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Clerk, Virginia Court of Appeals

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Record No. 5164

In the Supreme Court of Appeals of Virginia at Richmond

ESSO STANDARD OIL COMPANY, ET AL.

v.

MATTIE LEE WILLIAMS

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5164

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 7th day of March, 1960.

ESSO STANDARD OIL COMPANY, ET AL., Plaintiffs in Error,

against

MATTIE LEE WILLIAMS, Defendant in Error.

From the Circuit Court of the City of Norfolk

Upon the petition of Esso Standard Oil Company, a corporation, and John R. Porter a writ of error and *supersedeas* is awarded them to a judgment rendered by the Circuit Court of the City of Norfolk on the 18th day of November, 1959, in a certain motion for judgment then therein depending wherein Mattie Lee Williams was plaintiff and the petitioners were defendants.

And it appearing from the certificate of the clerk of the said court that a *supersedeas* bond in the penalty of five 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

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: W. R. Hanckel, Clerk of said Court, and Berry D. Willis and Russell R. Stallard, Attorneys of Record for Mattie Lee Williams.

NOTICE is hereby given that the undersigned will apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the final judgment entered herein by the court on November 18, 1959, in favor of Mattie Lee Williams and against the undersigned, and the following assignments of error will be relied upon on appeal:

1. The trial court erred in overruling defendant's motion to strike plaintiff's evidence and to enter summary judgment on behalf of the defendants.
2. The trial court erred in overruling defendant's motion to set aside the verdict for the plaintiff and enter final judgment for the defendant.
3. The trial court erred in entering final judgment for the plaintiff on the jury verdict.

ESSO STANDARD OIL COMPANY, A CORPORATION AND JOHN RUSSELL PORTER,
By ALLAN S. REYNOLDS
Of Counsel.

Filed Dec. 2, 1959.

T. A. W. GRAY, D. C.

* * * * *

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* * * * *

In the Circuit Court of the City of Norfolk, on the 18th day of November, in the year 1959.

This day came the parties, by counsel, and thereupon came a jury, to-wit: Donald Orr, Raleigh A. Marshall, Jonas

Levinson, Harry S. Seeley, D. M. Wagner, Gilbert Levin and Herman L. Robins, who were sworn to well and truly try the issue joined, and having fully heard the evidence and argument of counsel returned its verdict in the following words and figures, to-wit: "We the jury find in favor of the plaintiff in the sum of $3,500.00." And thereupon said defendants, by counsel, moved the Court to set aside the verdict of the jury and grant them a new trial on the grounds that the same is contrary to the law and the evidence, or in the alternative enter judgment in favor of the defendants *non obstante veridicto,* which motion having been fully heard and maturely considered by the Court is overruled. Whereupon it is considered by the Court that said plaintiff recover against said defendants the sum of Thirty Five Hundred ($3,500.00) Dollars, with legal interest thereon from the date hereof, till paid, together with her costs about her suit in this behalf expended, to all of which actions of the Court said defendants, by counsel, duly excepted.

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STARNEY LEE WILLIAMS,

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

Examined by Mr. Stallard:

Q. Your name is Starney Lee Williams?

A. That is right.

Q. Speak up. What is your home address?

A. 850 Clifton Street.

Q. That is in the City of Norfolk?

A. That is right.

Q. You were operating your 1949 Studebaker on Granby Street on April 7, 1958?

A. That is right.

Q. Now, in your own words will you please tell the Court and the jury just how this accident occurred?

A. Well, I was going down Granby Street after leaving

Starney Lee Williams.

Taussig Boulevard light, just driving down in
page 29 } back of this truck.

Q. Speak up, please.

A. I was following a truck on down Granby Street going toward Willoughby. We had gone down about a quarter of a mile and he gave a signal that he was going to swing out.

Q. First, let's get into this: Who was in your automobile with you at the time?

A. My wife and six—five children

Q. Where was your wife seated?

A. She was in the front beside me.

Q. And where had you been before, prior to this accident?

A. At Ward's Corner to put my daughter off to go to work.

Q. Where were you going after you left Wards Corner?

A. I was going to bypass Ocean View and going down by Seaview Beach to hide some Easter eggs for the children.

Q. Would you describe the road there on that stretch where this accident occurred?

A. Well, it was just a clear road or—

Q. Is it level or does it have dips?

A. No, wasn't any dips in the road, just—

Q. How many lanes for traffic does it have?

A. Two lanes.

page 30 } Q. What is that? Two lanes?

A. Going the same direction.

Q. Two lanes northbound and two lanes southbound?

A. That is right.

Q. Are these lanes marked off?

A. Dotted off.

Q. Marked off by dotted lines?

A. Yes, sir.

Q. In which lane were you traveling?

A. I was traveling in the right lane.

Q. Is that what we take to be the curb lane or the inside lane?

A. That is the curb lane.

Q. You were next to the curb. You were heading in which direction?

A. North on Granby.

Q. You were heading north on Granby in the curb lane. What was your approximate speed prior to this collision?

A. Between 30 and 35 miles per hour.

Q. What were the traffic conditions on Granby Street in that area at the time?

A. Well, the traffic was pretty heavy.

Starney Lee Williams.

Q. Was it heavy, you say?
A. It wasn't real heavy; it was pretty heavy.
Q. What was the weather on that day?
page 31 } A. It was clear, fair and bright.
Q. What was the condition of the street?
A. Fine condition, I would say.
Q. Was it wet or dry or what?
A. No, it was dry.
Q. A dry street. Was your automobile in good operating condition?
A. That is right.
Q. By that I mean were your brakes in good condition?
A. Sure.
Q. When did you first see this Esso, Standard Oil truck?
A. At Taussig Boulevard and Granby Street.
Q. Where was it located in relation to your automobile?
A. How you mean?
Q. Was it to the rear, to the front or the side? Where was the Esso truck?
A. It was in the front.
Q. In which lane was it ahead of you?
A. It was in the righthand lane.
Q. In your lane, in other words?
A. That is right.
Q. About how far had you been trailing behind this Esso truck before you had your collision?
A. I say about a quarter of a mile.
page 32 } Q. About a quarter of a mile. What was the approximate speed of the Esso truck prior to the collision?
A. About 35 miles an hour.
Q. Do you recall what the speed limit is in that area?
A. 35 miles an hour.
Q. Immediately prior to this collision, would you please tell the Court and the jury just what this truck did, what was the conduct of the driver?
A. Well, it was running about 35 miles an hour and give a signal to turn.
Q. Which kind of a signal did it give?
A. The lefthand signal.
Q. A left turn signal?
A. That is right.
Q. All right. Now, what did it do?
A. Well, he started to pull out and then he curved back in and all of a sudden he stopped.

Starney Lee Williams.

Q. Now, let's get this straight. You say he started to pull out?

A. That is right.

Q. In which direction did he start to pull out?

A. To the left.

Q. Over into the inside lane or what?

A. In the inside lane.

page 33 } Q. Did he cross over the dotted line as you stated which separates the two, the northbound lanes?

A. That is right.

Q. And approximately how far did he get over into that lane?

A. Not far. I say about a foot; a foot over the line before he curved back.

Q. Then what did he do? He started over the line?

A. That is right.

Q. What did he do after he started over the line?

A. What did I do?

Q. No, sir. What did the truck do as it started, after it started over into the inside lane?

A. He pulled back in.

Q. Pulled back into which lane?

A. In the lane which I was driving in.

Q. Was he still ahead of you or to your rear then?

A. He was in ahead of me.

Q. All right. Then what happened?

A. When he pulled back in, assumed, he came to a sudden stop.

Q. Then what happened?

A. I just piled right into him, right into the back.

Q. Which portion of your car struck the truck?

page 34 } A. I hit his right rear.

Q. What part of your car received the major portion of damage?

A. The left part of the front.

Q. In other words, we understand when you say the left front of your automobile, it struck the right rear of the truck?

A. That is right.

Q. —initially?

A. That is right.

Q. Now, when you first saw this truck pulling back over into the curb lane, what did you do?

A. I jammed my brakes.

Q. Did you push them all the way down?

A. That is right.

Starney Lee Williams.

Q. Approximately how far behind the truck were you when you hit your brakes?

A. Well, when he pulled back in, I guess I was just about a carlength. I guess I just was about, was a carlength from the truck when he pulled back in.

Q. Had the truck driver given a signal prior to reentering the curb lane?

A. No, sir.

Q. Did he give you any indication, any way to suggest that he was switching back to the curb lane?

page 35 } A. When he got out, the children was crying; him and I talked; he said that "I just couldn't help it," said "The fellow stopped."

Q. Did he give any indication to you that he was switching the course of his travel? As you indicated here, he had given a signal to make a left turn into the passing or inside lane, now he has cut back into your lane of travel. Did he give any signal, any indication to you that he was changing his course of travel?

A. No, sir.

Q. Was there any way in the world you could have avoided striking the rear of this truck?

A. No, sir.

Q. After the truck started back into your lane ahead of you, was there sufficient time for you to cut to the right or the left or stop your automobile before colliding—

A. No, sir.

Q. —with the rear of the truck?

A. No, sir.

Q. How would you describe the truck's action as it returned to your lane?

A. What do you mean? As to the condition, the shape she was in?

Q. No, not talking about that. I mean just the turn that the truck driver made. Did he make a gradual turn

page 36 } back into the right lane or in what way did he cut back into that lane?

