lane the approaching vehicle was in because if he was in a through lane, I would assume he would come through but if he were in the left-hand turn lane, he wouldn't ever cross my path. I think it's applicable and I shall grant it.

Mr. Hall: We object to the granting of it for the reasons heretofore assigned.

page 310 } Court: Granted.

Mr. Hall: And I would like, if I could, to add to my further objection.

Court: All right.

Mr. Hall: That the Instruction as given in this particular case creates a greater burden on the defendant than that contemplated by law as being applicable to the facts in this case.

PLAINTIFF'S INSTRUCTION NUMBER 4.

(Granted):

"The Court instructs the jury that while the driver of a vehicle within or approaching an intersection has the right of way over a vehicle in an intersection and turning to the left therein, this right of way does not relieve a driver within or approaching an intersection of the duty of keeping and maintaining a proper and efficient lookout and of the duty of using reasonable and ordinary care and caution in entering and passing through the intersection."

Mr. Hall: I think 4 is all right, if your Honor please.
Court: Granted.

PLAINTIFF'S INSTRUCTION NUMBER 5.

(Refused):

"The Court instructs the jury that the driver of any vehicle driving at an unreasonable rate of speed forfeits any right of way which he might otherwise have.

"The Court therefore, instructs the jury that
page 311 } if they believe from a preponderance of the evidence that the defendant, Marshall F. Ragsdale, was at a time and place in question traveling at an unreasonable rate of speed under the circumstances and traffic conditions then obtaining, then he, Marshall F. Ragsdale, by such unreasonable speed, forfeited any right of way that he might have otherwise had."

Court: One thing that occurs to me, just from a casual glance, what evidence do we have here that he was going at an unlawful speed, that is exceeding thirty-five miles an hour?

Mr. Pitchford: I take the position that the maximum lawful speed under ideal circumstances would be thirty-five miles an hour. Under all of the testimony, the weather was bad, visibility was limited and according to the testimony of the defendant himself his view was obstructed or partially obstructed and that under those conditions he could not possibly drive up to the maximum speed limit.

Court: But doesn't the word, "unreasonable" you cover that rather than unlawful.

Mr. Pitchford: That's the reason I put the word, "unreasonable."

Court: I am afraid the jury will put it as unlawful.

Mr. Pitchford: That's why I put it in there because some

member of the jury would take the position that
page 312 } he could drive thirty-five miles an hour.

Court: I don't think I can instruct them as to unlawful speed when I don't recall any witness fixing his speed as being in excess of the speed limit. Some people said he came fast. His own testimony indicated that perhaps he was going a little too fast under the circumstances but nowhere was there any indication of unlawful speed and I shall delete the word, "unlawful."

Mr. Hall: We object to the—

Mr. Pitchford: Delete also, "or," if you please.

Court: I have.

Mr. Hall: We object to Instruction Numbered 5, offered by the plaintiff with the deletion of the word, "unlawful" as it is not contemplated, the forfeiture of a right of way on an unreasonable speed or unreasonable rate.

Court: I'd have to look at the Code to determine that. Do you have the Section?

Mr. Pitchford: 46-1-221, last sentence, 1958 replacement.

Court: It doesn't say, "unreasonable."

Mr. Pitchford: The word, "unreasonable" is not in there. I was worried about the jury thinking about thirty-five miles and I inserted "unreasonable." Unlawful; what is the law-
ful speed?

page 313 } Mr. Hall: Thirty-five miles an hour is lawful.

Mr. Pitchford: Thirty-five miles an hour is the maximum speed at which a person can travel under ideal circumstances. Can he maintain that maximum speed under adverse circumstances?

Court: I don't say he can maintain it. We get to the question of forfeiture of right of way. This isn't the question whether he is using care or not. It's the question of whether he forfeits the right of way. My ruling would be he would only forfeit the right of way if he were exceeding the speed limit.

Mr. Hall: That's right. It's a very stringent statute and is to be, as I understand it—

Court: I shall refuse 5.

Mr. Pitchford: The plaintiff excepts to the action of the Court in refusing 5, for the reason that under the circumstances the Instruction as tendered is—properly states the law applicable to the case.

PLAINTIFF'S INSTRUCTION NUMBER 6.

(Granted):

"The Court instructs the jury that if they believe from the evidence that both Hubert Jones and Marshall F. Ragsdale were guilty of negligence and that the negligence of such concurred to proximately cause the collision, then they should find for the plaintiff, Lelia Jones, for the negli-
page 314 } gence of Hubert Jones, if any, cannot as a matter of law be imputed to or charged against the plaintiff, Lelia Jones."

Court: Looking at 6, I wonder if it wouldn't again be better to change, "contributing" to, "concur." "That the negligence of each concurred to cause the collision" rather than, "contributed."

Mr. Hall: I think so. I think it is better language.

Court: "Concurred to cause."

Mr. Pitchford: Since the Court feels that way about it, let me offer another Instruction in lieu of that that I have designated as 6-A. That gave me a little trouble about the language. That uses the word, "concurring."

PLAINTIFF'S INSTRUCTION NUMBER 6-A.

(Refused):

"The Court instructs the jury that if you believe from the evidence that the accident in question was proximately caused by the concurring negligence of both Marshall F. Ragsdale and Hubert Jones, driver of the automobile in which the plaintiff was riding, you must find a verdict in favor of the plaintiff, Lelia Jones, and fix her damages in accordance with other Instructions of the Court, for the negligence, if any, of Hubert Jones cannot as a matter of law be imputed to the plaintiff, Lelia Jones."

Court: Well, I don't see there's too much difference. I'll put it this way. I'll give you your choice. I'll give you 6, as amended or 6-A.
page 315 } Mr. Pitchford: I'll take 6-A. I think 6-A covers the amendment you propose in 6.

Mr. Hall: My objection to 6-A, if your Honor please, and I found it in another Instruction, it has nothing to do with the concurring or anything of that sort but it constantly refers to fixing her damages. Now he has a damage Instruction and it doesn't seem to me that throughout the series of Instructions he should refer to damages and the fixing thereof as it attaches undue significance to that particular point.

Court: I don't see that it's necessary. I think I shall

amend 6, and make it that the negligence of each concur to cause. "Concurred to proximately cause the"—I'll use, "collision." "The negligence of each concurred to proximately cause the collision."

Mr. Hall: Shouldn't a period come after, "Lelia Jones," if your Honor please, and the rest of it be deleted?

Court: No, I think she's entitled to have that explained to the jury.

Mr. Pitchford: So it now reads, "the negligence of each concurred in proximately causing the."

Court: No, "concurred to proximately cause the collision."

Mr. Pitchford: "Concurred to proximately cause the collision."

page 316 } Court: I shall give 6, as amended and refuse 6-A.

Mr. Pitchford: No exception. Did you except?

Mr. Hall: No, sir.

Court: I didn't hear anybody object to that.

Mr. Hall: No, sir, I have no objection.

PLAINTIFF'S INSTRUCTION NUMBER 7.

(Refused):

"The Court instructs the jury that the driver of an automobile who has seen, or by the exercise of reasonable care would see, a signal from the driver of another automobile is by law required to heed and obey said signal and to keep his vehicle under reasonable control so as to avoid an accident when necessary in the exercise of ordinary care and caution."

