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Record No. 5207

In the Supreme Court of Appeals of Virginia at Richmond

ALFRED R. BROWN

v.

ELLIS PRICE ARTHUR

FROM THE CIRCUIT COURT OF HALIFAX COUNTY

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5207

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 10th day of August, 1960.

ALFRED R. BROWN, Plaintiff in Error,

against

ELLIS PRICE ARTHUR, Defendant in Error.

From the Circuit Court of Halifax County

Upon the petition of Alfred R. Brown a writ of error is awarded him by one of the Justices of the Supreme Court of Appeals on August 10, 1960, to a judgment rendered by the Circuit Court of Halifax County on the 18th day of February, 1960, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Ellis Price Arthur was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 211 } INSTRUCTION NO. A.

The Court instructs the jury that the law does not undertake to hold someone liable for every accident; that negligence is never presumed; that the mere fact that an accident occurred and the plaintiff was injured is not sufficient for a verdict to be based upon, because the burden is upon the plaintiff in this case to prove negligence on the part of the defendant by a preponderance of all the evidence and that such negligence was the sole proximate cause of the accident and resulting injuries. Therefore, you should find a verdict for the defendant, unless you believe from the greater weight of the evidence that the defendant was negligent and that such negligence was the sole proximate cause of the accident.

Granted.

G. E. M., JR.

page 212 } INSTRUCTION NO. B1.

The Court instructs the jury that a pedestrian has a right to cross a street between intersections, if he elects to do so, rather than go to the regular crossings; that if the pedestrian chooses to cross the street between intersections, he is required to use greater care for his own safety than when he crosses at the place provided for pedestrians, as vehicles have the right of way, except at intersecting streets. But the Court further instructs the jury that the rule by which to determine whether a pedestrian crossing a street between intersections has exercised the greater care required in such case is the rule of ordinary care, that is to say, has he used the care which an ordinarily prudent person would use in the same place and under the same conditions.

Granted.

G. E. M., JR.

page 213 } INSTRUCTION NO. 3.

The Court instructs the jury that if the defendant relies upon the contributory negligence of the plaintiff to defeat the

plaintiff's action, the burden of proving such contributory negligence rests on the defendant, and it will not avail the defendant, unless it has been established by a preponderance of the evidence.

Granted 11/25/59.

G. E. M., JR., Judge.

page 214 } INSTRUCTION NO. 2.

The Court instructs the jury that while the plaintiff, Alfred Roy Brown, must prove his case by a preponderance of the evidence, this does not mean that he must prove the negligence of the defendant beyond a reasonable doubt as in a criminal case.

Preponderance of the evidence means that after hearing all of the evidence, if the jury is satisfied by the greater weight of the evidence that the defendant was guilty of negligence which was the sole proximate cause of the accident and the injuries complained of, then the plaintiff is entitled to recover. The jury is entitled to draw all reasonable inferences from any facts proved, and in arriving at its verdict can base its findings on such facts and reasonable inferences drawn therefrom.

Granted.

G. E. M., JR.

page 215 } INSTRUCTION NO. 5.

The Court instructs the jury that if you find that the plaintiff, Alfred Roy Brown, is entitled to recover, you may in ascertaining the damages to which he is entitled take into consideration the following:

1. The nature and extent of bodily injuries he sustained.
2. His mental suffering.
3. The physical pain he suffered, and is likely to suffer as a result of said injuries.
4. The costs of all medical expenses incurred by him and to be incurred by him in the future in an effort to be cured and relieved of his injuries.
5. The effect of the injuries on the health of the plaintiff.
6. His physical condition according to degree and probable duration thereof.

7. Whether the same is temporary *of* permanent.
8. The inconvenience caused the plaintiff by his injuries.
9. The impairment of the plaintiff's earning capacity, and the pecuniary loss already suffered by his inability to work.
10. The normal life expectancy of the plaintiff as established by the evidence.

And in the light of the foregoing, to award to the plaintiff, Alfred Roy Brown, such an amount as will fairly compensate him for his injuries, not to exceed the amount sued for.

Granted.

G. E. M., JR.

page 216 } INSTRUCTION NO. 1.

The Court instructs the jury that it is the duty of a person driving a motor vehicle on or along a public street to observe and obey the laws of the road and to exercise reasonable care in the operation of such vehicle, and the following duties are imposed upon the operator of such vehicle.

1. To keep a reasonable and proper lookout for all parties lawfully on said street.
2. To operate his vehicle in a careful and proper manner.

The Court further instructs the jury that each of the above is a continuing duty, and if you believe from the evidence that the defendant, Ellis Price Arthur, violated any one or more of the above, then such violation constitutes negligence, and if you further believe that such negligence was the sole proximate cause to the accident and injuries complained of, then you must find your verdict for the plaintiff, Alfred Roy Brown, and fix the damages in accordance with other instructions of the Court.

Granted.

G. E. M., JR.

page 217 } INSTRUCTION NO. F.

The Court instructs the jury that under the law when the negligence of both the plaintiff and defendant concur or join to proximately cause an accident, then the plaintiff cannot recover from the defendant.

Therefore, even though you may believe that the defendant was negligent in not keeping a proper lookout, yet, if you further believe that the plaintiff was negligent in not looking for approaching traffic as he crossed the street, which proximately contributed to the happening of the accident, then, the plaintiff in this case is not entitled to a verdict against the defendant, because contributory negligence on the part of any plaintiff which proximately contributes to his injury bars his right of recovery.

Granted.

G. E. M., JR.

page 218 } INSTRUCTION NO. 4.

The Court instructs the jury that the plaintiff had a right to cross the street at the point and place he did cross. The law requires him to use reasonable care to watch for automobile traffic which might endanger him. If the jury believe from the evidence that the plaintiff did in crossing use reasonable care then they cannot find him guilty of contributory negligence.

Granted.

G. E. M., JR.

page 219 } INSTRUCTION NO. D.

The Court instructs the jury that there was a duty on the plaintiff in this case to exercise ordinary care for his own safety, and there was a duty upon him to exercise ordinary care not only in looking before he left the sidewalk and stepped into the street, but also there was a duty on the plaintiff to maintain a careful lookout as he continued to cross the street. And, if the jury should believe from the evidence that the plaintiff failed to exercise ordinary care for his own safety in not keeping a proper lookout while crossing the street, then such failure would be negligence, and, if such negligence was a proximate cause of the accident and resulting injury, then the plaintiff would not be entitled to a recovery in this case.

Granted.

G. E. M., JR.

page 220 } INSTRUCTION NO. E.