A. Well, he cut back in right snappy after he had started to make his turn.

Q. Right what?

A. Right snappy, quick.

Q. All right. Thank you. Now, at the scene of the accident you discussed this accident with the driver of the Esso truck?

A. That is right.

Starney Lee Williams.

Q. Did he give any reason to you as to why he cut back in on you like that?

A. Well, a car was coming up from the side, he say saw the car coming out from the side and he cut back in, and all the same time he said the car stopped in front of him. Isn't but one thing he said could do was just stop. He said he hated to do it but that is all he could do was stop.

Q. Did you see any vehicles north of where this accident occurred prior to this collision?

A. Well, when he come back in I glimpsed a car from the side because I know something happened for him to cut back.

Q. Did you see anything ahead of him?

A. No, sir. I couldn't see anything ahead of him.

page 37 } Q. Why couldn't you see anything ahead of him?

A. Well, the way the truck is, the truck isn't like a car. She is kind of broad like that, with a stomach to it; got to be completely out of the way before you can see it, which, part of it was still in front.

Q. You could not see beyond the truck?

A. That is right.

Q. When the truck gave its left turn signal and started to pull into the passing or inside lane, what did you think he was going to do?

A. Pass going in the same direction. I figured it was slow traffic was in the front, he was on the job and he wanted to be going where he was going. I mean that is the attitude that I had take it to be. Most people on a holiday, they are just driving along. Most people are working, they just go ahead, on about their business.

Q. Could you give us an estimate as to the distance you were trailing behind this truck prior to his giving his left turn signal?

A. Before he give his signal I was just about 75 feet.

The Court: What were the question and answer?

(The last question and answer were read by the reporter.)

page 38 } By Mr. Stallard:

Q. When the truck gave indication that he was making a left turn into the inside lane, what did you do then?

A. Well, I pull up a little closer so it wouldn't be a long gap if they give the signal, so when he pass, well, I will still be moving along with traffic.

Q. After he had started over into the inside lane, did you

receive any signals from the truck that it was returning to the curb lane?

A. No.

Q. Who owned this automobile you were driving at the time?

A. I do.

Q. You are the sole owner of it and who suggested that you take this trip for your Easter egg hunt, whatever it was?

A. Well, it is such a small place in the back, when I come in I told the children I would take them to hide eggs.

Q. That was your suggestion?

A. That is right.

CROSS EXAMINATION.

By Mr. Reynolds:

Q. This car you were driving you said was a '49 page 39 } Studebaker?

A. That is right.

Q. Two door? Four door or—

A. Two door.

Q. And these children that you had in the car, I believe one of them was named Mattie?

A. Mattie, that is right.

Q. She is 15 now, isn't she?

A. That is right.

Q. And you had Starney, Jr., with you?

A. That is right.

Q. He is 12 now?

A. That is right.

Q. And Raymond?

A. That is right.

Q. He is 10—11 now?

A. That is right, 11.

Q. Is it Reggy Ann?

A. Regina Ann.

Q. Regina Ann?

A. That is right.

Q. She is 9 years old now?

A. That is right.

Q. Gwendolyn Fay?

A. That is right.

page 40 } Q. Is five now?

A. Five.

Starney Lee Williams.

Q. And those five were in the back seat of your car at the time?

A. That is right.

Q. Were they talking or playing with each other during the course of your trip?

A. No, no more than just talking as usual.

Q. Did you have any conversation with them immediately before this accident happened?

A. No, no.

Q. Were you talking to your wife?

A. Well, we exchanged words as going along.

Q. You say this car you were driving was in good condition?

A. That is right.

Q. You had good brakes on it?

A. That is right.

Q. And you were not exceeding the speed limit, were you? I say you weren't exceeding the speed limit, were you?

A. Between 30 and 35.

Q. And you were keeping a good lookout, weren't you?

A. That is right.

Q. Going between 30 and 35, how long a distance would it take you to stop your car?

page 41 } A. Well, couldn't exactly answer that question. I don't—

Q. Could you give the jury your best estimate how long it takes you to stop the car?

A. I say about 50 feet.

Q. You can stop it in 50 feet?

A. That is right.

Q. Before anything happened, I believe you say you were following about 75 feet behind this truck?

A. That is right.

Q. When you got ready to stop, when you saw that something was going wrong and you saw you had to stop, how far were you behind the truck then?

A. I say just about a carlength.

Q. I believe you told the jury that this truck gave you a signal for a left turn?

A. That is right.

Q. And he got about a foot over the line?

A. That is right.

Q. You mean the left side of his truck—

A. That is right.

Q. —got about a foot over the line?

A. That is right.

Starney Lee Williams.

Q. It was a right big truck, wasn't it?

A. That is right.

page 42 } Q. A big tank truck?

A. Well, not the biggest one I have seen but it is a good size.

Q. I guess it is. It was painted red with white lettering on it?

A. I think it is blue. I am not sure. I think it was blue.

Q. Well now, could you give us some estimate of how wide that truck is?

A. It is pretty wide. I think it was about between the smallest and the largest one. It wasn't the largest one I have seen. It is pretty wide, pretty big truck.

Q. Give us your best estimate how wide it is in feet, if you can.

A. In feet? Just about from that picture over to the door (indicating).

Q. From that picture over to that door?

A. That is right.

Q. Would you say that is—

A. That is about 8 or 9 feet.

Q. About 8 or 9 feet. The right lane of that street, Granby Street along there, that is about 9 or 10 feet wide, isn't it?

A. I say it was about that.

Q. And the two lanes make a total of about 18, 20 feet?

page 43 } A. That is right, something like that.

Q. All right. So when that truck moved one foot over the line, it was still about 7 feet of truck in your lane, wasn't it?

A. I would say I guess it was about, something like that.

Q. If it was 7 feet of truck in your lane, the lane is about 8 to 10 feet wide, that means there is only about between 1 and 3 feet of your lane on the right side of the truck when he pulled over to his farthest point to the left, wasn't it?

A. How much you say?

Q. I say about 1 to 3 feet.

A. 1 to 3 feet?

Q. I will tell you how to figure it. You tell me if I am right. You say he pulled over about 1 foot.

A. About a foot.

Q. And the truck is about 8 feet. That leaves 7 feet still in your lane and you say the lane is about up to 10 feet wide. 7 from 10 is 3. That is why I—

Starney Lee Williams.

A. I would say he was still in the lane, about half of the lane in.

Q. So you didn't have any intention of trying to squeeze by him on the right at that point?

A. I couldn't have squeezed by him.

page 44 } Q. Did he pick up speed when he pulled there to cut to the left?

A. When he started his turn I would say, a little bit; he picked up his speed a little bit.

Q. You had been driving 75 feet behind him. Did you pick up speed?

A. A little bit.

Q. How fast did you get going?

A. Well, I was still between 30 and 35. I guess I got right at the point of 35. When I looked at my speed last, I wasn't running 35 miles an hour.

Q. If you saw this truck getting ready to pull out, didn't you know it must be pulling out for some reason?

A. Sure; sure.

Q. And yet you started speeding up even though you couldn't see why he was pulling out?

A. That is right.

Q. You started speeding up?

A. No, I wouldn't say speeding up; not speeding up.

Q. Well, increasing your speed if you don't like that.

A. Well, a little bit, that is right.

Q. You increased your speed even though you couldn't see why he was pulling out?

A. I couldn't see why he was pulling out.

page 45 } Q. All right. And how long did he stay one foot over the line? How far did he travel one foot over the line?

A. Not long. Just as he cut out there good and he saw this car coming, he just curved right back in.

Q. Well, now, you were sitting 75 feet back there, you could see that car, too, couldn't you?

A. No, no.

Q. I am not talking about the police car, I am talking about the car on his left.

A. I couldn't see the car in my left because traffic was right behind me.

Q. Let me see if I can make my question clear to you. You said the truck was going down in the right lane?

A. That is right.

Q. Let's just for the purpose of this, assume this repre-

sents the east side of the road, the part that leads toward Ocean View. I guess we had better turn it around (referring to map or diagram) this way, because Ocean View is to the north; there is a mark here that tells you. This will represent the grass island in the middle. There is a grass island in the middle of the street?

A. That is right.

Q. Then there would be another lane on this side heading towards town?

A. That is right.

page 46 } Q. You say you saw this truck going down in the right lane?

A. That is right.

Q. And he started to pull over and pulled one foot over the line?

A. That is right.

Q. And then there was another car that he couldn't pull out, made him pull back?

A. That is right.

Q. Was that car there beside him?

A. No, no. No.

Q. Where was the car that kept him from pulling out?

A. The car was coming up from behind.

Q. How far behind?

A. Well, when he pulled back in, I just glimpsed the car. I don't know how far it was behind.

Q. Well now, you were back here we will say 75 feet is your testimony, is that right?

A. That is right.

Q. Was this car that made him pull back, behind you or in front of you or where?

A. It was behind me.

Q. Do you have any idea how far it was behind you?

A. No, sir.

Q. You didn't see it?

page 47 } A. No, sir, not until he went to curve back; I just glimpsed it when it passed. He curved back in, I got my brakes—

Q. You mean to tell us that you are 75 feet back of him and here is another car that is some distance behind you, and that car back there made him whip back?

A. No. See, in the 75 feet when he give his signal to pull over, see, that was the time when the car was coming up from the back. See, he didn't pull right out. He pulled out and he ducked back in. See, he give his—

Starney Lee Williams.

Q. You have made that plain. I want to know was there any car in this left lane between you, 75 feet behind this truck, and the truck?