Mr. Hall: Well, 7 is objectionable, if your Honor please, for several reasons. My memory perhaps is not too good but I don't recall any testimony about a signal being given.

Court: I don't remember it either. I don't remember it either. Let me ask Mr. Pitchford about that before we go any further. I'm thinking back on Hubert Jones' testimony and the other eye-witness and I can't recall either of them saying they had given the signal.

Mr. Pitchford: I think I forgot to ask them whether or not he gave a signal. I think also the law presumes he did give a signal in the absence of evidence to the

page 317 } contrary and there is a case so holding. The case of *Scott* v. *Cunningham*, 161 Virginia 367, page 371, headnotes five and seven. In the absence of any evidence of any sort, it is presumed he did give a signal.

Court: Well, everyone is presumed to know the law. I

don't know how far the presumption goes about complying with the law.

Mr. Hall: I object to 7.

Court: Let me look at that. Say that case again?

Mr. Pitchford: *Scott* v. *Cunningham,* 161 Virginia, 367.

Court: The case says the converse of that. It says this. "In the absence of evidence to the contrary, we cannot assume that Scott before making the turn failed to give the signal."

Mr. Pitchford: You cannot assume that he failed to give the signal.

Court: Right.

Mr. Pitchford: What's the difference in that than the saying it can be assumed he did give the signal. I remember the case. That man was killed in making the left turn.

Court: That's what looks like to me is a different situation.

page 318 } You run into the same ruling that a person is ordinarily presumed to be free of negligence and let's say that Jones had been killed in the thing, I think he would be entitled to an Instruction that in the absence of evidence to the contrary he's presumed to be free of negligence but where he takes the stand, has the opportunity to testify, doesn't testify, should we draw the conclusion either way, either that he did or he didn't?

Mr. Hall: Yes, sir, I think it applies where he is silent on it and where he's able to testify that, then the—if he doesn't, then an Instruction can be given that he didn't give a signal.

Court: Well, you have just as much right to ask about that as Pitchford.

Mr. Hall: Well, certainly on cross examination while I know frequently I'm guilty of the sin of asking too many questions but it's not up to counsel on cross examination to develop vital phases of the case that were not developed on direct examination. I say I'm guilty of that very frequently. I ask questions I wish I hadn't asked.

Mr. Pitchford: I should have asked that. I think—I know I forgot to do that and—of course it is a matter within the discretion of the Court to give permission to ask that just one question.

Mr. Hall: I apprehend that there they wanted to get the verdict on the law and enter judgment for the defendant, I would assume. I don't know.

page 319 } Court: I think he's wrong. Scott did not die in the accident. Scott testified but it's basically to the same thing here. He didn't testify whether he gave the signal or not. He was not asked and did not state whether or not he gave the signal. Now the question is can you as-

sume from that that he failed to give the signal. The Court says you cannot assume he failed to give the signal. Can you take it a step further and assume he did give a signal? I don't agree with that. In other words, I'm—now—you say you would like to recall—

Mr. Pitchford: I'd like to recall him for the purpose of asking him that one question.

Mr. Hall: I object to that. The case is closed, if your Honor please.

Mr. Pitchford: I believe it is a matter residing within the sound discretion of the Court.

Court: I realize that but I don't like to reopen these things.

Mr. Pitchford: That happened to me and it happened with a Police Officer and he wanted to ask whether it happened in the City of Warwick.

Court: You have completed your examination and Hall has put on his evidence and various witnesses have been excused. If I permit Jones to come on now and say, "I did give a signal" I would also have to in turn give
page 320 } Hall a chance to introduce evidence that he did not give a signal, if such is the case. If it was just a—in other words, if he hadn't gone ahead with his evidence I wouldn't hesitate a bit but the thing that concerns me is—

Mr. Hall: The case—both sides have rested and closed and we are in the midst of Instructions, if your Honor please.

Court: I have even this late—

Mr. Hall: And now when we reach an Instruction—

PLAINTIFF'S INSTRUCTION NUMBER 8.

(Refused):

"The Court instructs the jury that in the absence of evidence to the contrary, it is assumed that Hubert Jones, before making or attempting to make a left turn, gave the required signal."

Court: Let's put it this way. I'm going to refuse it at this time, 7 and 8. I want to give some thought to reopening it. If I do, of course 7 would apply. I don't think 8 would but I shall pass those for the moment. Let's complete—

Mr. Pitchford: You're passing them now?

Court: I'll pass those for the moment. If I do not permit you to reopen the case, I shall refuse it.

PLAINTIFF'S INSTRUCTION NUMBER 9.

(Granted):

"The jury is entitled to draw all reasonable inferences from any facts proved, and in arriving at its verdict, page 321 } can base its findings on such facts and reasonable inferences drawn therefrom."

Court: Nothing wrong with 9, is there?
Mr. Hall: No, sir, I think it is all right.
Court: If it isn't, we have been wrong a long time. Granted.

PLAINTIFF'S INSTRUCTION NUMBER 10.

(Granted):

"The Court instructs the jury that the law does not require every person riding in an automobile to be in perfect health. If a person is injured in an automobile collision through the fault of a defendant, that defendant's negligence is in no way lessened by reason of the fact that the plaintiff was not in good health and that if the injuries sustained by the plaintiff in the collision were made more severe or aggravated because of the fact that the plaintiff was not in good health does not in anywise lessen or minimize the liability of the defendant to the plaintiff, for the defendant takes the plaintiff as he finds the plaintiff.

"The Court further instructs the jury that if they believe from a preponderance of the evidence that the plaintiff, Lelia Jones, was susceptible to emotional upset or more susceptible to emotional disturbance than an ordinary person at the time and place of the accident, and that this condition in her made her injuries more severe, or more aggravated, or difficult to cure, then she can, if she is entitled to page 322 } recover, recover for the additional aggravation and difficulty resulting from the injuries, but not for any pre-existing disability."

Mr. Hall: The defendant, Ragsdale, objects to plaintiff's Instruction numbered 10, if your Honor please. The first paragraph pre-supposes that the defendant is negligent and in effect has the Court telling the jury that the defendant is negligent.

Court: Let's say right now I think, "when" ought to be changed to, "if."

Mr. Pitchford: I have no objection to that change.

Mr. Hall: Paragraph numbered two is embrasive to the extent to where it makes the defendant an insuror of this plaintiff and there again in the latter part of it presupposes that aggravation and difficulty arose from this condition of which he mentioned throughout the Instruction. Now I am mindful of the rule of law, if your Honor please, of where if a person has a latent condition and that such latent condition is accelerated or manifested as a result of trauma, as a result of a person's negligence that they are entitled to recover. I'm also mindful of the principal of where if a person has a pre-existing condition and such pre-existing condition was aggravated or worsened as a result of trauma, resulting from the defendant's negligence, that a person is entitled to such recovery but it is not apparent to me that Instruc-
page 323 } tion numbered 10, falls within either one of those principals or doctrines.

Court: I'm afraid I don't quite follow your objection to it. Now, I think your first point was well taken about the pre-supposing. If you change the, "when" to "if," if a person is injured through the fault of a defendant, to me that certainly makes it plain that the Court is not assuming that he was negligent. Now, is there any further objection to the first paragraph?