The Court instructs the jury that it is the duty of a pedestrian crossing a street to cross the street only at right angles. That if a pedestrian crosses a street diagonally, this is negligence on the part of the pedestrian; that if you believe from a preponderance of the evidence that Alfred R. Brown crossed Main Street diagonally, then this was negligence on the part of Alfred R. Brown. That if you believe from the preponderance of the evidence that Alfred R. Brown was guilty of such negligence and that this negligence proximately contributed to the happening of the accident and resulting injury, then such negligence bars any recovery by the plaintiff, Alfred R. Brown.

Granted.

G. E. M., JR.

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On the 20th day of November, 1959, came the plaintiff, and the defendant; and the pleadings having heretofore been filed and the issues made up, both parties announced that they were ready for trial.

Thereupon, the following jurors, namely, Frank C. Chaffin, Jr., Herbert S. Bowen, L. C. Blanks, L. M. Dodson, H. L. Royster, H. B. Farmer, and R. T. Waller, were duly selected, impanelled, and sworn to well and truly try the issues joined between the plaintiff and the defendant and a true verdict render according to the evidence.

Whereupon the plaintiff introduced his evidence. At the conclusion of the plaintiff's evidence, the defendant moved the Court to strike the plaintiff's evidence on the ground that the evidence showed that the plaintiff was guilty of contributory negligence as a matter of law. The Court overruled this motion, and the defendant, by counsel, excepted.

At the conclusion of all the evidence, the defendant, by counsel, renewed his motion to strike the evidence of the plaintiff on the ground that the evidence showed that the plaintiff was guilty of contributory negligence as a matter of law. The Court overruled this motion, and the defendant, by counsel, excepted.

The plaintiff then moved the Court to strike the evidence of the defendant upon the grounds that it was insufficient to support a verdict and judgment for the defendant, and for other reasons appearing in the record, which motion the Court overruled and the plaintiff, by counsel, excepted.

page 227 } After the jury had heard the evidence introduced by the plaintiff and the defendant, and the instructions of the Court, and the argument of counsel, it retired to its room to consider its verdict, and after a time returned to Court with the following verdict, to-wit:

"We, the jury, upon the issue joined between the plaintiff and the defendant, find for the defendant. Frank C. Chaffin, Jr., Foreman."

Thereupon the said jury was discharged, and the plaintiff moved the Court to set the jury's verdict aside and to award to plaintiff a new trial, and in support of said motion assigned the following grounds, to-wit:

1. The verdict is contrary to the law and the evidence and is not supported by the evidence.
2. The Court erred in granting certain instructions offered over objection of the plaintiff, and to which the plaintiff duly excepted;

And the Court upon a hearing of and argument of counsel on said motion overruled the same, and did enter judgment for the defendant on said verdict.

It being intimated that a petition for an appeal from the adverse judgment against him will be filed by the plaintiff in the Supreme Court of Appeals of Virginia, it is further ordered and decided that execution on said judgment be suspended for a period of sixty (60) days, from the date of the order upon proper bond being given by the plaintiff with adequate surety in the amount of $300.00, to be executed before the Clerk of this Court within fifteen days from the date thereof and conditioned according to law.

Enter 2/18/60.

G. E. M., JR., Judge.

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Alfred H. Carter.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: H. M. Sizemore, Clerk of the Circuit Court of Halifax County:

Notice is hereby given that the plaintiff, Alfred R. Brown, appeals in this case and will apply for a writ of error and *supersedeas* and makes the following assignments of error;

Assignments of Error.

The Circuit Court erred:

1. In denying the plaintiff's motion to strike the evidence introduced by the defendant after the introduction of all the testimony in the case.
2. In declining to set aside the verdict of the jury as contrary to the law and the evidence, as it is without evidence to support it, and plainly wrong, and for not granting the plaintiff a new trial on the question of damages alone.
3. In granting instruction Numbered B-1 offered by the defendant on the ground that the same was misleading to the jury, inapplicable according to the evidence introduced during the trial and the facts of the case, and was not a correct statement of the law covering the circumstances and the happenings of the accident which resulted in the plaintiff's injury.
4. In granting Instruction No. E on the grounds there was no evidence to warrant the granting of this instruction, and that the same was misleading and did not correctly state the law applicable to the facts of the case.

ALFRED R. BROWN
By JAMES E. EDMUNDS
Counsel.

* * * * *

page 4 }

* * * * *

MR. ALFRED H. CARTER,
called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Alfred H. Carter.

DIRECT EXAMINATION.

By Mr. Edmunds:

* * * * *

Q. You are a certified land surveyor, are you not?

A. That's right.

Q. Mr. Carter, did you, at my request, a day or so ago, make a sketch or survey of the street running in front of the courthouse here, known as Main Street?

page 5 } A. Yes, sir.

Q. For the record, what is the nature of this area here (indicating on survey); is this business or a residential area?

A. Business area.

Q. And I believe, of course, the courthouse is on this side (indicating) and the business establishments go all the way across the street (indicating)?

A. The other side of the street is classified as business.

Q. Is this the survey that you made (indicating survey)?

A. Yes, sir.

Q. Is it drawn according to scale?

A. Yes, sir. Of course, we might say that all these dimensions are about as accurate to the nearest foot, because there are slight variations in these lines and the lines themselves have width, therefore, the dimensions are to the closest foot or the nearest foot.

Q. Now, would you tell the jury what the width of this street is, from curb to curb in here (indicating), or out here in front of the courthouse?

A. The street is, to the nearest foot, is 54 feet. It varies slightly at a few places. It runs about 53-3/4 but it is anywhere between 53-1/2 and 54 feet.

page 6 } Q. Now, are there parking areas—parallel parking areas—marked off on the upper side, or northern part, of the street in front of the courthouse?

A. Yes, sir.

Q. Now, what kind of parking areas are down south below?

A. Well,—

The Court: Is that as of February or March?

Alfred H. Carter.

By Mr. Edmunds:
Q. As of February or March? As of now, but I think we will show it is the same.
A. As of now.

The Court: Does that map reflect the street out there now or as of February?
Mr. Edmunds: As of now.
The Witness: This is as I find it now (indicating survey).

By Mr. Edmunds: (continues examination)
Q. Well, we will show it later on and tie it in.
A. Exactly what was the question?
Q. What is the width from curb to curb?
A. From curb to curb, as I said, was approximately 54 feet.

Q. Now, what are the widths of the parallel park-
page 7 } ing areas?

A. They are 7 feet to the nearest foot from the center line—from the center of the line of the marking to the edge of the back of the walk is 7 feet. It would be, give or take an inch.
Q. What area or what width would that leave for a vehicle or traffic?
A. Vehicular traffic is approximately 40 feet.

Mr. Edmunds: 40 feet. All right, sir. I would like to enter this an an exhibit, if your Honor please, for the plaintiff.
The Court: All right.

(The survey referred to above was received in evidence and marked, Plaintiff's Exhibit A.)