A. No, no.

Q. No car back there?

A. Behind me it was. Wasn't no car between us.

Q. Behind the truck, in front of you there wasn't any other car?

A. No, no.

Q. You say he pulled out, then whipped back, with nothing in here (indicating)?

A. That is right.

Q. Well now, had he reduced his speed any before he whipped back?

A. When he whipped back, he made a sudden
page 48 } stop. I mean—

Q. Listen to my question now. Before he whipped back, when he made his signal and before he whipped back, had he reduced his speed any?

A. No, no.

Q. In other words, he was still going about 35 when he cut back?

A. Well, I wouldn't say going: when he whipped in and come in, he made his stop, well, he was stopping all the time.

Q. All right. How close was the left side of his truck to the center line when he stopped?

A. Oh, it wasn't far. Well, he had to go back in.

Q. Four? Two?

A. He had got back in the lane.

Q. Just in it?

A. No. I said he had got back full in the lane by the time we hit.

Q. Let's see if we can tell the jury how close he was to that center line. How close was the left side of his truck?

A. Well, I say he had got back in the lane. He was in there I say about two feet beyond the line.

Q. So that is pretty definite about him being about two feet from the line when he came to a stop?

page 49 } A. That is right.

Q. So this whipping you are talking about, he moved his truck a total distance of one foot the other side of the line. to two feet to one side; it is a total of three feet?

A. Whipped?

Q. You said he whipped back in the lane. I say he moved a total of three feet, is that right?

Starney Lee Williams.

A. Well, he come back in, into the—in the lane, before we had an accident.

Q. That is right?

A. Right.

Q. And he had been one foot over the line, on this side of the line.

A. That is right.

Q. He had been one foot over and when he got through he was two feet on this side?

A. That is right.

Q. And two and one are three?

A. That is right.

Q. So he moved a total of three feet to the side?

A. That is right.

Q. There is a shoulder on that road, isn't there?

A. Shoulder?

Q. Yes. In other words, there is no curb. He spoke of curb lane. There really isn't any curb there, is it?

page 50 } A. No, sir.

Q. The next thing over to your right after you leave the righthand edge of the road is that hedge right in front of the cemetery?

A. That is right.

Q. What would you say that was; maybe 10 feet off; that hedge, about 10 feet off the road?

A. I would say it is about 10 feet.

Q. You had 10 feet you could have driven your car on the shoulder?

A. No, no.

Q. Why not?

A. What? Off the highway?

Q. That is right.

A. No, not from the distance I was. I couldn't have turned. At the time he—

Q. The shoulder was there but you didn't have time to turn to get off?

A. If I had had the space, I would.

Q. I don't believe there are any skid marks from your car; were there?

A. No, sir, because we hit the same time brakes was catching good.

Q. In other words, you never had a chance to apply your brakes full before the impact occurred?

page 51 } A. We hit all the same time.

Q. Do I understand you put on your brakes and hit the truck at the same time?

A. Just about.

Q. And I believe you said you never saw the police car until after the accident?

A. That is right.

Q. Did you see it after the accident?

A. No, sir.

Q. After the accident?

A. I saw it after the accident.

Q. And it was there? Where was it?

A. It was in front of the car.

Q. In front of the truck, you mean?

A. That is right.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Let me clear up one point here. After the Esso truck pulled over into the inside lane, approximately how far did it travel in that lane before cutting back in, in front of your car?

A. I say about a truck length.

Q. About a truck length?

page 52 } A. That is right.

Q. Where was this police car when you saw it after the accident? Where was it located, on which side of the road? Where was it?

A. It was on the left side—the right side of the road.

Q. Where? On the right side of the road? Did you say you ever did see the police car before the accident?

A. No, sir.

Q. You saw it only after the accident?

A. That is right.

Q. Where was it located then?

A. In front of the Standard Oil Company truck.

Q. Where was it in front of the Standard Oil Company truck?

A. It was on—part of it was on the hard surface.

RE-CROSS EXAMINATION.

By Mr. Reynolds:

Q. Let me ask you this: Had you had any occasion to stop behind this truck or had this truck stopped in front of you at any time, say, back at Wards Corner, before the accident happened?

A. No, sir. I don't—it wasn't any stopping after
page 53 } I left the light.

Q. When the truck began to slow down and stop in front of you, the brake lights came on, didn't they?

A. I disremember about that.

Q. You don't remember? You couldn't say if they did?

A. No.

Q. But you just don't know?

A. That is right.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Approximately how long was the automobile you were driving at the time?

A. How long is it?

Q. What is the length?

A. About 16 feet.

(After a brief recess, the following occurred:)

page 54 } MADELIN WILLIAMS,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Stallard:

Q. Now, Madelin, will you please speak up so the Court can hear all you have to say. Just relax. Please state your name?

A. Madelin Williams.

Q. And who are your parents?

A. Mr. and Mrs. Starney L. Williams; Starney and Mattie Williams.

Q. The plaintiff in this case is your mother?

A. Yes.

Q. Were you in your father's automobile the time this accident occurred?

A. Yes, sir.

Q. Where were you seated?

A. I was seated in the back, on the left side behind my father.

Q. Behind your father. Now, please speak up. Did you see this truck ahead of your father's car, prior to the accident?

A. Yes, sir.

Madelin Williams.

Q. Could you estimate just about how far your father was traveling behind this truck, before the accident occurred?

page 55 } A. I will say about 2 or 3 carlengths.

Q. Would you tell us what this truck did? What did this truck do—

A. Well—

Q. —prior to the accident?

A. It started out into the left lane.

Q. It was in which lane before?

A. It was in the right lane.

Q. Was it immediately ahead of your father's car?

A. Yes.

Q. And you mean by that, it started into the inside lane? You said the left lane.

A. Yes.

Q. Did he or did he not give a signal for a left turn then?

A. He gave a signal for a left turn.

Q. You say he started over into the inside lane. Now, about how far would you say he got over into that lane? Could you tell us? Did you see?

A. About a truck length—I mean he just got his left front and back and his back wheel over into that.

Q. Was he, in other words, straddling the lanes?

A. Yes, sir.

Q. Just partially over it. How long was—

page 56 } Mr. Reynolds: Your Honor, I object to his leading the witness; just putting words in her mouth.

The Court: I sustain the objection. Don't lead the witness.

By Mr. Stallard:

Q. How far did this truck travel, once it had started crossing the inside lane?

A. About 2 truck lengths.

Q. Then what did the truck do?

A. It just came back over into the right lane and made a sudden stop.

Q. Then what happened, after the truck stopped?

A. We—the left side of the front—the front left wheel hit the right back side of the truck.

Q. Did you notice whether the truck driver gave a signal before reentering the right lane?

A. Yes, I did.

Madelin Williams.

Q. Did he or did he not give a signal?
A. He didn't give a signal.
Q. He did not give a signal?
A. No, he didn't.

CROSS EXAMINATION.

By Mr. Reynolds:

Q. There were five of you in the back seat of the
page 57 } car, weren't there?
A. Yes, sir.

Q. Anyone sitting on your left?
A. No, there wasn't.
Q. Five of you; somebody was sitting on somebody's lap?
A. No, because my sister is small. The baby was—is small and she was just sitting in between us.
Q. There weren't all five of you sitting on the seat; was someone standing up?
A. No, there wasn't.
Q. All five of you sitting on the seat?
A. Yes, it was.
Q. Beside each other.

Mr. Willis: It wasn't five back there, was it?
Mr. Reynolds: That is the testimony from the father.
The Court: Have you any objection, Mr. Willis?
Mr. Willis: What?
The Court: Do you make any objection?
Mr. Wlilis: No, that is all right.
The Court: All right. Go ahead.

By Mr. Reynolds:

Q. Now, what were you doing before the accident? What were the children doing back there, all five of them?
page 58 } A. They were just looking out of the window at the scenery.

Q. Were you talking to each other?
A. No, we weren't.
Q. Were you playing any games?
A. No.
Q. Just all sitting there?
A. Yes, just setting.
Q. No one was talking?
A. No.

Madelin Williams.

Q. Just looking out of the window. How long did you notice this truck before the accident happened?
A. Well, I couldn't say exactly.
Q. Did you see any other traffic on the road?
A. Yes, it was some other traffic on the road.
Q. Was there any other traffic between you and the truck?
A. No, there wasn't.
Q. Did you see any traffic ahead of the truck?
A. No, I didn't.
Q. Did you see any traffic in the left lane?
A. No, not at first.
Q. Beg pardon?
A. No, not at first.
Q. Not at first. When did you see it?
page 59 } A. When the truck started out into the left lane, I saw this car coming up from behind.
Q. You mean there was a car coming up behind the truck, on the—
A. Yes, coming up on the left side.
Q. Where was it with reference to the truck? Was it up beside it, ahead of it or behind it or where?
A. Almost behind. It was coming up beside it.
Q. Let me get it straight. Almost behind it, coming up beside it?
A. Yes.
Q. In other words, that car in the left lane was up ahead of you?
A. No, it wasn't ahead of us.
Q. Well, you were behind the truck, weren't you?
A. Yes, we were.
Q. And you say there was a car coming up beside the truck?
A. Yes, it was coming up beside of us, too.
Q. Well now, how far were you all behind the truck at this time?
A. About 2 or 3 carlengths.
Q. And was this car beside you or beside the truck?
A. It was beside us, almost beside us.
Q. All right. In which direction was it, so that it
page 60 } wasn't exactly beside you? Was it more behind you or ahead of you?
A. More behind; more behind.
Q. All right. Was that the only car you saw in the left lane?
A. Yes, sir, that was the only car.
Q. How fast was that car going?
A. I couldn't say.