Mr. Hall: Let me read it in the light of the change. Yes, sir, there is a further objection. In paragraph numbered one, it says, "the plaintiff was not in good health and that the injuries sustained by the plaintiff in the collision were more severe or aggravated." Then coming on down into his second paragraph—

Court: You want to say, "the injuries, if any"?

Mr. Hall: No, sir, we have to read it in its full context. Now let me come down into the second paragraph. He's talking about injuries there that were made more severe or more aggravated.

Court: I'm going to change that to, "injuries, if any."

Mr. Pitchford: I don't think there's any question she was injured in the accident. That isn't disputed anywhere. I put the "if any" in all of them and then went
page 324 } back and took them out. That wasn't raised anywhere.

Mr. Hall: Let's read the two together and see if there isn't any color to my observation. You say up here that the injuries sustained by the plaintiff in the collision were more severe or aggravated because and so forth. Now let's take it in its context. We come down into the second paragraph and say, "if they believe from a preponderance of the evi-

dence that the plaintiff was susceptible to emotional upset or more susceptible to emotional disturbance than an ordinary person, that—that then because of that emotional disturbance she is entitled to be compensated" and I—I can't follow the two together.

Mr. Pitchford: But you're overlooking the language, "if she is entitled to recover." We submit right squarely to the jury whether or not she is entitled to recover. You see I set it off in commas in the next to the last line.

Court: Looks like to me that language meets your objection.

Mr. Hall: Is there any testimony that this emotional disturbance made her injuries more severe, that is her herniated disc or anything of the sort?

Court: Oh yes.

Mr. Hall : On the contrary, isn't there evidence that the trauma—that the trauma may have precipitated
page 325 } some emotional disturbance?

Court: Oh no, one of the doctors testified that her condition was such that she required additional hospitalization, made her exceedingly difficult to treat; that she was so—

Mr. Hall: That was because of her emotion but how about the—did it worsen the injury?

Court: I think this is a proper case for an aggravation. I think perhaps it might be clearer if you added that, "but not for any pre-existing disability."

Mr. Pitchford: That's the law. I have no objection to that.

Court: I shall add the words there, "but not for any pre-existing disability."

Mr. Pitchford: I think, "if any" ought to go there because the testimony—

Court: I grant you—I think I was wrong about the, "if any." I think the language at the end certainly takes care of it.

Mr. Pitchford: I think right after this adding, I think the words, "if any" should go, "disability" because the testimony is to the effect she had recovered from the operation and from the glass ingestion business some four years prior to this accident and had led a normal life.

Court: Wait just a second. Your Instruction
page 326 } is predicated on the fact that she was unusually upset.

Mr. Pitchford: That's right.

Court: That that condition existed before the accident.

Now why did you say, "if any"? To me that's a pre-existing—

Mr. Pitchford: I think you're right.

Court: "If any"doesn't belong in there.

Mr. Pitchford: Let's don't put, "if any" in there.

Mr. Hall: If your Honor please, we go back to the injuries in the first paragraph. It seems to me that "if any" should be there for this reason. That you have, as the Instruction is now given, argument could be made to the jury for a multitude of injuries. Now, the only—the only injuries that there's not an area of dispute upon are certain injuries she received first aid for following the accident. The question of the herniated disc may or may not have resulted from this accident and for the Court to be telling—

Court: I think the word, "if" should be ahead of, "injuries." "If the injuries sustained by the plaintiff were made more severe or aggravated."

Mr. Pitchford: That, "if the"—

Court: "If the injuries sustained by the plaintiff were made."

Mr. Pitchford: That's on line seven?

page 327 } Court: "Were made more severe or aggravated."

Mr. Pitchford: I would have no objection to inserting, "if" there.

Court: That's really the "if". There's no question but that she was injured. The question is if something was aggravated.

Mr. Hall: I see your Honor's point but also there is evidence from the physicians, that there may or may not be causal relationship between the trauma and the herniated disc. I'm mindful of the fact that they said in their opinion they thought that it was but that they—on cross examination they said they couldn't state that that was the reason to the exclusion of all others; that the turning in the bed, the lifting of a pail, the stepping off a curb, any number of things—

Court: I think the "if" takes care of that point.

Mr. Hall: Well, we except to the granting of Instruction numbered 10, on behalf of the plaintiff with its amendments on the grounds that it creates a higher burden upon the plaintiff then—I mean on the defendant than contemplated by law and that the Instruction as drawn is not within the principals of either doctrine enunciated earlier in counsel's objection to the Instruction and for all of the reasons heretofore assigned.

Court: Granted as amended.

PLAINTIFF'S INSTRUCTION NUMBER 11.

(Granted):

page 328 } "The Court instructs the jury that if you find from a preponderance of the evidence that Lelia Jones is entitled to recover, you may in ascertaining the damages to which she is entitled, if proven by a preponderance of the evidence, take into consideration the following:

"1. The nature and extent of bodily injuries she sustained and the probable duration thereof.

2. The physical pain she has suffered and will suffer in the future from the injuries she sustained in the collision in question.

3. The annoyance, inconvenience, mental suffering and emotional disturbance she has suffered and will suffer in the future from the collision and injuries sustained therein.

4. The cost of all medical expenses incurred and to be incurred in the future in an effort to be cured and relieved of the injuries sustained in the accident.

5. The effect of the injuries on the overall health of Lelia Jones.

6. Any inability of the plaintiff, Lelia Jones, to follow and pursue her usual and customary activities without hinderance resulting from the injuries sustained in the accident.

7. Any lessening of her future earning ability resulting from the injuries sustained in the accident.

"And you may award her such damages as may fairly and adequately compensate her, not to exceed the amount sued for."

page 329 } Mr. Hall: The defendant objects to certain portions of plaintiff's Instruction number 11, namely a portion of paragraph numbered two, particularly beginning at the latter part of the first line of paragraph numbered two. "And will suffer in the future from the injuries she sustained in the collision in question." I don't recall that there's any evidence that she will suffer pain in the future. Now I recall that the doctor said that she was not a well woman and I recall that they said that she was having difficulty but I don't recall any testimony that she would have pain in the future.

Court: I don't recall those exact words but certainly the only fair inference from the doctors' testimony was that she would suffer in the future. I shall give two as it is.

Mr. Hall: She will suffer pain in the future.

Court: Yes.

Mr. Hall: All right, we except to the Court's ruling as to number two and also a further objection to paragraph numbered two is the Court is telling the jury that she has suffered pain. It seems to me—

Court: No, isn't this predicated on "if proven by a preponderance of the evidence"? You may in ascertaining the damages to which she is entitled, if proven by a preponderance of the evidence, take into consideration the following.

page 330 } I would say, "if proven" applies to each and every item.

Mr. Pitchford: That's the way it was intended.

Mr. Hall: Well sir, it seems to me though it's confusing if it does take care of it in law and I am not of the opinion that it does but assuming that it does, it is confusing and it has the Court telling the jury that she has suffered physical pain and that she will suffer it in the future. It would appear that to clarify it would be the physical pain she has suffered, if any, and will suffer in the future, if any because the Court's in the position of telling the jury she suffered these pains.

Court: I think that qualifying phrase in the first paragraph takes care of it. I shall grant it as it is.