By Mr. Edmunds:
Q. Mr. Carter, in this entire area in front of the courthouse, is there any intersection?
A. Why not in front of the courthouse; no. I mean there is one up here at the corner (indicating) but there is no intersection actually in front of the courthouse; no.
Q. What is the length of the frontage in front of the courthouse from that area up there where the roads come together on down—
A. I didn't bring a scale with me but it is over 100 feet—certainly over 100 feet.

Alfred H. Carter.

Q. From the courthouse, looking up?

page 8 } A. From the center line of the walk here (indicating) up to the corner is—well,—it is a rounded corner there. I believe the scale is about 110 feet from this edge of the walk (indicating) to the point where the courthouse wall begins to bend around.

Q. How far is it to an intersection looking southerly, or is there any?

A. Somewhat further than that. It's 150 feet, say.

Q. That is down to Edmunds Boulevard?

A. That is down to Edmunds Boulevard.

Q. That is just a side street coming into the main street—that is not a real intersection?

A. No, sir; it's not a right angle; it is not a crossroads.

Q. There is at least 260 feet here in front of the courthouse, without any intersecting roads (indicating)?

A. They are the approximate dimensions. I don't have the scale but I could give them to you.

Q. Are either of these areas where the roads intersect up here (indicating) near the Texaco Station or down at Edmunds Boulevard—at either of these areas is there a place marked off for people to walk across?

A. Not that I have observed.

Q. Are there any traffic signals on this street running in front of the courthouse?

page 9 } A. No, sir; no, sir.

Mr. Edmunds: That's all, Mr. Carter, unless they want to ask you something.

CROSS EXAMINATION.

By Mr. Earle Garrett:

* * * * *

Q. Now, do you know of any other change, if any, that has been made in the markings of the parking of cars or anything on this street right here (indicating)) in front of the courthouse since February 18th, other than two cars parked?

A. I don't know of anything. I do think there is one right in this area right in here (indicating) that they had it now marked for specific traffic coming into the bus station. It used to be just general parking right in there, I think,—

right across the street—at one time, but that was still flat parking area.

page 10 } The Court: Show that to the jury and point it out on this map up here (indicating).

The Witness: I don't think that would have any bearing on it, as I recall.

(The witness left the witness chair and proceeded to the survey mounted on the blackboard.)

This is just from memory—this little area right in front of the Hankin's Store (indicating) now is reserved for people coming in, I believe, possibly for the bus station purposes. I believe there is a reserved sign or something there now that they didn't have at one time.

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MR. JERRY LLOYD,

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Edmunds:

Q. State your name please.

A. Jerry Lloyd.

Q. And what is your occupation?

A. Town maintenance.

Q. In the course of your duties, do you have the obligation or do you mark or paint the City streets at times?

A. Yes, sir.

Q. Are you familiar with the two white lines running parallel directly across from the courthouse here in front of Hankin's Store, indicating where people, as of now, may—be a walking area?

A. Yes, sir.

page 12 } Q. Did you paint those lines?

A. Yes, sir.

Q. When were they painted?

Jerry Lloyd.

A. Sometime around the first of March—I do not know the date.

Q. Of March, 1959?

A. That's right, sir.

Q. As of February 18, 1959, were those lines there?

A. No, sir.

Q. Were there any lines—anywhere on this street—runing in front of the courthouse here at that time—February 18th, before you painted them; were there any lines there?

A. Only the lines for the automobiles to park in on the sidewalk or next to the sidewalk.

Q. There were no lines to guide people or to indicate where pedestrians were to go?

A. No, sir.

Q. Or to cross?

A. No, sir.

Q. Is there any stop light in the Town of Halifax?

A. No, sir.

Q. Is there any walking area up here at where 360 intersects with 501?

A. No, sir.

Q. Do you know when the lines in front of the
page 13 } River Bend Clinic—Dr. Wooding's Office—and the
5 & 10 Store, and the Anderson's Grocery—when the parking areas there were marked off or changed?

A. No, sir; I do not.

Q. You didn't mark them?

A. No, sir. I marked them but I don't remember what date.

Q. Do you recall whether they were changed from angular to parallel, or—

A. No; I don't remember that.

Q. You don't know?

A. No, sir.

Mr. Edmunds: That's all. Thank you.

CROSS EXAMINATION.

By Mr. Allan Garrett:

Q. Mr. Lloyd, were the lines in the street marking the different lanes for traffic on February 18, 1959?

A. Yes, sir; there was lines there but now, whether they had been changed at that time, I do not know.

Ellis Price Arthur.

Q. Well, would you step around here to the map just a minutes?

(Witness went to the survey on blackboard.)

Q. (Continued) Can you tell the jury whether or not these lines (indicating)—the double line—in the street for vehicles and the broken line were drawn on the street this page 14 } way on February 18, 1959?

A. I don't know, sir, if they were like they are now with the two lanes of traffic. I couldn't say.

Q. Were there any lines there?

A. Yes, sir; you had your center line in your street—it was there at that time.

Q. Well now, when you say center line, the line you have indicated as the double line—or is the double line which is not situate in the center of the street, I don't believe. Was that line there in this position, or was there a line in the center of the street?

A. Well, I couldn't say because I don't know for sure.

Q. You don't know but you do think there was at least one line in the street?

A. The traffic line was in the street.

Q. The traffic—

A. Whether it was in the direct center there, I couldn't tell you.

Q. And you don't know whether or not the lines were there, as shown on the map?

A. No, sir; I couldn't say.

Mr. Allan Garrett: All right. Thank you, sir.

By Mr. Edmunds:

Q. One other question, Mr. Lloyd. The width page 15 } of the street is the same now as it was in February; is it not?

A. Yes, sir.

* * * * *

MR. ELLIS PRICE ARTHUR,

the defendant, called as an adverse party, being duly sworn, testified as follows:

Ellis Price Arthur.

CROSS EXAMINATION.

By Mr. Easley:

Q. Mr. Arthur, you were driving the car which struck this colored man on the 18th day of last February?

A. Truck; yes, sir.

Q. A truck; yes, sir. What kind of tractor was it?

A. Just a pickup truck—Chevrolet '50—Chevrolet pickup.

* * * * *

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Q. You are familiar with Halifax, aren't you?

A. Yes, sir.

Q. You drive through here frequently?

A. Yes, sir.

Q. You know it is a fact that people generally who want to cross the street from the store side to the courthouse side just walk across the street at any point, don't they?

A. Yes, sir.

Q. And that is a universal practice, isn't it?

A. I think so.

Q. I mean, that is the general custom.

Mr. Earle Garrett: We object to the question as phrased. I don't know that this man is qualified to testify to a universal practice in Halifax or anywhere else.

page 17 } The Court: He knows what he has seen from time to time.