Mattie Lee Williams.

Q. How fast was your car going?
A. About 25 or 30 miles an hour.
Q. About 25 or 30; how fast was the truck going?
A. I couldn't say.
Q. How long had you been following behind it?
A. Well, we had been behind him ever since at the stop light at Taussig Boulevard, but I couldn't say exactly how long we were behind him.
Q. He was going about the same speed you were, wasn't he?
A. I don't know. I don't—
Q. Were you catching up to it?
A. No, we weren't. We were just riding behind.
Q. Going along about the same?
A. (The witness nodded).
Q. Behind him. Now, your father testified that the truck went about a foot across the center line. Is that the
page 61 } way you saw it?
A. Yes.
Q. Is that correct?
A. Yes.

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

DIRECT EXAMINATION.

Examined by Mr. Willis:
Q. Your name is what?
A. Mattie Williams.
Q. And how old are you, Mattie?
A. Forty-one.
Q. These four children, or five children—five children or four in the back of that car?
A. There was five in there.
Q. Five?
A. Yes, sir.
Q. What were their ages?
A. What are their ages? At the time one is 11, one 12, one 11, one 9—no, that was last year. One, 10; one, 11; one 14 and one, 4.
Q. This girl who has just left the stand, Madelin; how old is she?
page 62 } A. She is 15 now.
Q. 15 now?

Mattie Lee Williams.

A. That is right.
Q. What part of this car were you riding in?
A. I was on the front seat.
Q. Who was driving?
A. My husband.
Q. Do you drive a car, know how to drive one at all?
A. No, sir.
Q. Never have driven a car?
A. Never have.
Q. Where were you all going on this occasion?
A. We was going out to hide some eggs for the children.
Q. Who suggested going?
A. My husband.
Q. Were you invited to go with him?
A. Yes, I was invited.
Q. Who fixed the Easter eggs?
A. The children.
Q. The children fixed them?
A. That is right.
Q. And your husband was taking them out, all of you out to hide the Easter eggs?
A. Yes, sir.
Q. Did you have anything to do with where your
page 63 } husband was going or operating the car—
A. No.
Q. —or anything?
A. No; no, sir.
Q. Did you have any control over him at all?
A. No, sir.
Q. How old a man is he?
A. Say what?
Q. How old is your husband?
A. He is 38.
Q. You all were going out Granby Street towards Ocean View?
A. That is right.
Q. And was there anything in front? Tell us just what you were doing, how you were riding along there, just what happened.
A. We was riding along on Granby Street. We had stopped at Wards Corner to put out our oldest daughter and we went on and we caught this truck. We—
Q. Where did you put the daughter out?
A. On Gran—at Wards Corner, on the corner of Granby Street, because she works at Howard's Cleaners. And we left

from Wards Corner going on out Granby until we come to Taussig Boulevard.

Q. Was that one of the purposes of going down page 64 } there, to take his daughter back to work?

A. Yes, because she was at my house at the time. That is why we went by Wards Corner.

Q. What happened?

A. We was going on down Granby Street until we came to Taussig Boulevard and we got behind this—

Q. Talk a little louder, like you are on Church Street.

A. I don't talk any louder on Church Street, thank you. But we was going down Taussig Boulevard. We was going down Granby Street until we come to Taussig Boulevard and we was behind this truck. We left this stop light—

Q. When did you first get behind the truck?

A. As far as I know, after we left Wards Corner. I don't know too much about that direction because this is the first time I had ever been out that way.

Q. You were going along behind, following behind the truck?

A. That is right.

Q. Then what happened?

A. Well, we got to this—up here where the wreck was. I don't know what section of Granby Street that is.

Q. Was it anywhere near the cemetery?

A. I guess so. But I don't really know. I can't really say that, because I don't know anything about that page 65 } street because I always looks in front of me. I never gives no outside look because in front is the important thing, in my condition, the way I see it. And so this truck started to turn out and as it did, well, my husband he was going I say around 25 or 27, probobly 30 miles an hour as far as I imagine, because I don't drive. And so this truck did as though it was turning out, it gave the signal; and come back in.

Q. Well, when he turned out, the truck was traveling along right in front of you all, wasn't it?

A. That is right. It was right in front of us.

Q. And how far behind the truck were you all when he turned out?

A. I say maybe two or a carlength and a half, probably.

Q. What is that?

A. Maybe two carlengths or maybe a carlength and a half.

Q. Then did he give any signal he was going to turn out to the left and get in the other lane?

Mattie Lee Williams.

A. That is right. He gave the signal.
Q. Did he get in that left lane?
A. He didn't get all the way in.
Q. Did he drive in that lane at all?

page 66 } A. He went I say just about probably a car-length, probably a truck length in—he was half over, from the way it looked to me, probably was half over.

Q. Did you have any reason to believe why he pulled out?
A. Well, I figured it was just going to pass another car.
Q. Pass another car?
A. Another something, I couldn't imagine what. I didn't know that.
Q. But he did pull out and get in that lane—
A. That is right.
Q. —like he was going ahead?
A. He pulled out.
Q. Did he drive in that lane for a truck length or longer?
A. Probably a truck length but it wasn't any longer.
Q. Then what did he do?
A. Then he turned back in over and comes back over. He didn't ever get all the way over in that right lane—the left lane.
Q. Did what?
A. He never got all the way over in the left lane.
Q. In the left lane?
A. No, he didn't.

page 67 } Q. He got far enough over there to straighten out and drive a truck length, you say?

A. No, he didn't get straight over in there.

Q. What is that?
A. He didn't get straight over in that lane.
Q. How far over in the lane did he get?
A. He got I will say about probably a foot or foot and a half.
Q. Over the line?
A. That is right.
Q. You mean the back of the truck got—
A. The truck, the back of the truck.
Q. The back of the truck—
A. That is right.
Q. —was a foot over the line?
A. That is right, as far as I could judge it from my own judgment of a car.
Q. Then what did he do?

Mattie Lee Williams.

A. Then he turned and come back over in the right.

Q. Did he give any signal that he was going to come back into your lane?

A. If he gave any signal I didn't see any signal at all.

Q. Were you watching out?

A. I was watching all the time.

Q. Were you on the lookout to try to see; you page 68 } could warn your husband anything that happened?

A. Yes, sir, yes, sir, because something I have always been frightened of is cars.

Q. You were looking out for your own safety?

A. Yes, sir.

Q. What happened to you when the collision occurred?

A. Well, when this collision occurred—

Q. When he turned back in that lane, did he cut right in, right back in front of you all, or not?

A. That is right. He just come right back in just as he had went over.

Q. In front of your husband's car?

A. That is right.

Q. Then what did he do then?

A. My husband mashed on his brakes and then he made a sudden stop, the truck driver did. The truck made a sudden stop.

Q. It was too close for your husband, for him to stop?

A. That is right, that is right.

Q. When the cars ran together, how did you get your leg hurt? What did that hit?

A. Well, as the car hit the truck, I just went right over to the windshield like that and my knee struck the dashboard.

* * * * *

page 73 }

CROSS EXAMINATION.

By Mr. Reynolds:

* * * * *

Q. You mentioned that you always looked to the page 74 } front while you were riding?

A. Yes, sir.

Q. You are scared of an automobile?

Mattie Lee Williams.

A. That is right.

Q. This accident happened on a straight section of the street, didn't it? In other words, the road was straight?

A. Yes, sir, as far as I am concerned and as far as I remember, it was straight.

Q. When did you first see the police car?

A. Oh, I never saw that.

Q. In other words, you mean the truck didn't pull out far enough for you to see the police car?

A. I never saw the police car. I was watching the truck.

Q. Well, but you were looking ahead?

A. That is right.

Q. And so the truck never pulled out far enough for you to see the police car?

A. No, I never saw the police car by the truck.

Q. And you were sitting on the righthand side—

A. Yes, sir.

Q. —of the front seat?

A. Yes, sir.

Q. Next to the right window?

A. Yes, sir.

page 75 } Q. These children you had in the car, what were they doing when the accident happened?

A. They were just sitting there looking out, as she said. They like to ride and they never give you any trouble as long as they are riding.

Q. Your husband hadn't turned around to say something to one of the children?

A. No, he hadn't.

Q. Did you say anything to your husband before the impact occurred?

A. No; no.

Q. In other words, you never cried out or gave any warning of what was going on?

A. No, I didn't until I saw him duck right back in, and by the time my husband put on the —my brakes—his brakes, it just so sudden until he had just hit.

Q. Did you see the brake lights on the truck go on when he started to stop?

A. No, I didn't.

Q. You mean you weren't looking, you just didn't notice it?

A. I was looking; I was looking because I never took my eyes off that truck.

Mattie Lee Williams.

Q. Did your husband put on his brakes as soon as that truck started to turn back into the right lane?

page 76 } A. Yes, soon as that truck started back in the right lane it sudden, all of a sudden it stopped just as it turned, come back in the right lane.

Q. That is when he put on his brakes?

A. (The witness nodded)

Q. So your husband put on brakes before the truck started to stop, is that right?

A. Say what?

Q. Did your husband put on his brakes first?

A. Did he put on his brakes first?

Q. Yes.

A. No, because the truck was all of a sudden. It just come right back in and stopped. He was mashing his brakes all the time but this truck just stopped right in front of him all of a sudden.