Mr. Hall: We except to the Court's ruling in granting paragraph numbered two, of Instruction number 11, on behalf of the plaintiff. Now paragraph numbered three, is objectionable. The annoyance, inconvenience, mental suffering and emotional disturbance she has suffered and will suffer. We again find the same objections to three that we have to two, that the Court is telling the jury that she has suffered annoyance, she has suffered inconvenience, she has suffered mental suffering, she has suffered emotional disturbances and that she will suffer them in the future.

Court: What you would say would apply to each and every one of them, one through seven but I have already ruled that

page 331 } the qualifying phrase takes it out of the realm of the Court making any assumption. Is there any additional objection to three? Your objection would run to each and every paragraph.

Mr. Hall: Each one, yes, sir, each one. Then—no, I have no further objection to three. Then in the interest of time, may we say this; that I should like for my objections to run to each of the paragraphs and that my exceptions that I have stated rather fully run to each one of the paragraphs?

Court: I so understand.

Mr. Hall: Now we have number seven which I have an

additional objection to, paragraph numbered seven.

Court: I sustain your objection. "Any resulting"—any lessening of earning ability." Now what evidence is there about her earning ability?

Mr. Pitchford: The evidence is this. The woman worked and had worked up until the time the child was adopted. She lifted bags, she did heavy work and that there can very easily come a time she would have to go back doing that same kind and type of work and her earning ability as distinguished from lost earnings should be an element to be taken into consideration and considered by the jury which some part of the evidence is that she has a high percentage of partial permanent disability. That extends to her back and her leg and that most certainly effects a person's earning ability especially when a person is such a person as Mrs.

page 332 } Jones, who has to work using the back and the muscles. That's the only kind of work she has ever done. She worked at Arkell plant and worked at the Zipper plant I believe she said. She worked as a waitress in Ray's Barbecue and People's Drug Store and other places.

Court: I see your point.

Mr. Pitchford: We put no evidence of loss of earnings—

Mr. Hall: There's no evidence, if your Honor please, that there is, as I understand it, any lessening of earning ability. Now, pursuing Mr. Pitchford's thought further, as to what she did or did not do at Arkell or at these other places, there's no evidence that she couldn't today do that job. The only evidence is that I recall is that she hadn't been able to work on the ice cream truck to the full capacity that she had and do certain housework that she had been doing but there's no evidence that she received any compensation for her work on the ice cream truck. As far as the record is concerned, that was a gratuity and the lessening of the earning ability I should think would mean you are not able to do that which you were doing and as a result you can't earn that which you were making as a result of the trauma and as I say, to repeat myself, there's no evidence before the Court that I recall that she could not do any of the gainful jobs that she enumerated having been employed in.

Court: I think she testified to certain things

page 333 } she couldn't do that she was formerly able to do.

Mr. Hall: I understand that. Not at Arkell. In other words, there's no testimony before the Court she couldn't work at any of the places where she worked and received compensation for it.

Mr. Pitchford: There's evidence before the Court that she lifted bags over at Arkell that weighed about 50 pounds on

which she sewed and she is now so situated she can't lift five gallons of ice cream mix to put in the freezer. She lifts nothing. There's a vast difference between loss of earnings and loss of earning ability.

Court: This would only apply to the future.

Mr. Pitchford: That's right, and we got definite testimony she has a fifteen to twenty per cent partial-permanent disability. In fact, she's so situated I suspect if she went to get a job because of that disability people wouldn't give her a job.

Mr. Hall: There's no evidence about that. A lot of people get jobs that have a worse disability than fifteen to twenty per cent.

Court: A person able to lift is perhaps capable of getting a wider variety of jobs than one who isn't able to. The only thing that worries me, they might confuse that with earnings in the past, which I don't think has been proven. I shall change that to—"any lessening of her future
page 334 } earning ability" and give it as amended.

Mr. Pitchford: I have no objection to the change.

Mr. Hall: The defendant excepts to the giving of paragraph numbered seven, of plaintiff's Instruction numbered 11, as amended for the reasons heretofore assigned.

DEFENDANT'S INSTRUCTION "A."

(Granted):

"The Court instructs the jury that in every civil action for money damages the burden is upon the plaintiff in the suit to prove liability against the defendant, by a preponderance of the evidence. The jury can not infer negligence on the part of the defendant from the mere happening of the accident.

"The Court further instructs you that a verdict cannot be based, in whole or in part, upon surmise or conjecture, nor be influenced by any sympathy for the injured person, or the desire to see such injured person compensated.

"The law does not undertake to hold a person who is sued for money damages liable in every accident. Damages are allowable only after legal liability has been first established.

"Your verdict, therefore, should be based solely upon the evidence introduced and the Instructions given you by this Court as to the law applicable to the case.

"Therefore, you cannot find a verdict in favor of the plaintiff, Lelia Jones, against the defendant, Ragsdale, un-

Meacham Lester

less and until the plaintiff has proven by a pre-
page 335 } ponderance of the evidence that the defendant is
guilty of the negligence charged against him, and that such negligence, if any, was the proximate or concurring cause of the accident and injuries of which complaint is made."

Mr. Pitchford: The plaintiff objects to some parts of Instruction "A."

Court: All right.

Mr. Pitchford: There is no objection to the first sentence ending with the words, "by a preponderance of the evidence." There is objection to the second sentence as written.

Court: I shall delete the second sentence. That's a criminal Instruction. I don't believe it has any application to a civil case.

Mr. Hall: We except to the deletion of it because the burden rests upon the plaintiff, as I understand it, through the entire trial and applies at every stage thereof and the burden never shifts and I object to that—to the deletion of it, except to the Court's ruling for the reasons assigned.

Court: The burden never shifts in a criminal case but it shifts in a civil case sometimes.

Mr. Pitchford: No objection to paragraph two. The plaintiff has no objection to paragraphs three and four of
Instruction "A." The plaintiff does object to
page 336 } some parts of paragraph five, of Instruction "A,"
particularly that language, "therefore under your oaths you cannot find." I believe the Supreme Court has held in several different cases that it is not proper for the trial Court to remind the jury of its oath.

Court: I will delete the words, "under your oaths."

Mr. Hall: We except to such deletion, as it being proper and appropriate.

Mr. Pitchford: I have no further objections to "A."

Court: What he has is correct here. He says, "if any" was a proximate cause rather than "the." I think that is correct as written. I was wondering if you thought—what you thought of—I say there's nothing incorrect in it. Would it be any plainer to say, "proximate or concurring, the proximate or concurring."

Mr. Hall: I think it's clear like it is, Judge.

Court: "A proximate cause." I don't think it makes any difference.

Mr. Pitchford: "Was a proximate or concurring cause of the accident" I think should go in there.

Mr. Hall: I object to adding any "concurring" in it. You have "concurring" in your's.

Court: My only thought was to make them consistent. It is not incorrect but you use the word, "a" and
page 337 } not, "the" but I don't know that they would catch that fine distinction.

Mr. Pitchford: I didn't catch it.

Court: I'm going to make it the "proximate or concurring."

Mr. Hall: I object to the amendment to the Instruction on the grounds that the Instruction as drawn is a full and proper statement of the law and that the phrase as put in by the Court is abundantly covered in the plaintiff's Instruction and that these are tendered by the defendant and should be tendered in a light insofar as practicable as most favorable to him.

Court: Granted as amended.