Mr. Earle Garrett: I don't mind him stating what he observed but the question was phrased as "a universal practice." I don't believe that Halifax is the entire universe.

By Mr. Easley: (continues examination)

Q. I will leave out the word "universal." It is customary for people of this town to cross the street from the courthouse side to the store side, or *vice versa,* whenever they want to?

A. I suppose so. I have seen them cross them any time they get ready.

Ellis Price Arthur.

Q. Yes. Well now, when you drove up into Halifax, what did you do first, Mr. Arthur?

A. I parked right along there in front of Miss Anderson's Store—pulled into the street parallel. In other words, pulled in the street like this (indicating), and I saw, after I had parked there, that I was parking wrong and I backed out into the street and there was a car sitting in the next parking section (indicating).

Q. You mean the next one—the next one up towards the Williams Store?

A. Yes, sir; the next one above. There was a car sitting in that, and I pulled around that car very slowly. I page 18 } don't suppose I was doing more than two miles an hour, just easing around that car.

And when I got around that car and got out of my truck, I seen this colored man and two more colored people standing there on the street, and he was brushing his clothes and I asked him what the trouble was. He said, "You knocked me down with the truck." I had never seen the man; never seen him the first time nowhere in my life—not looking—I was certainly looking because I didn't want to run into nobody parking or get into anybody.

And so I pulled in there and parked and when I got out he was standing there and I went there and I asked him what was wrong. He said, "You knocked me down." I said, "Well, are you hurt?" He said, "No." And I said, "Now, if you're hurt," I says, "I'll see that you get a doctor." I said, "I'll take you to a doctor." It was right there in front of Dr. Wooding's office and he said, "No; there's nothing wrong with me."

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Q. Now, Mr. Arthur, it is my understaning that you first parked your car level with the street somewhere between Hankin's Store and the grocery.

A. Parked how?

Q. Parked somewhere between at—between the opening or the door to Mr. Hankin's place and the grocery store. You first parked your car there?

A. Yes; I drove into the street.

Ellis Price Arthur.

Q. And you parked parallel to the street?
A. Yes, sir.
Q. You realized that you had gone over or that you were over the place where the parking was forbidden?
A. Yes, sir.
Q. And then you backed your car; is that right?
A. Yes, sir.
Q. And went around the truck which was in front of you?
A. There was a car in front of me.
Q. A car?
A. Yes, sir.
page 20 } Q. You pulled around that car and then went up with the intention of cutting in front of the—of it and parking?
A. Yes, sir.
Q. And you did cut in front of it to park?
A. Yes, sir.
Q. All right. Now, when you started backing, where did you look?
A. When I started back?
Q. Yes.
A. I didn't start back.
Q. You backed your car out before you went around the car in front of you?
A. Well, I looked all the time when I was backing.
Q. Well, where were you looking?
A. I looked back to see if anybody was coming.
Q. That's exactly what I'm talking about. You were looking back?
A. Yes; but I wasn't looking back when I pulled in front.
Q. Where were you looking?
A. I was looking right square in front of me.
Q. Why couldn't you see this man right square in front of you?
A. I don't know why I couldn't see him. I couldn't see him because he wasn't there.
page 21 } Q. He wasn't there?
A. No, sir.
Q. And you never did see him at all?
A. No, sir; I never did see him.
Q. Isn't it a fact you continued to look back for cars coming behind you and rammed that man without looking in the front?
A. No, sir; I was looking in the front.

Ellis Price Arthur.

Q. You can't give any explanation why you didn't see this man—daylight wasn't it?

A. Yes, sir.

Q. And there was nothing to obstruct your view?

A. I just didn't see him—never did see him—didn't know that I had hit anybody until I got out.

Q. I'm not questioning your veracity at all. I just want to get it clear that it is your statement that you just didn't see him there.

A. No, sir.

Q. And you didn't know you hit him until after you found out he had been knocked down?

A. Yes, sir.

Mr. Easley: That's all.

DIRECT EXAMINATION.

By Mr. Allan Garrett:

Q. Mr. Arthur, I think it is clear in the jury's page 22 } mind where you first parked and how you first parked. You used the word, referring to where you first parked, as parking "parallel" to the street. Did you mean parallel to the street or at an angle to the street when you first drove in?

A. Drove into the street. In other words, the head or the motor of the car was against the street—towards the street—and I saw that I was parked wrong. I was supposed to park sideways with the street. I didn't know which was parallel or which was which, or which was the other way, but I just explained it so that you might understand it. I drove into the street like this (indicating).

Well, I saw that the lines there, when I went to get out, I saw the lines were running this way (indicating). Well then, I backed back and when I backed back, there was a car sitting in front of me (indicating), and I went around that car and to park right straight with the street.

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Ellis Price Arthur.

Q. All right, sir. To make the clear record there, you parked in the first parallel parking place on the east side of Main Street?
A. Yes, sir.
Q. But you parked diagonally?
A. Yes, sir.
Q. Then you saw that you were parked wrong; you backed up, you pulled around a vehicle parked in the next parallel parking place—
A. Yes, sir.
Q. —and parked in the third parallel parking
page 24 } place?
A. Yes.
Q. On the east side of Main Street?
A. Yes, sir; that's right.

Mr. Allan Garrett: All right, sir. I believe that makes it a little bit clearer.

(Witness returned to witness stand.)

Q. (Continued) At what speed were you driving your pick-up truck as you—after you backed up and started down Main Street to park again?
A. At what stage?
Q. What speed were you driving at?
A. Oh, I would say two or three miles an hour.
Q. Going very slowly?
A. Yes, sir; just very slowly.
Q. Do you know where Brown was in the street when your truck struck him?
A. No, sir.
Q. Where was he after he had been hit by your truck?
A. Standing up on the sidewalk.

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page 25 }

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Q. What were the weather conditions; was it
page 26 } raining or dry?
A. It was dry. The best I remember it was fair.

Ellis Price Arthur.

It was probably cloudy but it was fair, to the best of my remembrance.

Q. Do you recall the markings on the street, the way they were on February 18, 1959?

A. No, sir; not only—just the marking of the parking. I think it's identical the same thing now as it was then. I don't know because I haven't looked at it in the last week or so. I don't know whether it's been changed or not, but I recall the marking there where you park straight with the street and where you went into the street. They were there.

Q. Did Alfred Brown tell you why he didn't see your truck?

A. No, sir.

Q. Did he make any statement to you there?

A. No, sir; no, sir.

Q. Did Brown appear to be sober?

A. Yes, sir; if he was drinking, I never seen him before—but if he was drinking any, I couldn't tell it. He showed no manifestation of it whatsoever.

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page 27 }

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RE-CROSS EXAMINATION.

By Mr. Easley:

Q. Just let me ask him one more question. Will you come over here just one minute please, sir?

(Witness went to sketch on blackboard.)