Q. You say he was mashing his brakes all the time. When did he start mashing his brakes?

A. Well now, for that I am not sure but I know he had his foot on the brake because he usually drive with his feet over the brakes that way.

Q. All right. In other words, he had his foot on the brake when the truck started to pull out to the left, is that right?

A. When it started to pull out to the left? No, he didn't.

Q. When he started to come back to the right,

page 77 } did he have his foot on the brake?

A. When he started to come back to the left?

Q. Talking about the right, to the right.

A. When it started to come back into the right, always he kept his foot over his brakes because I notice that much about him. He wasn't mashing them when the truck was pulling out, he wasn't mashing them.

Q. Let's don't talk about what he always does.

A. All right.

Q. Let's talk about this particular day, this accident.

A. All right.

Q. You say he didn't have his foot on the brake when the truck pulled to the left but he did have his foot on the brake when the truck came back to the right?

A. I didn't understand what you mean.

Q. Leave out the first part. Did your husband have his foot on the brake when the truck started to pull back to the right?

A. Did he have his foot on the brake when it first started pull back, the truck started to pull back to the right I can't say.

Q. You don't know?

A. No, I don't.

page 78 } Q. Did you see your husband put his foot on the brake?

A. Say what?

Q. Did you see your husband put his foot on the brake?

A. Did I see him put his foot on the brake? No, not this time I didn't.

Q. You were here when your husband testified and you heard him say that he speeded up, rather he increased his speed, when the truck started over to the left, is that correct?

A. Well, I couldn't say about that, either, because I don't drive.

Q. Well, I know, but you know whether the car increased its speed or not?

A. It didn't seem to increase it to me.

Q. So you would say that he did not, your husband did not increase his speed?

A. I couldn't say he did or I couldn't say he didn't because it didn't seem to—

Q. In other words, if he said it did, it probably did?

A. That is the way I always takes it as.

Q. All right. That is all.

page 79 } OFFICER H. W. GINN,

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

DIRECT EXAMINATION.

Examined by Mr. Stallard:

Q. Officer Ginn, you had the occasion on April 7, 1958—it was a Monday—to investigate an automobile collision involving a truck owned by Esso Standard Oil Company and driven by a John Porter, and a '49 Studebaker being driven by a Starney Williams?

A. I did.

Q. Where was this? Where did this collision take place?

A. It happened on Granby Street, about five hundred feet north of Carrollton Place.

Q. Would you describe for the Court how this street is at that point there, how many lanes it has?

Officer H. W. Ginn.

A. It has two lanes northbound and two southbound.

Q. Where would you fix the point of impact to be, in which lane?

A. In the righthand lane.

Q. That is the righthand lane heading north?

A. Heading north.

Q. Will you describe the character of this road, what shape it is in; level, straight?

A. It is a level, straight road, yes, sir.

page 80 } Q. What sort of surface does it have?

A. Concrete.

Q. What was the condition of the road surface at the time of this collision?

A. It was dry.

Q. Were there any defects in the road and around the place where this collision occurred?

A. There were no defects.

Q. Were there any traffic controls regulating traffic in and around the place where this collision occurred?

A. No.

Q. How would you describe the locality at the scene of this accident?

A. Well, it is the Forest Lawn Cemetery on the righthand side. There is no houses anywhere close.

Q. Would you describe it as being open country?

A. That is right, yes, sir.

Q. What time of the day did this collision occur as you fixed it from your investigation?

A. There has been a hole punched in it (indicating paper) but it looks like 1:15 P. M. in the afternoon.

Q. Were you called to investigate this accident?

A. No, I was not. I was at the scene of the accident when it happened.

Q. You were at the scene of the accident then.

page 81 } Would you describe why you were there?

A. That morning at roll call we received information that we had two runaway girls. We were going south on Granby Street when we noticed two girls heading north that was hitchhiking. I went out to a break in the parkway, I made a turn and went back to where the girls were walking, hitchhiking on the highway. I pulled up beside them and talked with them to find out if they were the two girls that we had a report that was running away from home. Being—we satisfied, we had satisfied ourselves that they wasn't the two girls that we had the report on and I was just preparing to

Officer H. W. Ginn.

pull away and I glanced in my mirror and I saw a Standard Oil truck that had pulled up behind me. As I put the car in gear to take off, I heard a crash back of us. I taken the car out of gear and went around in back and found that a '49 Studebaker driven by a Starney Williams had run into the back end of the oil truck and that a passenger, Mattie Williams, had a broken leg. We went back to the emergency wagon, got the stretcher out, loaded her on the stretcher and carried her to De Paul Hospital. Officer J. C. Cochrane taken her to the hospital and I stayed at the scene of the accident, directed traffic around and made the report.

Q. Was any portion of your car, the police car, on hard surface that you said you stopped on Granby there to interrogate these girls?

page 82 } A. Yes. Approximately two-thirds of the car was on the street in the righthand lane.

Q. How long would you estimate your car had been there prior to this collision?

A. I don't recall definitely. It was only a few—a short while. I would say a matter of maybe from one to three minutes. I couldn't say definite just how long it was; just a short while, while we talked to those two girls, just long enough to get enough information to find out that they wasn't the ones that we were looking for.

Q. Do I understand it correctly, then, that your patrol car was there from one to three minutes in a stationary position covering the major portion of the northbound lane?

A. I would say about.

Q. Prior to the time of the impact?

A. Approximately, yes, sir.

Q. How did you come to see this truck coming up behind you? You say you were parked heading north.

A. I was a little to the right and I glanced in my outside mirror on the lefthand door and saw the truck. It was either stopped or either moving very slowly at the time and I just glanced and saw the truck back of us.

Q. How soon thereafter was it that you heard the collision?

A. Almost—

page 83 } Q. —instantaneous?

A. Instantaneous.

Q. Approximately how far behind your car, the police car, was the truck after you got out to investigate?

A. It was just a mater of a few feet; maybe five, seven feet.

Q. Were there any skid marks left by either vehicle?

A. No, sir.

Officer H. W. Ginn.

Q. No skid marks left at all by either vehicle?
A. None that I could see, no, sir.
Q. Were you the only officer to interview both drivers of these vehicles, this automobile and the truck?
A. Yes, sir.
Q. Would you please state to the Court what the driver of the truck, Mr. Porter, gave as his reason for this collision, at the scene? Did he give a statement?
A. Yes. The best that I can recall, he said that he saw a car coming up in the lefthand lane and he was afraid to pull out and go around, so he just pulled up and stopped behind me.
Q. Did he state whether or not he had attempted to pass your vehicle?
A. No, sir, he didn't say anything about it at the time.

page 84 } Q. Didn't say one way or the other. Did Williams give any statement as to why the collision occurred?

A. I don't recall just what Williams said.
Q. Did you inspect the brakes on the Williams car?
A. No, I did not.
Q. Who did inspect them?
A. There was no one inspected them. The car was damaged to the extent that there was no way even if the brakes had been bad that you could have told that they had been bad before the impact. Whole front end was demolished on the Studebaker.

Mr. Reynolds: May I have that answer read back?
The Court: Read that back.

(The last answer was read by the reporter.)

By Mr. Stallard:
Q. Were you the first to reach the Williams automobile after the collision?
A. I—I couldn't say whether Officer Cochrane or I. He got out on one side and I got out on the other and we both went around the truck. He went around on one side of the truck and I got out the other, almost I would say approximately about the same time.
Q. Did you all remove Mrs. Williams from her automobile?
A. Yes, we did.

page 85 } Q. Where was she sent?
A. She was sent to De Paul Hospital.
Q. In what manner?

Officer H. W. Ginn.

A. On a stretcher.

Q. Now, going back; your car being parked in that right lane there, was your car parked in such a manner as to prevent the truck or any other traffic passing you and still remaining in that right lane?

A. You mean with the truck, would the truck have to pull out to the other—

Q. That is right.

A. That is right, the truck—anyone coming up in the lane that we were in would have had to have pulled off into the lefthand lane to have got around.

Q. Do you recall whether any other traffic had been moving around your car in any such manner prior to this collision?

A. Yes. There had been some cars pass in the lefthand lane while we were sitting there. I don't recall how many because I wasn't paying too much attention to the traffic, but traffic was flowing on past in the lefthand lane.

CROSS EXAMINATION.

By Mr. Reynolds:

Q. This Esso truck—a red truck, wasn't it?

page 86 } A. Yes, sir.

Q. And at the point where you stopped, where this accident occurred, how close is it to the main gate of the cemetery there?

A. I would say maybe between two—maybe two, three hundred yards, maybe a little more, maybe a little less. I don't know definitely just how far it was.

Q. But you were on a straight section of Granby Street?

A. That is right, yes, sir.

Q. Right there in front of the cemetery. When you saw the truck, that was the first time you knew about its being behind you, wasn't it?

A. That is right, when I looked in my rear view mirror on the door, I saw the truck back of me at that time.

Q. You hadn't heard it behind you before?

A. I had no knowledge that he even came up. I hadn't any knowledge that the truck was back of me until I had saw it in my mirror.

Q. There wasn't any scream of brakes, anything like that—

A. No, sir.

Q. —to attract your attention?

A. I didn't hear anything, didn't know that the truck was

even back there until I saw it, glancing up in the
page 87 } mirror, saw the truck pull up.

Q. I believe you said at that time you are not positive whether it was going real slow or had stopped?

A. No, sir, I couldn't say definitely whether it stopped or was moving real slow. I just got a glance of it when I looked, glanced in my mirror.