DEFENDANT'S INSTRUCTION "B."

(Granted):

"The Court instructs the jury that in the exercise of reasonable care, the following duties devolve upon a motorist operating a vehicle over and along the streets and highways of this Commonwealth:

1. To keep a proper and efficient lookout for other vehicles then using the street or highway.
2. To avail himself of what such lookout discloses, so as to avoid injury to himself or others.
3. To look when looking is effective, and to prudently act on what such lookout discloses.
4. To timely and seasonably apply the brakes of his vehicle when so to do would avoid a collision.
page 338 } 5. To operate the motor vehicle at a speed which is reasonable under the circumstances and conditions then obtaining.
6. When making a left turn at an intersection to so do in conformity with other Instructions.

"The Court further instructs you that each of the foregoing duties was a continuing duty, and if you believe from the evidence that Hubert Jones, in whose automobile his wife, Lelia Jones, was riding as a passenger, violated one or more of these duties, then such violation constitutes negligence, and if you further believe such negligence was the sole proxi-

mate cause of the accident and damages complained of, then you must find your verdict for the defendant, Ragsdale."

Court: Let me inquire about your six. When making a left turn at an intersection to so do in conformity with the law.

Mr. Hall: I have an Instruction covering a left turn further on in here, Judge.

Court: Well, I'm not going to say they shall do it in accordance with any law.

Mr. Hall: In conformity with Instruction numbered—

Court: I'll say in conformity with other Instructions.

page 339 } Mr. Hall: Yes, that's all right. That's all right, sir.

Mr. Pitchford: Delete the word, "law" and put in, "with other Instructions."

Mr. Hall: Yes, sir, that's all right.

Mr. Pitchford: Now, I submit that on the third line from the bottom after the word, "negligence" the words, "if any" should be inserted.

Court: I don't see that that's—

Mr. Pitchford: "Such negligence, if any."

Court: You got the, "if."

Mr. Hall: The Court already said there was negligence if they violated.

Court: When you use, "such negligence," I don't think it is necessary. If I said, "if you believe his negligence was the sole proximate cause of the accident" I think your point would be well taken but I say, "such negligence" I don't think it is. I'll give it as it is. Any other objection?

Mr. Pitchford: I object to the failure to put in the word, "if any."

Court: Granted as amended.

DEFENDANT'S INSTRUCTION "C."

(Granted):

"The Court instructs the jury that if you believe from the evidence that the defendant, Ragsdale, in the exercise of ordinary care, was operating his vehicle in a westerly direction on Bridge Road and into the section of Bridge Road and

page 340 } Highway 60, and that while the defendant, Ragsdale, was so doing Hubert Jones, operating a vehicle in an easterly direction on Bridge Road and into the intersection of Bridge Road and Highway 60, negligently made a left turn in front of the defendant, Rags-

dale, and that such was the sole proximate cause of the accident then you must find your verdict for the defendant, Ragsdale."

Court: To get that correct, "made a turn" and so forth causing the accident, it should be, "which was the sole proximate cause of the accident."

Mr. Pitchford: It ought to be written, "and that such conduct on the part of Hubert Jones was the sole proximate cause of the accident."

Court: "Then you must find your verdict for the defendant."

Mr. Hall: Well, let's see, Judge. "Negligently made a left turn in front of the defendant, Ragsdale causing the accident in question." It's kind of hard to get it in there as drawn.

Court: I wouldn't have any trouble.

Mr. Hall: Let's see if I have one that has that. I don't know whether I do or not. This might be—it doesn't have that precise language but it might.

Court: I shall refuse it as offered and then I'll give you your choice.

Mr. Hall: All right, sir.

Court: I have deleted the words, "causing the
page 341 } accident in question then under such circumstances the defendant, Ragsdale was not guilty of negligence." I have deleted those words and inserted instead, "and such was the sole cause of the accident, then you must find your verdict for the defendant." Let me ask plaintiff's counsel, if there any objection to the Instruction?

Mr. Pitchford: As I understand the Instruction as the Court has amended it, it's picking it up about middle way of the intersection of Bridge Road and Highway Number 60, negligently made a left turn in front of the defendant, Ragsdale and such was the sole proximate cause of the accident, then you must find your verdict for the defendant, Ragsdale. I see nothing wrong with it.

Mr. Hall: You want to look at C-1, Judge?

DEFENDANT'S INSTRUCTION "C-1."

(Refused):

"The Court instructs the jury if you believe from the evidence that the defendant, Ragsdale, while in the exercise of ordinary care, seasonably operated his automobile in a westerly direction on Highway 258, and while so doing, entered the intersection in question, and that Hubert Jones was

proceeding easterly on Highway 258, entered the intersection in question and negligently turned left across Ragsdale's line of travel, as a result of which the accident in question occurred, then under such circumstances the Court instructs you that the defendant, Ragsdale was not guilty page 342 } of negligence, and you must find your verdict for the defendant, Ragsdale."

Mr. Pitchford: C-1, appears to me to have the same objection that "C" had originally.

Court: I shall refuse C-1.

Mr. Hall: Well, I object to the deletion in Instruction "C" and the amendment as drawn as well as the other deletions on the ground that the Instruction was clear and was a full statement of the law. I also object to the Court's refusing Instruction "C-1" offered by the defendant without relinquishing any objections stated to "C" but assigned for the same reasons.

DEFENDANT'S INSTRUCTION "G."

(Refused):

"The Court instructs the jury that every driver who intends to start, stop, turn or partly turn from a direct line, shall exercise reasonable care to see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, said driver shall give a signal plainly visible to the driver of such other vehicle, of his intention to make such movement, for a distance of at least fifty feet.

"The Court further instructs you that if you believe from the evidence that Hubert Jones failed in the above, then such failure constitutes negligence and if you further believe that such negligence was the sole proximate cause of the accident and damages complained of, then you must page 343 } find your verdict for the defendant, Ragsdale."

Court: "G" brings us to the same question I dodged before, namely about reopening the case. Apparently you must have been aware of that when you failed to ask the question. when you drew this Instruction.

Mr. Pitchford: The Instructions were drawn many days before.

Court: It would be most unusual if the man testified he gave the signal that you would offer Instructions with the evidence to the contrary.

Mr. Pitchford: You write everything in sight and see

what's going to happen and I have many more that I haven't offered. I don't know what turn it is going to take and examining him and the other witnesses and other—the pressure of the other parts of the trial I totally failed to ask him if he gave a signal.

Mr. Hall: I apprehend counsel conferred with him on many occasions concerning his testimony.

Mr. Pitchford: Three or four times.

Court: Ordinarily if it was just one formal matter, I would be inclined to do it but—it's a very—fairly important matter and if I permitted—in other words, it isn't just a question of one thing that you can supply through oversight. It is a question if I did this, I would have to permit Mr. Hall to re-

page 344 } recall all of the witnesses because I think he perhaps rested upon the assumption you didn't say anything about it and he was saying nothing. He has not asked his witnesses about it.

Mr. Hall: That's right.

Court: I would have to permit him to re-recall and perhaps rehear the whole case and I shall refuse to reopen the case. Therefore, I shall refuse Instruction 7 and 8.

Mr. Pitchford: I take exception to the action of the Court and I take—cite to the Court the case of *Scott* v. *Cunningham,* 161 Virginia, 367, which supplies ample authority for granting the two offered Instructions.