When you first parked, you came in here (indicating) near Hankin's Grocery—near Hankin's front—like that (indicating)?

A. Yes, sir.

Q. And parked at an angle?

A. Yes, sir.

Q. And you found you were in the wrong place and you wanted to get in this section over here (indicating); is that right?

A. Yes.

John Medley.

Q. And in front of you there was another car parked parallel with the street (indicating)?
A. Parked in this lot right here (indicating).
Q. Parked in this lot right here (indicating). What you did was, you backed out this way (indicating), cut
page 28 } your car around this way (indicating), drove past that car (indicating) and then cut in again (indicating)?
A. Yes, sir.
Q. That's right. And the time you hit Mr. Brown, you cut in that store (indicating)?
A. Yes, sir; somewhere over here (indicating).

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MR. JOHN MEDLEY,
called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

page 29 } DIRECT EXAMINATION.

By Mr. Edmunds:

* * * * *

Q. Now, did you see the vehicle which Alfred Brown was a passenger in parked over across the street?
A. Yes, sir.
Q. Where did it park?
A. He parked the second light from the steps—
page 30 } the car was parked the second light from the steps. Red Cross standing. And then Trent got out.
Q. Richard Trent?
A. Yes; and Ronald Anderson got out and Brown got out and a car passed, and Brown stood at the car, and then he come straight across the street.
Q. Did he come straight across or diagonally?
A. He come straight across the street.
Q. And towards where you all were?
A. Right straight across the street where I was. I was in about seven feet of him and he got to the white line and had one foot on it—
Q. What—got to the white line and what do you mean the white line?

John Medley.

A. See, the line would go straight across down the street—all the way down the street—where you park in on there.

Q. You mean the parking line?

A. Yes, sir.

Q. The outside parking line over on the side of the street where you were?

A. That's right.

Q. Now, do you know whether he looked or did you see whether he was paying attention when he went across or not?

page 31 } A. Bound to have been because the car passed him—one passed on that side and one passed going out up—he bound to have seen that, but another one come on behind him after he got up there—he couldn't see behind him.

Q. And he had gotten all the way across the street to where the parking line was to that outside diagonal parking line?

A. See, there was a car there just like my hand (indicating). Brown got like here (indicating) and here was the line right here (indicating)—well, he got right there. The car that struck come on up the street—he turned in (indicating)—he didn't see him when he was down there further. He didn't park down there (indicating)—he might have looked at it but he didn't park. I didn't see him there, but I seed him when he come on up and Brown was here (indicating) and the truck hit him and knocked him up in the air about three feet, and I picked him up.

Q. Did he fall on the street?

A. That's right.

Q. Where was he when you picked him up?

A. He was just a little in front of the car, where he testified—just a little in front of the other car where he was parked, and his head was laying right at the front wheel when I picked him up—at the left front wheel—his head was laying right out there and I picked him up.

page 32 } Q. Where was he in relation to the parking lane there—was he in the lane or out of the lane?

A. Well, he had made another step and he would have been or the one foot was on the white line.

Q. On the white line?

A. Yes, sir.

Q. What was the course that this vehicle driven by Mr. Arthur took?

A. He was coming up the street (indicating) and then he turned in there (indicating), he cut in there and that's the

John Medley.

only reason he hit him—he cut in there (indicating). If he had gone up to the 5 & 10 somewhere, then he wouldn't have hit him.

Q. He turned his vehicle to the right?

A. Yes.

Q. And what part of his vehicle struck Brown?

A. His right fender—his right fender hit him.

Q. And what part of Brown did he hit?

A. He hit him in the back and just swept his feet out from under him and he fell back—he knocked him senseless because he didn't have no sense and because I picked him up and he didn't have no sense.

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page 34 }

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CROSS EXAMINATION.

By Mr. Allan Garrett:

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page 35 }

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Q. Now, can you state definitely whether the car was in this parking space (indicating) or—

A. Wasn't in there.

Q. —or this one (indicating)?

A. He had the second one.

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page 37 }

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Q. The first car that went by was headed in which direction?

A. Going towards South Boston.

Q. Towards South Boston?

A. Yes.

John Medley.

Q. All right. And another car came by headed
page 38 } towards Clover; is that correct?
A. It was coming on up the street.

* * * * *

Q. You made the statement that Brown couldn't see behind him. What do you mean by that?
A. Nobody can see behind him, as far as I'm concerned. I don't know nobody can see behind him without looking back.
Q. You mean he doesn't have eyes in the back of his head?
A. No; he ain't and nobody else has.
Q. He didn't turn his head either then, did he?
A. No; he didn't pay—I didn't pay any attention whether he turned his head or not. He was looking across the street.

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page 41 }

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Q. Did he get out of the car towards the street side or towards the sidewalk side of the car?
A. I don't know particularly whether he got out on this side or the other side.
Q. When you first saw Brown, where was he? Was he in the street?
A. He was standing by the car and then Trent and Reverend Anderson was out of the car—was out of the car and sort of in front of the car.
Q. Did you see the truck moving down the street before it struck Mr. Brown?
A. Which way you call down the street?
Q. North—moving that way.
A. I seen it coming up the street.
Q. All right. Did you see him going up the street then?
A. I seen the truck coming up the street; I didn't see him trying to park or nothing there.
Q. The truck was moving very slowly, wasn't it?
A. He wasn't running fast.
page 42 } Q. You say he was not running fast?
A. No; he had another engine or something on

the truck. Of course, when he hit the man, the 1000 pound blow, it must have been, I reckon.

Q. You said he had a load on the truck—on his pickup truck?

A. Looked like he had another load on his truck—a sawmill engine, or something like that. I don't know what it was.

Q. Do you remember talking to me sometime ago about how this accident happened?

A. You asked me some questions up there.

Q. You do remember talking to me, though?

A. I answered that a little while ago.

Q. Do you remember what you told me about how far Brown was from that white line when he sas struck?

A. I didn't tell you how far he was from the white line. He was on the white line and I picked him up on it. You may have thought that but I didn't say that because I couldn't say it then because his head—if he had kept up the street, he wouldn't never have hit him and he cut in there. That's when he hit him.

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page 43 }

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MR. JOHN R. ANDERSON,

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Edmunds:

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page 45 }

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A. He got out of the car and went this way (indicating) across the street.

John R. Anderson.

By Mr. Edmunds: (continues examination)

Q. Did he go straight across the street or diagonally across the street?

A. Well, when I saw him, he was about middleways when he went on across.

Q. Right on across the street?

A. Yes.

Q. Now, was he walking at that time?

A. Yes.

Q. Now, go ahead and tell the jury, as best you can, what you saw or heard there.

A. Well, I saw a car coming up the street there and I thought he done—I thought he done made it across—and at that time I saw him come right over and this car pulled in, and he come right over the fender of this car (indicating), and I told Trent, I said, "They done killed Brown," and then we got up and went over to the scene.