Q. When you looked back there after the accident happened and saw the car, could you tell the jury what way it went into the truck? In other words, did he go straight in, at an angle or how headed?

A. Well, the best of my knowledge, it looked like it hit almost straight in.

Q. Did Williams say anything to you about he was looking at one of his children? Did he give that excuse for the accident?

A. He said something that he glanced off for just a moment and when he looked up, the fellow had slammed on brakes right in front of him.

Mr. Reynolds: All right.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Officer Ginn, I think you testified earlier, on direct, that you didn't recall what the driver of the Williams
page 88 } car had said after the accident, what excuse he gave. Now, this is important. We want to get to the truth of the matter. Can you safely say, with reasonable certainty, whether Williams made a statement one way or the other as to how this accident did occur?

A. I remember he said, definitely said that the driver of the truck slammed on brakes all of a sudden.

Q. Did Williams state that he looked off to the side speaking to his children, or something?

A. He said something about either the children or something had distracted him just for a moment, he glanced off at one of the children or something for just a moment and said when he looked up, the truck had just slammed on brakes and was stopped right in front of him.

Q. He did state that to you?

A. That is right, said something that distracted him, his attention.

Officer H. W. Ginn.

Q. You are certain of that?

A. Yes, sir.

Q. Thank you. You state that your car had stopped there and was there from one to three minutes before the truck pulled out?

A. I would say approximately one to three minutes. I don't recall definitely just how long that we had been there.

page 89 } Q. Would you be able to testify whether the truck made an abrupt stop or where it was stopped, how it stopped at the time of the—

A. Could I do what?

Q. Whether it made an abrupt stop, a gradual stop or if it had stopped at the time of impact?

A. No, sir, I couldn't say how the truck stopped because I didn't see it or hear it until I glanced in that mirror.

Q. What date did that accident occur?

A. It happened on fourth month, seventh day, '58.

Q. Could you give us some idea how many accidents you have investigated out in that section of Granby Street since that time?

A. Quite a number.

Q. Have you run into any of them similar to this accident, rear end collisions?

A. Quite a few, yes, sir.

Q. Is there any likelihood you may have confused this accident with any other accident?

A. No, sir.

Q. Do you have anything there to show that on the date that you investigated this accident, this admission or statement was made by Williams, that he was looking to his children—

page 90 } Mr. Reynolds: Your Honor, I object to this line of questioning. This is their own witness and they are cross examining him.

Mr. Stallard: Your Honor, I think by his own testimony in some manner he has proved to be adverse here. In direct—

The Court: This was brought out by cross examination, was it not, that something was said by Williams about this distraction or something of that nature?

Mr. Reynolds: Yes.

The Court: I will permit him to question about that. I overrule the objection.

Mr. Reynolds: All right.

Officer H. W. Ginn.

By Mr. Stallard:

Q. I say, sir, is there any possibility that you might have confused this with some of these other accidents at the time?

A. No, sir. This accident was quite—

Q. Do you have anything on your police report, the report you made up, showing that his statement was made? That is what I want to get to, just something to refresh your memory. If it was made, it was made and that was it.

A. No, sir.

Q. We want to be satisfied it was made, because on direct you did state you didn't recall if any statement of
page 91 } that nature had been made.

A. No, sir, there is nothing on here (indicating) that says it, that he made any statement. There was quite a bit of confusion around there. He was hurt, so was his wife.

Q. That is understandable. There is no chance that this accident was caused by your stopping the police automobile suddenly, thus causing the truck to stop suddenly, starting a chain reaction?

A. No. We had been there long enough that any car would have been several hundred yards behind us.

Q. Well, any vehicle moving up from your rear could easily have seen you unless it were that their vision was obstructed by other traffic there?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Reynolds:

Q. Officer, on your report I believe you did write: "Williams' car, Car No. 2, failed to observe and ran into the back," is that correct?

A. (Witness examining document)

Mr. Willis: Failed to observe what?

A. I have on my report here Car No. 1, which
page 92 } was my car "stopped on Granby Street, Car No. 2 failed to observe and ran into the back."

Mr. Stallard: May I see that report?

The Court: Do you have an objection?

Mr. Stallard: May I see the report?

The Court: Go ahead.

Officer H. W. Ginn.

(Mr. Stallard examined the report.)

A. (Continuing) Car No. 1—

By Mr. Stallard.

Q. This "failing to observe," that is what I wanted to see, Officer.

A. That is following too closely.

Q. Is there any reference in your report that the Car No. 2 was failing to observe? That is what we want to bring out. It is important in this case. I know this accident happened some time ago, Your Honor, and Officer Ginn, like anyone else he is prone to forget; investigates so many accidents.

Mr. Reynolds: I object. He is arguing the case.

The Court: Take the report and stand back down. Do you have an objection? The witness is in the process of being questioned. Do you have an objection to this question or line of testimony?

Mr. Stallard: No, sir, I don't.

The Court: All right. You go ahead and finish page 93 } your question.

By Mr. Reynolds:

Q. Well, I think we had covered the point that your report shows "failed to observe," is that correct?

A. That—

Mr. Stallard: Just a moment. I think the report fails to show that very thing.

The Court: Do you object to the question?

Mr. Stallard: Yes, sir, I object to it.

The Court: Well, I sustain your objection.

Mr. Reynolds: That is all.

Mr. Stallard: That is all.

* * * * *

(In the absence of the jury, the following occurred:)

Mr. Reynolds: The defendants move to strike the plaintiff's evidence and for entry of an order of summary judgment on the ground that the plaintiff has failed to show any primary negligence on the part of the defendants, page 94 } and on the further ground that it is conclusively shown to be negligence on the part of the plain

tiff's driver that was the sole proximate cause of the accident or, at least, a sufficient intervening cause to insulate any negligence on the part of the defendants, if any.

(After argument by counsel, the motion was overruled and exception taken by Mr. Reynolds, counsel for the defendants.)

(The following occurred in the presence of the jury:)

OFFICER J. C. COCHRANE,

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

DIRECT EXAMINATION.

Examined by Mr. Reynolds:

Q. Officer, were you sworn?

A. Yes, sir.

Q. State your name, please?

A. J. C. Cochrane.

Q. And you are a police officer, City of Norfolk?

A. Motorcycle squad.

Q. Were you in the car with Officer Ginn when this accident occurred which happened on April 7, on Granby Street?

A. Yes, I was.

Q. What was the police car doing at that time? page 95 } What were the officers doing at the time?

A. It was on April 7, approximately 1:15 P. M. We were proceeding southbound in Car 14 on Granby Street when we observed two young girls hitchhiking in front, along by the front of the Forest Lawn Cemetery. We went up to Carrollton Place and made a turn, proceeded northbound, pulled up alongside of the girls. We had had report of two runaway girls and they were hitchhiking at the time. We questioned them where they were from and what they were doing out that time—that—on the highway at that time; advised them to get off the highway and stop hitchhiking. And observed a truck come up behind us and stop, realized we were blocking traffic at the time so we moved on off. Just as we started to move on off we heard a collision.

Q. Did you say that the reason you moved off was because the truck came up behind you?

A. Yes, sir.

Q. And when did you first observe the truck? Where was it?

A. I was—I didn't observe the truck at the time. Officer Ginn observed it, said, "There is a truck behind it. We might

move on." So I told the girls to get off the highway, advised them they were violating a law, so they moved on off. We started to move on and I heard the collision.

Q. And was it after that that you first noticed

page 96 } the truck was behind you?

A. When Officer Ginn drawed my attention to it.

Q. Did you look at it at that time? Do you remember?

A. I did, I looked to the side, to my left side through the window as I started to pull off, as customary.

Q. Was the truck moving at that time or stopped?

A. The truck was stopped.

Q. You hadn't noticed it prior to that time?

A. No, I hadn't.

Q. Or heard it?

A. (The witness shook his head)

Q. You hadn't heard it?

A. No, I hadn't.

Q. When you went back, I believe you found this '49 Studebaker behind the oil truck?

A. Yes, sir, I did.

Q. And could you describe what, if anything, was damaged on the Studebaker?

A. The entire front end, approximately two hundred dollars' worth.

Q. When you say the entire front end, was it a slight dent or severe damage?

A. It was considerable amount of impact.

Q. Did you find any skid marks from the Williams car?

page 97 } A. No, I did not.

Q. What was the angle at which the car was sitting with reference to the truck?

A. Right directly behind it.

Q. And was it heading into it straight?

A. Headed into it straight.

CROSS EXAMINATION.

By Mr. Willis:

Q. By the time you looked in the mirror, did you look in the mirror, see the truck behind your car?

A. No, sir. I turned over my shoulder, looked through the back rear window.

Q. About the time you turned, saw the truck behind you, the collision occurred?

John R. Porter.

A. Just as we started off I heard the impact.

Q. You mean you didn't see the truck following behind you at all?

A. No, sir.

Q. You all didn't drive along there, the truck following you and stopped all of a sudden, causing the truck to stop, did you?

A. No, sir.

Q. You had been standing there for two or three
page 98 } minutes before the truck came up, hadn't you?
you?

A. I—I don't know just how long. I was engrossed in investigating the two girls. I couldn't say positively how long we had been sitting there.

Q. Did you get out of the car and talk to them?

A. Sir?

Q. Did you get out of the car and talk to the girls?

A. No, sir. I sit right in the car. I think approximately two of our wheels was off the pavement. That is a narrow street coming down through there.