Court: Relying on *Scott* v. *Cunningham,* I'm going to refuse "G" because what evidence do you have that Jones failed to give a signal?

Mr. Hall: The record is silent, if your Honor please, and the—it wasn't up to the defendant to establish whether he gave it or not. It seems to me that the burden is upon the plaintiff to establish a signal and if no signal has been given, then how can this Court take the position and presume that he did give one. This is a clear statement of what the statutory duty is and tells the jury if they believe from the evidence that he didn't, then he's guilty of negligence and I think it's a proper statement. It's a statutory requirement.

Court: There isn't any evidence to support the

page 345 } fact that he didn't do it. It's an unusual situation but I can't see that there's any presumption either way that he did or didn't.

Mr. Hall: There's no evidence, if your Honor please, that he did give a signal.

Court: I agree with that. There's no evidence he didn't.

Mr. Hall: You are correct. You are correct but it is a statutory requirement and as I understand it, he who—he

who is required to do something by the statute must show that he has accomplished that by the statute.

Mr. Pitchford: A person doesn't have to show he's free of negligence.

Mr. Hall: He's conformed with the statute if he has a statutory requirement. It is to be strictly construed, like the giving of the signal light.

Court: On looking back I see perhaps instead of refusing the Instruction "G" as offered that I should delete the words pertaining to the signals starting with, "said" and going through, "fifty feet" because the rest of it would seem to be proper.

Mr. Hall: Is that in the first paragraph?

Court: That's right, you delete starting with the word, "said" in the fourth from the last line and just taking out the last four lines.

page 346 } Mr. Pitchford: From the first paragraph?

Court: Yes. Would there be any objection to "G" with that change?

Mr. Pitchford: Yes, sir.

Court: What is the objection?

Mr. Pitchford: The Instruction then as written would make Hubert Jones an insuror. It totally ignores his duty to use only ordinary reasonable care and caution to see that such movement can be made in safety.

Court: That's right. "Shall partly turn, shall in the exercise of reasonable care"—well, I'll strike out the words, "in the." "Shall exercise reasonable care to see that such movement can be made in safety." I'd have to start up here at, "and" to delete. When I got through deleting, it wouldn't be enough worth while here to—to justify it. I shall refuse it.

Mr. Hall: The defendant, Ragsdale excepts to the ruling of the Court in refusing Instruction "G" on the grounds that it is proper in this case. The evidence is uncontradicted that Jones was making a left turn from a direct line of travel and in so doing there was a burden upon him to see that such movement in the exercise of reasonable care could be made in safety. Moreover, there was another statutory burden upon him and that was to give a signal plainly visible to the driver of any other vehicle who may be affected by such

page 347 } movement of his intention to so do for a distance of at least fifty feet and unless he complied with the statutory requirements herein recited, he was guilty of negligence *per se*. The Instruction as drawn meets the factual situation. The mere fact that Jones did not testify in either—either in the affirmative or the negative as to whether a signal

was given is not germane to the—this issue. It certainly wasn't incumbent upon the defendant to prove the fact that he did or did not give a signal when the plaintiff is the burdened party and is burdened to move forward and to carry the burden in proving the case and the refusal of the Instruction, we submit, is to the prejudice of this defendant and commits reversible error.

DEFENDANT'S INSTRUCTION "H."

(Granted):

"The Court instructs the jury that if it appears to you, after hearing and considering all of the evidence and circumstances in this case that it is just as probable or likely that the defendant was not negligent, as it is that he may have been guilty of negligence which was the proximate or concurring cause of the accident, then the law requires you to find your verdict for the defendant."

Mr. Pitchford: I object to number "H" as it is written for the reason it totally ignores the doctrine of concurring negligence.

Court: I have never liked this Instruction. I page 348 } have always thought it was—

Mr. Pitchford: And I object for the further reason it is misleading and confusing.

Mr. Hall: I agree the word, "sole" ought to come out and put in, "which was a proximate cause." I agree with you. The point is well taken. "Sole" should be deleted. I suggest that the word, "sole" be deleted and in lieu thereof put the word, "a."

Mr. Pitchford: What are you going to do about concurring?

Mr. Hall: "Which was a proximate cause."

Mr. Pitchford: "Proximate or concurring cause."

Court: I'll change it to, "a proximate or concurring"—"the proximate or concurring" it should be. "Which was the proximate or concurring."

Mr. Hall: Well, I object to the word, "concurring."

Mr. Pitchford: The word, "sole" comes out.

Court: Rright. Now what's your objection to it?

Mr. Pitchford: I have no further objection except it's a little confusing to me. It might mislead the jury.

Court: I have always felt that way. It's been given from time to time. Granted.

DEFENDANT'S INSTRUCTION "K."

(Granted):

"The Court instructs the jury that the credi-
page 349 } bility to be given to the testimony of every wit-
ness is exclusively for the jury, and the jury, in determining the weight to be given to the evidence of a witness, should consider in connection therewith his interest, if any, in the result of the case, his apparent intelligence, candor and fairness, and his demeanor while testifying, and give such credit to his testimony as he is fairly entitled, from all of the other facts and circumstances appearing at the trial."

Mr. Hall: I don't remember whether you had one on "K" or not. I don't believe you did.
Court: We haven't given one on "K."
Mr. Pitchford: I have no objection to "K."
Court: I don't see anything wrong with it. Granted.

DEFENDANT'S INSTRUCTION "L."

(Refused):

"The Court instructs the jury that if you believe from the evidence the defendant, Ragsdale, through no fault of his own, was suddenly confronted by an emergency and was compelled to act instantly in an effort to avoid the accident, then he was not guilty of negligence, if he made such a choice as a person of ordinary prudence, placed in such a position, might have made, even though the defendant did not make the wisest choice; and whether he used reasonable care under the circumstances is a question for the jury."

Mr. Pitchford: I object to number "L," to
page 350 } Instruction "L" for the reason that this is not
a sudden emergency case and the rule as stated I don't believe is a proper statement of the sudden emergency doctrine.
Mr. Hall: It's right out of *Daniels against Whittens*. If it is wrong, the Court of Appeals is wrong. If the testimony of the defendant is believed by the jury, then the doctrine is applicable.
Court: Let me ask you this. The defendant said, as I recall his testimony, that his car came out of nowhere.
Mr. Pitchford: He saw him and it was just a few feet in

front of him. He could have been standing still or going fifty miles an hour.

Court: To me that makes it beyond—that he was exercising reasonable care. Cars don't usually come out of nowhere.

Mr. Hall: It is a question for the jury, if your Honor please, to determine whether or not—whether or not he was with fault. If he was without fault in their judgment, and the car turned suddenly in front of him, then the doctrine is applicable.

Court: I shall refuse "L." I don't believe—while there's some question about the wording, I don't believe—according to the testimony it is not a proper Instruction.

Mr. Hall: We except to the action of the Court
page 351 } in refusing Instruction "L" on the grounds it is amply supported by the evidence and is a proper statement of the law and give *Daniels against Whittens Transfer Company,* 84 Southeastern Second, 528 as authority.

DEFENDANT'S INSTRUCTION "M."