Q. Did you see this car hit Brown—did you see
page 46 } the truck hit Brown?

A. Brown—no, I couldn't see. Brown was in front of the truck when it pulled in. That cut Brown off from me—I was watching.

Q. How was the truck going when it hit Brown?

A. It come on up the street and pulled around this way (indicating)—see, that cut the wheels and my view from Brown and when I saw Brown again, he come over the fender of this truck.

Q. You say the truck was cut?

A. Yes.

Q. Where was the truck heading?

A. Towards the street on the other side.

Q. Towards the sidewalk, you mean?

A. Yes, sir; like this (indicating).

Q. Cutting in?

A. Yes, sir. See, that cut my view off from Brown.

Q. Do you know where Brown was when he was hit or how far across the street?

A. He was over—I couldn't exactly see how much but it looked like he was over—there at the white line from the distance I was.

Q. Did you go over there after he was hit?

A. Yes, sir.

Q. Did you see him get up—did you see Brown
page 47 } get up?

A. John Medley picked him up. He didn't get up by himself.

John R. Anderson.

Q. He picked him up?
A. Yes.
Q. Where was he when he picked him up in relation to the white line and white parking line?
A. Looked like he was right on the white line when he picked him up, from as far as my recollection but it's been a good while.
Q. Picked him up right on that white parking line?
A. Yes.

Mr. Edmunds: That's all.

CROSS EXAMINATION.

By Mr. Anderson:
Q. Did you see Mr. Arthur's truck prior to the collision—before the collision took place?
A. Yes, sir; coming up the street.
Q. Did you see it—where was it coming from?
A. It was coming up the street.
Q. Well, where was it when you first saw it?
A. I don't know—about the distance of a couple of cars down the street.
Q. How far did it appear to you, or how fast did it appear to you to be traveling?
A. Well, it was just moving. It was just coming
page 48 } on up the street—I couldn't tell exactly how fast.
Q. Did it appear to be moving very slow or slow or at a rather rapid speed?
A. It wasn't going too fast but it was moving on.
Q. So it was going something—slow then; is that what you are saying now?
A. Yes, sir.
Q. Where were you standing at the time?
A. I was sitting in my car.
Q. Oh, you were sitting in the car, and that was the car which Brown had just gotten out of?
A. Yes; that's right.
Q. What position in the car were you in?
A. Sitting kind of like this (indicating).
Q. I mean, what part of the car were you in—were you under the wheel?
A. Under the steering wheel.
Q. You were under the steering wheel, so you had a plain view right across the street there?

John R. Anderson.

A. Yes.

Q. Now, Brown got out of your car and on which side of the car?

A. On the side of the street.

Q. On the side of the street. And then, he did what?

A. Well, he looked across the street and then
page 49 } looked down the street and then went on across.

Q. He looked down the street and he looked up the street and then went across?

A. Went across.

Q. What else did he do?

A. Well, then?

Q. Yes. He walked straight across, did he?

A. He walked straight across; yes.

Q. Walked straight across the street?

A. Yes.

Q. Now, you state that he walked straight across the street now; and a few moments ago, under examination by Mr. Edmunds, I gathered you might be trying to say at an angle rather than directly straight across the street.

A. Well, like this (indicating).

Q. By "this," do you mean—let's come right up here a moment.

(Counsel and witness went to the survey on the blackboard.)

Q. (Continued) This, I understand, is about where your car was (indicating). Will you state and show to the jury here which direction he took crossing that street?

A. Well, when I looked at him, I said he was right there (indicating)—looked like he was going straight across in my view.

Q. Going right straight across?

page 50 } A. Yes.

Q. And you didn't mean then that he was going at an angle, which you stated awhile ago on cross examination?

A. No; this way (indicating).

Q. Went straight across the street.

A. You see, I said like this (indicating).

Q. You mean that he went straight rather than at an angle?

A. Yes.

Q. Now, this is the sidewalk here (indicating) and these

John R. Anderson.

are the parking areas (indicating). Was he bothered with any traffic on across the street until he come into contact with the truck?

A. No; weren't no traffic there.

Q. No traffic whatsoever. There was not a car coming or going in either direction or in either lane except—

A. Except this car.

Q. —except Mr. Arthur's pickup truck; is that right?

A. Yes.

Q. So you watched him really and had a clear view all the way across the street, didn't you?

A. Yes.

Q. Now, he had about reached what point in relation—

page 51 } this is the parking line—(indicating), this is the sidewalk over here (indicating). Now, what point along here had he reached when he was struck (indicating)?

A. Along here (indicating)?

Q. In other words, he had reached the line or almost the line?

A. Almost the line, from where I could see.

Q. From what you could see?

A. From what I could see, yes.

Q. And what place down in this area (indicating), did you see Mr. Arthur's truck first?

A. It was where he said he come from here (indicating); looked like to me he was about—when I saw this car,—about several lengths of a car.

Q. About several lengths of a car. Then you don't say Mr. Arthur's car was coming all the way up the street or he was in a parking area then when he came out?

A. No; I don't say that.

Q. But you do know—

A. He was coming up the street.

Q. But you do know that man stopped here (indicating) and he looked both ways and then walked immediately across the street?

A. Yes.

page 52 } Q. And he had no reason to look again; is that correct?

A. I don't know if he did. I didn't see no car coming—I don't think he would have.

Q. So the man did not look any more after he checked his traffic across?

A. Well, I wouldn't know about that.

Alfred H. Carter.

Q. Well, you were watching him, weren't you?

A. Well, he had his back turned to me then.

Q. Well, did you see his head turn or look down the street, or up the street?

A. No; if his head was turning, I don't know.

Q. Which way was it turning?

A. He looked—it looked like to me, it turned both ways.

Q. So, he was looking both ways going across the street, you say; is that right?

A. He looked like he come down and cut his head and sometime the other way, too.

Q. But you don't know that he turned his head looking down the street when Mr. Arthur's truck was coming, do you?

A. Well, I imagine that he thought he had done got across the street, because this truck come up and come around a car there.

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page 56 }

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MR. ALFRED H. CARTER,

called as a witness in behalf of the plaintiff, having been previously sworn, testified as follows:

CROSS EXAMINATION. (Continued)

By Mr. Allan Garrett:

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The Witness: This distance (indicating) was taken from my map of the courthouse lawn, which was an accurate map made in preparation of the courthouse work here. That was taken from this and, of course, I have the dimensions which are other than this but this was a projection of the sidewalk to the jail—128 feet (indicating). Coming this way then to Edmunds Boulevard, you don't have quite enough distance on the map to get it on this map. You get out here (in-

dicating) but the actual distance was 143 feet to the edge of that and the power pole, which I was requested to measure, is directly off of the corner of the medical clinic—just this east side of it, of the parking arae, just off the sidewalk (indicating).