Q. In other words, you didn't see the truck until it stopped?

A. I didn't see the truck at all until it was called to my attention, said "There is a truck behind us. We are going to have to move on." So I told the girls to get off of the highway.

Q. The truck had stopped before you ever saw it, is that right?

A. I imagine it had. It was stopped when I seen it.

RE DIRECT EXAMINATION.

By Mr. Reynolds:

Q. Was there any damage to the truck in the accident?
page 99 } A. None so I could see.
Q. And did you allow it to proceed on?

A. Yes, sir, I did.

JOHN R. PORTER,

a defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Reynolds:

Q. Speak up now so we can hear you. State your name, please?

John R. Porter.

A. John R. Porter.
Q. And how old are you?
A. 29.
Q. Where do you live?
A. 8437 Mona Avenue.
Q. Are you married?
A. Yes, I am.
Q. Do you have any children?
A. Yes, I do.
Q. At the time this accident occurred that we have been talking about this morning, you were employed by Esso Standard Oil, weren't you?
A. That is right.
Q. What was your job?
page 100 } A. Motor tank salesman.
Q. Are you employed by them now?
A. No, I am not.
Q. Whom do you work for now?
A. A. T. Zoby.
Q. What kind of truck was this you were operating?
A. It was a straight body, fuel oil truck.
Q. What is the capacity of it?
A. 2,310 gallons.
Q. At the time of the accident, were you loaded or empty?
A. It was full.
Q. Where had you come from?
A. From the terminal.
Q. Where is that located?
A. Hampton Boulevard.
Q. When you first started using that truck the beginning of the day, did you make any kind of check of the operating condition of the vehicle?
A. Yes, sir.
Q. Do you make any check of your brakes and lights?
A. Yes, sir.
Q. Had you checked it on this particular day?
A. Yes, sir.
Q. Were your brake lights functioning?
page 101 } A. Yes, sir.
Q. After the accident had occurred, did you make any checks of your brakes and brake lights?
A. Yes, sir.
Q. Were they operating properly?
A. Yes, sir.
Q. And after the accident, did you continue your route?

John R. Porter.

A. Yes, sir.

Q. Can you give us some description of the brake lights that the truck has? What sort of lights does it have?

A. On each side there are two lights about so big (indicating) that are your brake lights. They are just above two regular running lights, two regular taillights. They are both the same size, one above the other, and I guess they are about that big around (indicating).

Q. Do those lights come on when you put on the brake?

A. Yes; yes, sir. they do.

Q. Can you see them for at least a hundred feet?

A. Yes, sir.

Q. Could you see them farther than that?

A. I would imagine so.

Q. In the way this truck is constructed, can you see behind it?

page 102 } A. I can't see directly behind it. I can see behind it at a distance behind it, because I only have a side view mirror.

Q. How far does the tank part of the truck extend beyond the cab? In other words, if you stick your hand out, can someone behind you see it?

A. I imagine if I stuck it straight out they could see the end of my fingers, but if I gave a slow, you couldn't see it—a slow signal.

Q. Why is that? What blocks the view?

A. The tank on the back of the truck.

Q. In other words, the tank extends out beyond the cab?

A. Yes, sir. There is a ladder that goes up right on the side where you climb on top of the truck, so it extends out right far.

Q. And that ladder is on the forward part of the tank?

A. Yes, sir.

Q. When this accident happened, what were the weather conditions?

A. Good.

Q. It was daylight, wasn't it?

A. Yes, sir.

Q. The street was dry?

page 103 } A. Yes, sir.

Q. In what direction were you traveling?

A. North.

Q. On Granby Street?

A. Yes, sir.

John R. Porter.

Q. That has been established. Of the two northbound lanes, which lane were you in?

A. The righthand lane.

Q. Did you at any time get out of that lane?

A. No, sir.

Q. Tell the jury what happened from the time you came around that curve there by the Sunoco Station near the end of the cemetery; tell them what happened?

A. When I came around the bend at the Sunoco Station I noticed a police car stopped on the road on the righthand side of the road. So I looked through my mirror to see if there was a break in traffic. The flow of traffic was constant and I couldn't pull over. I give a blinker signal because sometimes the traffic on that side will slow down and let you come in, but nobody slowed down and so I had to continue in that lane. So I just—when I got a distance from the police car, I stopped, and after I stopped I felt the impact from the man running in the back of me.

Q. All right. Now, did you apply your brakes to stop?

page 104 } A. Yes, sir.

Q. And would you describe your stop as a quick, sudden stop, or a slow, normal stop?

A. A slow, normal stop.

Q. You heard this morning Williams testifying that you cut out and then cut back. Did you do that?

A. No, sir.

Q. Did you move out in a straight line as you were traveling in that lane?

Mr. Willis: If Your Honor please, it is his witness. I object to his leading.

The Court: I sustain the objection.

Mr. Reynolds: Your Honor, I submit it is not a leading question. I asked him if he turned out of a straight line. He can answer yes or no.

The Court: Perhaps I didn't understand the question. What is the question that you are asking?

By Mr. Reynolds:

Q. Did your truck move out of a straight line as you were traveling along there?

A. No, sir.

Q. How long had you been stopped when the impact occurred?

John R. Porter.

A. I don't know. Just a few seconds. It wasn't a long time.

page 105 } Q. And what, if anything, did the impact do to your truck?

A. Well, it didn't do much of anything. I just felt a jolt and that was all.

Q. After you got out of your truck, what did you find behind your vehicle?

A. A Studebaker with the front end pushed in.

Q. Could you describe the manner in which the front end was pushed in?

A. Well, when I walked around it, it looked like the hood ornament was about so far (indicating) from the windshield.

Q. You are indicating what? A couple of feet?

A. Yes, sir, I would say so.

Q. In what manner had the car gone into the rear of the truck?

A. He hit dead center.

Q. As to one side or the other, where was the car?

A. You mean in comparison to my truck?

Q. That is right.

A. It was dead center, right in the middle.

Q. Were there any marks on your truck?

A. Yes, sir, had two headlight marks on the bumper. The bumper is about so wide (indicating) and it was two headlight marks just about the center. If you—they

page 106 } were about the same distance from each end and had a hood ornament had punched a hole in the door to the back where the meter is, just below the handle that you raise the door on, which is dead center of the truck.

Q. At the point where this accident occurred, is there any curb on the right-hand side?

A. No, sir.

Q. Is there any shoulder to the road?

A. Yes, sir.

Q. How wide is the shoulder?

A. I don't know. A little wider than a car, anyway.

Q. What was your speed before anything happened as you were going along Granby Street there?

A. I imagine it was around 30 miles an hour.

Q. Were there any skid marks from the Williams car?

A. No, sir.

Q. Were there any marks left by your truck?

A. Yes, sir.

Q. Will you describe them?

John R. Porter.

A. A mark about that long (indicating) under each rear wheel.

Q. How many inches, about?

A. Four inches, three or four inches, something like that, I guess.

Q. Did you have your brakes on at the time
page 107 } the accident occurred?

A. Yes, sir.

Q. I didn't get your answer.

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Porter, you have just testified you left some short stretch of skid marks or tire burns on the hard surface of the road there where the point of impact was?

A. Yes, sir.

Q. And you testified earlier that you came to a slow and gradual stop, didn't you?

A. Yes, sir.

Q. Now, would you like to satisfy my curiosity by telling me how these tire markings or tire burns got on the road there?

A. I don't know unless it is from the impact.

Q. In other words, you would like to suggest that this '49 Studebaker drove that heavy truck that distance, with your brakes locked, is that what you are suggesting or would you say that you slammed your brakes on and came to a sudden stop, leaving those tire burns?

A. No, sir, I didn't. I don't know whether
page 108 } he moved it but it shook me and I was in the front of it.

Q. Now, you testified earlier that you gave a left turn signal to make the turn over into the passing lane from right to left lane?

A. Yes, sir.

Q. Did you go near that center line?

A. No, sir.

Q. Where was your truck located? Dead center in the right lane?

A. Yes, sir.

Q. You never made any attempt to pull the truck over toward the center of the road so you could slip over into that passing lane when you found a break in the traffic?

John R. Porter.

A. No, sir.

Q. You testified you have these rear view mirrors that you use on the side of the car—

A. Yes, sir.

Q. Rather, the truck, the cab. You have already testified you can't see up too close to your rear, can you?

A. No, I can't.

Q. Explain to me how you intended to make your left turn into that passing lane when you had that blind spot behind you there, without pulling over toward the center of the road, near the center lane so that you could see traffic immediately to your rear.

page 109 } A. Well, the blind spot is directly behind my truck. What was directly behind my truck wouldn't affect my pulling into that lefthand lane. I have four—

Q. What if the car to your rear was coming up to pass you there?

A. I would be able to see him if he was coming to pass.

Q. How long did you travel along there with your—you had directional signals?

A. Yes, I do.

Q. How long did you have these directional signals on?

A. I imagine right after I made the bend in the road and saw the police car.

Q. About how far did you travel?

A. I really don't know now. It is a year.

Q. The distance you traveled, approximately, from the time you put on your blinker lights, your left turn directional signal, until the accident occurred, did you travel half a mile along there with those left turn signals on?

A. I traveled a distance from the turn to the police car.

Q. How far would that be? A city block?

A. Two—

page 110 } Q. A city block?

A. About a city block, I guess.

Q. In other words, you traveled—let's get this straight—you traveled a city block with your left turn directional signal on. However, you remained right in the middle of your lane, you did not hug the center line, did not cross over into the inside lane?