(Refused):

"The Court instructs the jury that the operator of a motor vehicle desiring to make a left turn, shall approach the intersection for such left turn in that portion of the right half of the roadway nearest the center line thereof, and by passing to the right of such center line, where it enters the intersection, and after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered."

Mr. Pitchford: The plaintiff objects to Instruction "M" as offered because it is not applicable to the facts in this case. In this instance we have an intersection with clearly defined lanes and—

Court: Doesn't the statute exclude this type of intersection?

Mr. Pitchford: There's another. This comes from where you have two lanes of highway.

Mr. Hall: You can't—still you have got to go to the half.

Court: What's the Code Section?

Mr. Hall: 46-231. The man still has a duty
page 352 } to make a proper left turn.

Court: 46-231 has right of way of pedestrians.

Mr. Pitchford: The whole act was repassed by the last Assembly. You got the wrong Code Section.

Mr. Hall: I haven't changed my authority.

Mr. Pitchford: There's one section in there about laned highways. There's a different rule that applies to laned highways.

Court: Let me ask you this. What bearing would that have on the accident anyway?

Mr. Hall: It would have the bearing—the bearing would be, Judge, about the nature of the turn that he was making and coming across from the one point to the other.

Court: He's bound to go—the highway is divided in half by an island. He's bound to be on the right of the center line of the highway.

Mr. Hall: Yes, how far to the right of it? How far to the right of it? It may be he's coming on that island up there, the northerly island.

Court: I refuse that.

Mr. Hall: We except to the Court's ruling on the grounds that we are entitled to an Instruction setting forth the duties and the burden of the driver of the plaintiff's vehicle in making a left turn. He is within the rule and he must conform as any other motorist in making a turn.

page 353

DEFENDANT'S INSTRUCTION "N."

(Granted):

"The Court instructs the jury that the operator of a vehicle in an intersection and turning therein to the left across the line of travel of vehicles within or approaching the intersection shall yield the right of way to such other vehicle or vehicles.

"The Court further instructs you, if you believe from the evidence that Hubert Jones failed in the above, then such failure constitutes negligence, and if you believe such negligence was the sole proximate cause of the accident and injuries complained of, then you must find your verdict for the defendant, Ragsdale."

Mr. Pitchford: The plaintiff objects to "N" for the reason it is covered in another Instruction. I'll get the one here in a minute.

Mr. Hall: No, sir, that's not covered.

Court: I don't recall this one.

Mr. Hall: That's the Instruction dealing—

Mr. Pitchford: Instruction "C."

Mr. Hall: That's the Instruction dealing with yielding the right of way.

Mr. Pitchford: The same subject matter as covered in Instruction "C."

Court: Well, it's somewhat similar but it
page 354 } doesn't pertain I think to yielding the right of way.
I think he's entitled to an Instruction dealing with right of way.

Mr. Pitchford: The Instruction should be further amended to tell the jury that it does not relieve Ragsdale of maintaining a proper lookout. It's not an absolute right. It is a conditional right.

Mr. Hall: This is the statute, if your Honor please, telling them what the duty of a person is who is turning left and if they believe this driver didn't comply with it and that his negligence was the sole proximate cause, then to find for the defendant, Ragsdale.

Mr. Pitchford: It totally ignores—the duties of all other drivers approaching the intersection.

Court: If they think it is the sole proximate cause.

Mr. Pitchford: The way it is written, it is easily misleading and confusing to the jury.

Mr. Hall: I think it is clear as crystal. There again we find the statutory duty that devolves upon the operator of the plaintiff's vehicle. Surely there's some duty on him although I must submit I find it difficult here to get you to agree.

Mr. Pitchford: Your defendant—also has some duties devolving upon him.

page 355 } Mr. Hall: The Court has already given you abundant Instructions setting forth more than the duties devolving upon him. Surely the defendant has some rights in this Court.

Court: The only question in my mind is whether they might misconstrue the word, "sole."

Mr. Hall: It has been approved, if your Honor please.

Court: Of course what that would mean is that the other man was free of negligence.

Mr. Hall: That's right exactly and counsel can so argue the matter to the jury as to what "sole" means.

Court: I don't believe that they would misconstrue it. In any event I always explain that to them usually in a verbal Instruction anyway that they are to weigh the evidence. Granted.

Mr. Pitchford: Would the Court consider adding to that Instruction, "and that the defendant, Ragsdale, was free of negligence."

Mr. Hall: It said it, if your Honor please.

Court: Well, I'd have to delete the word, "sole." That such negligence was the proximate cause.

Mr. Hall: I object to that.

Mr. Pitchford: And that Ragsdale, the defend-
page 356 } ant Ragsdale—

Court: I'll take care of that in an oral—

Mr. Pitchford: This is what they take back to the jury room and they might forget what you might say to them.

Mr. Hall: You can argue the case to them.

Mr. Pitchford: I can't go in the jury room with them.

Mr. Hall: I submit it is properly drawn.

Court: There's nothing—there's nothing erroneous about it at all. The only question is whether it is misleading.

Mr. Pitchford: Another thing that occurs to me is the lookout. It is a finding Instruction and it totally omits the concurring negligence of Ragsdale.

Court: If it is the sole proximate cause, I don't think that's a valid point. I don't think it is misleading. I'll grant it as is.

Mr. Pitchford: I except to the ruling of the Court for the reason stated.

DEFENDANT'S INSTRUCTION "O."

(Refused):

"The Court instructs the jury that if you believe from the evidence that Hubert Jones was proceeding easterly on Route 258 and turned left, or north, on to Highway 60, at the intersection in question, across the line of travel of the defendant,

Ragsdale's vehicle, which was proceeding west-
page 356A } erly on Highway 258, at a time when the defend-
ant Ragsdale's vehicle was within, or approaching said intersection, then under such circumstances the Court tells you that it was the duty of Hubert Jones to yield the right of way to the defendant, Ragsdale, and if you believe he failed to so do, then such failure constitutes negligence, and if you further believe that such negligence was the sole proximate cause of the accident and injuries of which complaint is made, then you must find your verdict for the defendant, Ragsdale."

Mr. Hall: I find, "O," if your Honor please, is repetitious of "C." I believe that "O" is the one I was looking for a while ago and I would like for the Court to read it. I believe that that language would save the interlining there.

Court: You mean to offer this in place of "N"?

Mr. Hall: No, sir, I was thinking about "C." Isn't it?

Court: "N" is the one on right of way. Let me go back a minute to "N" now.

Mr. Hall: Yes, sir, I believe "O"—

Court: "N" wasn't interlined. I can't see any difference.

Mr. Hall: Other than "O" I believe states my case a little further.

page 357 } Court: I already have given "O" as being repetitious.

Mr. Hall: I would like to withdraw "N" and give "O."

Court: All right. I shall withdraw "N."

Mr. Pitchford: No, sir, "O" as written as offered now places an absolute duty and liability on Hubert Jones in the event he turned across the line of travel of the defendant, Ragsdale. It says nothing about care and caution. If he turned across, he's guilty of negligence and precludes recovery.

Court: I don't believe I'll give "O." I'm perfectly willing to give "N" which is a correct statement of the law.

Mr. Hall: Looks like I have overlooked reasonable care on the part of Ragsdale.

Court: I shall refuse "O." Do you want to offer "N" again?

Mr. Hall: Yes, sir.