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page 58 }

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MR. RICHARD TRENT,

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

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page 62 }

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CROSS EXAMINATION.

By Mr. Earle Garrett:

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page 63 }

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Q. But Brown got out on the side towards the
page 64 } street, didn't he?

A. I believe so; yes, because Brown was sitting on this side (indicating) and I was on this side (indicating) and he got out onto the street, I think and went straight across. That's the way it was.

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page 65 }

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James Coleman.

Q. Where was he when you got over there and he was being helped up off the street; where was that point with reference to one of those stores over there?

A. Well, I thought it was right there in front of Dr. Wooding's office.

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page 70 }

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MR. JAMES COLEMAN,

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Edmunds:

* * * * *

Q. Were you in the Town of Halifax on the afternoon of February 18, 1959, around 4:30?

A. Yes, sir.

page 71 } Q. Where were you at that time?

A. Standing across the street there between Anderson's Grocery Store and the doctor's office.

Q. Who was standing there with you?

A. John Medley.

Q. Now, tell the Court did you see Alfred Brown come across the street?

A. Yes, sir.

Q. Where did you see him come from?

A. He got out of the car on this side of the street (indicating) and came straight across the street.

Q. And when you say came straight on, you mean straight across?

A. Yes, sir; came straight across.

Q. Do you know whether or not he was looking as he came across?

A. Well, I guess he was looking. I wasn't paying that much attention. He come straight on across the street there.

Q. Was he walking?

A. Yes, sir; he was walking.

James Coleman.

Q. Now, did you see a truck—a vehicle—operated by this man (indicating defendant)?

A. Yes, sir; I seen a truck come up the street there.

Q. Now, tell the Court what you saw or observed
page 72 } about the truck.

A. Well, the truck was coming up the street, moving along kind of slow then, and there in front of Mr. Hankin's is a yellow mark there which means no parking there in that area.

Well, the truck undoubtedly—the fellow driving started to pull in there and he seen the sign, I guess, which said no parking. He just turned right on and kept on moving up the street slowly and pulled right in front of the car.

Q. Pulled around the car?

A. Yes.

Q. What kind of a car was parked there; did you see him—the vehicle—strike Brown?

A. Yes, sir.

Q. Where was Brown at that time?

A. He was about at the line—about another step he'd be across the line.

Q. You mean at the line—you mean the parking line?

A. Yes; the white line there.

Q. What part of his body was struck?

A. He was struck on his hip back here (indicating).

Q. On the back?

A. Yes.

Q. Which way was this vehicle headed when it struck?

A. Going up the street like it was going to turn—like he was going to turn there—for another parking
page 73 } and come around.

Q. Kind of coming around the truck or car out there?

A. Yes.

Mr. Edmunds: Witness with you.

CROSS EXAMINATION.

By Mr. Earle Garrett:

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Officer Woody Bane.

Q. Where was he then?
A. One more step, he'd been across the line.
Q. One more step is three feet. And three feet from that white parking line would have put him out in the traffic lane of Main Street here in Halifax, wouldn't it?
A. It wouldn't put him out that far.
Q. Where would it put him them?
A. Would have put him one more step—would be across the line.
Q. Well, he didn't make that one more step. He got hit before he made that one step. Isn't that right?
A. Yes.
Q. And so, when he was hit, where was he—that's what I want you to tell the jury.
A. When he got hit, he got hit by the car right at the edge of the line.
Q. But on the side of the line out towards the street, rather than towards the storehouses?
A. He wasn't across the line; he had one more step.

page 80 }

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By Mr. Earle Garrett: (continues examination)
Q. How fast was the truck going?
A. I couldn't tell you that. I never owned a car in my life and I couldn't tell you.
Q. You don't drive one?
A. No; I don't drive.
Q. Was he going fast or slow?
A. Creeping along like.
Q. Creeping along? Just creeping?
A. Yes.

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page 84 }

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OFFICER WOODY BANE,
called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Officer Woody Bane.

DIRECT EXAMINATION.

By Mr. Edmunds:

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Q. Where was Mr. Arthur?

A. A red truck was parked right in front of the 5 & 10¢ Store and they said the driver of it was in the 5 & 10¢ Store and that it was Mr. Arthur, when I first got to the scene.

Q. Brown was on the sidewalk and Mr. Arthur was up at the 10¢ Store when you got there?

A. Yes, sir.

Q. Was there any mark or anything in the road to indicate where the accident happened?

A. Not that I observed.

page 86 }

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CROSS EXAMINATION.

By Mr. Allan Garrett:

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page 88 }

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Q. What is your opinion as to the way the street lines were marked on February 18, 1959?

A. The center lane was a dual white—dual white lines there. There were just two lanes of traffic is my opinion. However, it was being used for three lanes for the left turn traffic coming from South Boston to turn left up 360, the

page 89 } the center lane would be, and the outside lane towards Williams 5 & 10¢ Store on that side they was using it to keep straight through but the State had not marked it as such at that time. That is my opinion.

James A. Guthrie.

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Q. Well then, there were no physical facts indicating any speed on the part of the truck, were there, Officer Bane?

A. Not that I observed.

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page 90 }

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MR. JAMES A. GUTHRIE,

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Easley:

* * * * *

Q. Where were you on the 18th of last February, the day this accident occurred, when the car struck the

page 91 } man?

A. I was sitting in my cab on the corner up there.

Q. Did you see the whole scene?

A. Yes, sir; I think I saw about all of it.

Q. Well now, what did Brown do—he drove up in front of you, didn't he—your car was parked behind?

A. He was parked about two spaces down the street from where I were.

Q. What did he do when he got out of the car?

A. He got out and walked across the street, started across the street, and the truck somehow was involved. I don't know whether he was backing out from in front of Hankin's or just pulled in and pulled around, but he kind of hesitated like he was going to wait for the truck and then he went ahead, and as he went ahead he got almost across to the white line where you park at when the truck pulled out and hit him.

Q. Now, your statement is that when he first got or was about the middle of the street that he hesitated?

A. No; I don't believe he was quite to the middle of the

street when he hesitated. He might have hesitated, watching for another car; I'm not sure.

Q. Could you tell whether or not he was looking for cars?

A. He did look up towards my cab. I know he looked that way to see if there was anything coming.

Q. And then, when this truck hesitated—

page 92 } A. That's true.

Q. Then he moved on forward?

A. That's right.

Q. And this truck came around and struck him?

A. That's right, sir.

Q. Could you tell that the truck, as it passed by a car in front of it, did it then turn into the sidewalk to park?

A. I couldn't tell whether he did or not at that time. At that time, he had hit him and I couldn't tell. Of course, I wasn't watching just that close.