A. No, I did not.

Q. Am I correct in understanding that?

A. Yes, sir, you are.

John R. Porter.

Q. This curve you mentioned, is that near the Sunoco Station up there?

A. Yes, sir.

Q. You still say that is just about a block away from the point of impact? That Sunoco Station is up there at Taussig Boulevard and Granby, isn't it?

A. At where?

Q. Taussig and Granby.

A. No, sir, it is not.

Q. How far away from Taussig, Granby? Would it be north?

A. It is about three blocks, three or four blocks, something like that.

Q. You still insist that you traveled about a city block with your left turn signals on?

page 111 } A. Yes, sir.

Q. No more? When did you leave your job with Esso Standard Oil, how soon after?

A. July 4th.

Q. This accident happened in April. In other words, did this accident have anything to do with your change of position?

A. No, sir.

Q. On direct examination, I think you testified you were driving a Pure Oil or was it Esso?

A. I didn't hear that.

Q. On direct examination, in answer to Mr. Reynolds' question, did you state that you were driving a Pure Oil truck at the time of this accident?

A. No, sir.

Q. You were driving a Standard Oil truck?

A. Yes, sir.

Q. Where were you going at the time of this accident?

A. I am not sure of the street of the delivery. It was at Ocean View.

Q. You were making a call somewhere in the city on behalf of your employer?

A. Yes, sir.

Q. Does Esso Standard Oil Company have a safety program for drivers?

page 112 } A. Yes, sir.

Q. Does that safety program have any punitive features to it? In other words, what I am getting at is, if the driver is involved in an accident and the driver is at fault,

is that driver's pay docked or does he lose a day's pay or something of that sort?

A. Well, it is voted on by the committee and then if it found that he is the cause of it, well, first it takes away from his safety badge, can't get a safety badge that year; and if it is two accidents, I believe, and he is the cause, avoidable accidents, then he gets a day off or something suitable. The safety committee arranges what they will do.

Q. Then, it is highly desirable for any driver involved in an automobile accident to come out with his hands clean, in other words?

A. Yes, sir.

Q. And they rely pretty much on what the driver gives as his version of the accident?

A. No, sir.

Q. They make an independent investigation?

A. Yes, sir.

Q. Now, just about how far south of this police car were you when you first saw it?

A. At the turn at the Sunoco Station.

page 113 } Q. About a block away, we still say?

A. I guess that is the distance. It has been a year and a half; I haven't been back up that way.

Q. Was the police car moving at the time?

A. No, sir.

Q. It was at a standstill and you were satisfied it had stopped?

A. Yes, sir. I saw people talking to them on the side of the road.

Q. About how far over on the hard surface was this police car at the time you first saw it?

A. Well, I had thought that all four wheels were on the hard surface road. I could be wrong. It has been a good while.

Q. Pretty much most of the car, a good portion of it, was on the hard surface?

A. Yes, sir.

Q. What was your speed at the time you saw this?

A. I guess it was doing about 30.

Q. Could you be more *positve* about this? Are you rather certain what your speed was?

A. I had just come around Taussig Boulevard onto Granby and—

Q. Do you know what your speed was, to be truthful, no

John R. Porter.

guesses? Do you know what your speed was?
page 114 } Yes or no.

A. I am not sure.

Q. You don't know what your speed was, do you?

A. No. I knew it wasn't exceeding the speed limit, I mean, if that is what you want to know.

Q. The speed limit there is what?

A. 35.

Q. You were satisfied that the police car had stopped on the hard surface there?

A. Yes, sir.

Q. And what had you decided to do to—explain the situation now.

A. Why, the traffic was heavy on my lefthand side, so I just turned the blinker on, thinking perhaps I would get a break to get out. And when I saw I wasn't going to get one, I just stopped.

Q. You stopped dead, completely?

A. No. Well, I had stopped like a normal person would stop.

Q. You didn't go toward the center line, over into the inside lane?

A. No, sir.

Q. Did you have any mud on your brakes, on your rear brake rods?

A. No, sir.

Q. Any dust?
page 115 } A. No, sir.

Q. Do your brake rods have "Stop" written across it?

A. I don't believe they do.

Q. What kind of signal do you give when you pull up to make a stop on the open highway? You don't use your directional signal?

A. Well, you give a directional signal to indicate that you are going off the side of the road, if you are going to pull off.

Q. You had your directional signals on for a left turn, didn't you?

Q. And you stopped on the right side of the road, as I understand it?

A. I stopped in the center of the lane.

Q. But in the right lane?

A. Yes, sir.

John R. Porter.

Q. And how far away from the police car were you when you stopped?

A. I guess nine, ten foot.

Q. Nine or ten feet. Can you pass this police car safely without getting over into the passing lane?

A. No, sir.

Q. How wide is your truck bed along the rear there, would you say?

page 116 } A. How wide is the truck bed?

Q. Yes.

A. I would say about seven foot, something like that.

Q. Is it built up pretty high?

A. Yes, sir.

Q. Or is it low to the ground. In other words, is it right difficult for a driver proceeding to your rear to look over there and see what is up ahead of him on the road—

A. Yes, sir.

Q. —to your immediate front Now, were there any vehicles ahead of you and behind the police car, before this collision?

A. I don't believe so.

Q. Did you see any cars ahead of you in the right-hand lane, going northwardly, pull over into that inside lane or pass the police car?

A. No, sir, not to my knowledge.

Q. When you gave your left turn signal, did you see this Williams car, the Studebaker, to your rear?

A. I don't know whether I saw his car or not.

Q. When did you first see the Williams car?

A. Well, the first time—I knew there was traffic behind me—the first time I ever noticed his car is when I got out and walked back there.

Q. After the collision was the first time you

page 117 } knew of the Williams car?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Reynolds:

Q. This police car that you saw as you came around the corner was a marked car, wasn't it?

A. Yes, sir.

Q. Could you see that they were police officers in it?

A. Yes, sir.

Q. These skid marks under the wheels: when you stopped your truck, did you skid the tires?

A. No, sir.

Q. It has been brought out about the safety program at Esso and the investigation of the accident. Was this accident charged against your record?

A. No, sir.

Q. You got a promotion after this happened, didn't you?

A. Yes, sir.

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EUGENE WATTS,

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

Examined by Mr. Reynolds:

Q. State your name, please.

A. Eugene Watts.

Q. And you are employed by Esso?

A. Yes, sir.

Q. What is your position?

A. Plant supervisor or superintendent.

Q. And did you have occasion to investigate this accident that we have been talking about this morning?

A. I did, yes, sir.

Q. When you arrived at the scene of the accident, to your knowledge had the vehicles been moved?

A. Not to my knowledge, no.

Q. What did you find when you got there?

Mr. Willis: We object, Your Honor, unless he knows whether or not they had been moved.

The Court: Well, your questions are directed to his findings; not as to the position of the vehicles but page 119 } as to what he found otherwise when he got there.

Mr. Reynolds: We will leave out about the positions of vehicles.

By Mr. Reynolds:

Q. Let me just ask you this: Could you describe the damage, if any, that you saw to the Esso truck?

Eugene Watts.

A. There was no damage to the extent we were interested in recovering. The paint on the bumper, of course, had been marked. There were headlight prints, two headlight prints on the bumper and—

Mr. Willis: Your Honor, we object to this because he doesn't know, those dents may have been on there for a month. He is not in a position to know what put those dents on there.

The Court: Overruled.

A. There was also a place on the—there are two doors, or a door on this particular unit that raises in the back with a handle on it—I assume the center of the door, near the center—that had been bent just slightly and the indentation made in the door itself.

By Mr. Reynolds:

Q. Any damage to the brake lights?

A. No, no damage.

Q. Did you check to see if the brake lights were functioning following the accident?

page 120 } A. The brake lights, the signal lights, and the brakes were checked and all functioned properly.

Q. What did the truck do following the accident? What did you have the truck do following the accident?

A. After I had made my investigation and the police officers had made theirs, the truck continued on its regular run to its destination.

Q. Can you tell me whether or not, as a result of Esso's investigation of this accident, any charges against the driver's record were made?

Mr. Willis: Your Honor, we object to that. That is not proper in a case of this kind.

Mr. Reynolds: Your Honor, they brought it out. They are the ones that raised the question as to whether or not his safety record was involved.

The Court: I don't think the direct question was asked him by the plaintiff as to whether or not any action was taken against his license. There was a question asked by the plaintiff to develop whether or not such an investigation was held but there was never any indication or question from the

plaintiff to bring out the result of any investigation. I think the objection is proper and sustain it.

Mr. Reynolds: We note an exception. That is all I have.

page 121 } CROSS EXAMINATION.

By Mr. Willis:

Q. What was the weight of that truck with a full load?

A. I am not sure.

Q. Do you know the length of it?

A. No, I don't. I believe the weight of that unit is—

Q. Unless you know, we don't want any guessing business.

A. I don't know.

Q. Do you know the length of it?

A. No, I don't.

Q. Do you know the width of it?

A. It is seven and a half feet, give or take a couple of inches.

Mr. Willis: That is all.

Mr. Reynolds: You may come down. That is the defendants' case, Your Honor.

(In the Judge's chambers, in the absence of the jury, the following occurred:)

Mr. Reynolds: Your Honor, I would like to renew my motion to strike the plaintiff's evidence and for summary judgment, for the reasons previously stated.

page 122 } (The motion was overruled by the Court, and exception taken by defendant's counsel to the ruling.)

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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