Mr. Pitchford: You understand I objected to the granting of "N" for the reasons I assigned.

Court: I do.

DEFENDANT'S INSTRUCTION "P."

(Refused):

page 358 } "The Court instructs the jury if you believe from the evidence, under all of the circumstances in the case, that the accident was unavoidable insofar as Ragsdale is concerned, then you must find your verdict for the fendant, Ragsdale."

Court: I'll refuse that without argument, unavoidable accident.

Mr. Hall: I except to the Court's ruling in that there there's evidence to support it.

DEFENDANT'S INSTRUCTION "Q."

(Granted):

"The Court instructs the jury that the defendant, in any event, would not be liable for anything other than injuries actually caused by the accident in question, and it is not sufficient to prove that the plaintiff has suffered from causes which may have possibly resulted from the accident. She can only recover, if recovery be had, for damages which are shown by the evidence, with reasonable certainty, to be the direct result of the accident."

Court: Any objection to "Q"?

Mr. Pitchford: It's a little misleading the way it is, so far as I read. I object to that part of the language on line five, "which may have possibly resulted from the accident." That part is particularly misleading and leaves the door open to argument about people turning over in their bed and slipping a disc.

Mr. Hall: "Possibly" ought to be a, "Y" on there.

Mr. Pitchford: No evidence she suffered from any other cause except what she got from this accident with
page 359 } the possible exception of this grippe episode.

Mr. Hall: I think there is. There is evidence she wasn't a well woman in the beginning.

Court: I think "Q" is a proper Instruction.

Mr. Hall: You in your Instructions, you say she wasn't a well woman. Now you say she is well. Which horn are you going to grab her by.

Mr. Pitchford: The plaintiff excepts to the action of the Court in granting Instruction "Q" for the reason it does not state properly the rule of law applicable. As written it is confusing to the jury and it invites speculation and conjecture on the part of the defendant.

Court: Granted.

DEFENDANT'S INSTRUCTION "R."

(Refused):

"The Court instructs the jury that if you believe from the evidence in this case that the accident in question resulted from the combined and concurring negligence of the plaintiff and the defendant, then neither party can recover, as the law does not undertake to weigh the negligence of one person against that of another; and under such circumstances your verdict must be for the defendant."

Court: I refuse that.

Mr. Hall: I except to the ruling of the Court for the reasons that the matter set forth therein is a jury issue.

page 360 } DEFENDANT'S INSTRUCTION "S."

(Granted):

"The Court instructs the jury that every driver who intends to turn or partly turn from a direct line, shall exercise reasonable care to see that such movement can be made in safety, when any other vehicle may be affected by such movement.

"The Court further instructs you that if you believe from the evidence that Hubert Jones failed in the above, then such failure constituted negligence and if you further believe that such negligence was the sole proximate cause of the accident and damages complained of, then you must find your verdict for the defendant, Ragsdale."

Court: I will grant "S" and I understand that your objection to it is that the word, "sole proximate cause" is misleading. That it should be, "free of negligence."

Mr. Pitchford: Yes, sir, I think it ought to have a provision in it telling the jury that Ragsdale should be free of negligence in order to be exonerated, particularly in view of the fact it's a finding Instruction.

Court: Granted.

(At this time the Court Reporter then read portions of the testimony of Doctor Shield and Doctor Beath to the Court).

page 361 } Court: I shall overrule the motion to exclude the hospital bill because I think it's a jury question presented. One doctor expressed the opinion that it was due to the accident and the hearsay evidence of Doctor Shield was that it was due to pneumonia. I think that presents a fair jury question.

Mr. Hall: We except to the ruling of the Court for the reasons set forth when the motion was made.

(At this time the jury then returned to the Courtroom and resumed their seats in the jury box).

(The Court and the attorneys for both sides then returned to the Courtroom).

Couet: Gentlemen, it seems we took about an hour longer than I had anticipated to consider the Instructions. You heard all of the evidence in the case. At this time it is my duty to read you the Instructions, that is the law that applies to this particular case. I want to make it plain to you that while it's my duty to tell you what the law is, it's your duty and yours alone to determine what the true facts are. You'll notice these Instructions all start off if you believe so and so, you arrive at one conclusion. If you believe so and so, you arrive at a different conclusion.

page 362 } Now, that's a matter entirely up to you as to what facts you believe. You're not to assume the Court believes either one way or another because all of these Instructions are predicated in the beginning if you believe certain things and what you believe is to be based on the evidence that you have heard on the witness stand. It's your duty and yours alone to determine what the true facts are. Now I'll tell you this much of the case, as I told you in the beginning, it's a case predicated on negligence. That is if the plaintiff is entitled to recover against the defendant, it must be because he was negligent and if you find that he was negligent, then you must fix—find not only that he was negligent but that his negligence was a proximate cause of the accident, then you must find for the plaintiff and fix damages.

Now, if you find that the plaintiff—I mean the defendant was free of negligence which was the cause of the accident, then you find for the defendant. Now, if you find that both parties were guilty of negligence which caused the accident, that is the driver was guilty of negligence and the

page 363 } defendant was guilty of negligence and that such negligence was the proximate cause of the accident, you still find for the plaintiff because she was not the driver.

(The Court then read the Instructions to the jury).

Court: Perhaps I didn't make it clear to you the difference between, "sole proximate cause" which means the only cause. "Concurring negligence" would mean the two—the negligence of both parties combined. You'll see throughout it says if it was the sole, let's say if the negligence of Jones was the sole proximate cause, that is, was the only cause of the accident, then you find for the defendant, Ragsdale. Then you also see the word, "concurring negligence" which means the negligence of two parties combined to proximately cause the accident.

(At this time the attorneys for both sides then presented their closing arguments to the jury).

Court: Gentlemen, you should retire to your room now to consider of your verdict. You should select a foreman to preside over your deliberations and your foreman should sign the verdict. If you find for the defendant,
page 364 } you simply say, "we the jury find for the defendant" and the foreman signs the verdict. If you find for the plaintiff, you must fix the amount to which she is entitled and you say, "we the jury find for the plaintiff and fix her damages" at whatever amount you think proper. If there's any question about the writing of the verdict, any other questions, you may return to the Court for further instructions.

(The jury then retired to the jury room to consider of their verdict after which the jury returned with the following verdict).

"We the jury render a verdict for the plaintiff and fix the damages at the sum of $25,000.00.

(Signed) T. RUSSELL MITCHELL,
Foreman."

Court: Any questions about the form of the verdict?
Mr. Pitchford: The plaintiff has no questions.
Mr. Hall: No question about the form. I should like to have the jury polled, if your Honor please.
page 365 } Court: You gentlemen answer whether that's your verdict of all of you.

(The jury was then polled and all jurors answered in the affirmative).

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Motion for Judgment	2
Judgment—September 2, 1959	4
Notice of Appeal and Assignments of Error	5
Witnesses:	
Hubert Jones	9, 119, 136
Jay Suddreth	34
Randolph T. West	45
Lelia Jones	56
Doctor Armando Ralph Coppola	74
Doctor Thomas Beath	89
Mrs. Esther Pauline Watterton	102
Lieutenant William T. Morton	108
Marshall Franklin Ragsdale	109
Freda Sheffield	126
Walter A. Garner	135
Proceedings	106, 124, 171
Instructions	136