Q. Where was this man picked up; did you go over there where he was?

A. I went over there but they had picked him up, and it seemed he fell right on the white line—close to the white line—at the parking—where they park at over there. That's where his shoulders were. Now, his feet was over near the sidewalk.

Q. Did you see his body when the car struck it; what happened?

A. Yes.

Q. What did it do?

A. It hit him in the hip and his feet went out from under him and he kind of rolled over the right fender of the car and down on the ground.

Q. And then down on the ground?

page 93 } A. Yes.

Mr. Easley: Witness with you.

CROSS EXAMINATION.

By Mr. Allan Garrett:

Q. Mr. Guthrie, you were parked sitting in your taxicab?

A. That's right, sir.

Q. Would you show the jury on this map up here—on the bulletin board—where your taxicab was. Just step around here please.

(Counsel and witness went to the diagram on blackboard.)

James A. Guthrie.

Q. (Continued) Now, this indicates the courthouse steps (indicating); this is the walk (indicating), these are the parking areas (indicating). Now, this side of the street is Williams 5 & 10 (indicating) and River Ben Medical Center (indicating).

A. This is my space right here (indicating).

Q. And this is your parking space (indicating)?

A. Right here (indicating) on the same side of the street as the courthouse.

Q. Were you sitting under the driver's wheel?

A. Yes; I was sitting under the driver's wheel.

Q. Which of these parking spaces was the car parked in?

A. In here (indicating).

page 94 } Q. Show the jury clearly which parking space the car was in that Brown got out of.

A. This one right here (indicating).

Q. Are you positive?

A. I'm almost positive it was that one because there was nothing between us here (indicating). I believe he went right down to this sign here where he parked.

Q. So he was in the first parking space?

A. I believe so.

Q. And close up to the courthouse steps?

A. Yes; that's right, up towards me.

Q. Was there anything in these two parking spaces?

A. No, sir; I don't think it was.

Q. Did you see which side of the car Brown got out of?

A. No; I didn't. When I saw him, he was starting across the street.

Q. All right. Now, which way did he cross the street when he started across?

A. Kind of a bias like this (indicating).

Q. Kind of a bias?

A. Yes.

Q. Show the jury with your hand what you mean by "kind of a bias"?

A. Well, he went—instead of going straight
page 95 } across here (indicating), he went kind of—west up this way (indicating).

Q. He went up the street, or not, as he was crossing?

A. That's right.

Q. He was crossing the street at an angle then?

A. At an angle; that's right, sir.

Q. And you were facing south and looking right at Brown at the time?

James A. Guthrie.

A. That's right.

Q. Now, you operate the taxicab and—

A. That's right.

Q. —and you're as familiar, I suppose, with the streets as anyone would be?

A. That's right.

Q. And now, could you tell the jury whether or not on the date this accident happened that these lines were in the street this way or were they different?

A. No; just this center line was here then (indicating), but no line over here (indicating).

Q. All right, sir.

A. Otherwise, just the two-way traffic was there.

Q. All right, sir. Was this line in the exact center of the street (indicating) or was it located as shown on this map?

A. It was in the center, I believe. I believe they

page 96 } changed that.

Q. Just the double lines and they were located in the center of Main Street?

A. Yes, sir; in the center.

Q. Now, as Brown started across the street, can you state whether or not he looked as he first started across the street?

A. He looked up my way.

Q. Did he look the other way?

A. I believe he did because he kind of hesitated a little bit before he kept going.

Q. All right. Now, where was he when he hesitated?

A. Oh, he went about just two or three steps over here in the street (indicating).

Q. So he had started across the street, taking two or three steps, and then he looked?

A. Then he kind of hesitated. Evidently, he looked my way first—I'm pretty certain he did, because that lane was clear, so he could go halfway before he looked down the street.

Q. All right. Did you watch him as he crossed the street from that point?

A. No: I wasn't watching from there. I saw the truck was backing out there and just imagining in my mind, after it happened, that's why he hesitated because he saw the truck move. And then after the truck had stopped, he just went on.

page 97 } Q. It looked like to you that Brown saw the truck?

A. Yes, sir; he did to me.

James A. Guthrie.

Q. Now, when Brown decided to go on, did he ever look back south again?

A. Now, I wouldn't know. I wouldn't say that way.

Q. You don't know whether he did or not?

A. Because I really don't know whether he did or not, because I saw the truck pulling off then and I don't know whether he looked or not.

Q. You were looking at him as he crossed the street, weren't you?

A. Yes.

Q. Did you see him turn his head again to look down?

A. No; I couldn't say he did.

Q. You didn't see him turn his head any more, once he decided to cross the street?

A. No; no.

Q. And when he hesitated, wasn't he approximately a third of the way across the street there (indicating)?

A. Yes; he would have been—not a third of the way across the street but a third of the way across the first lane of it, I'd say; yes.

Q. He hesitated at that point and he went across the street without looking any more?

A. I don't know whether he looked any more page 98 } or not now; I wouldn't say.

Q. All right. Just one other thing on the map. Will you locate where Brown was when he was struck?

A. Approximately right along here (indicating). That's the sidewalk (indicating) and it would be right along here (indicating).

Q. He was approximately opposite the center of the River Bend Clinic?

A. That's right.

Q. All right. That location, with reference to these stores—now, locate Brown with reference to where he was in the street: how far in the street was he when he was struck?

A. I believe this is a parking lane (indicating).

Q. These are the parking areas here (indicating) and this is the walk or the sidewalk.

A. He was approximately a foot and a half—maybe two foot—off of this line (indicating). Otherwise, if he had just had time to make about one or two steps, he'd have been behind the car.

Q. He needed to take one or two more steps?

James A. Guthrie.

A. Yes; and he would have been out of reach of the truck, because there was a car parked in this spot here (indicating).

Q. There was a car parked there—in which spot?

A. This spot right here (indicating)—right in front of Anderson's Grocery Store—a black Ford sitting

page 99 } there.

Q. All right, sir. Come back around now please.

(Witness returned to witness stand.)

Q. (Continued) Mr. Guthrie, do you remember giving a statement to me sometime ago concerning how the accident happened?

A. Yes.

Q. Do you recall telling me that Brown was in the center of that lane when he was struck?

A. I said close to the center.

Q. Close to the center of that line?

A. Yes, but I would say he would have been from two to two and a half or three feet from the parking lane—not over that.

Q. But you do recall telling me that he was in about the center of that lane?

A. Close to the center of the lane; yes.

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RE-DIRECT EXAMINATION.

By Mr. Easley:

Q. Just one minute, Mr. Guthrie. There is one thing I want to clear up. As I understand, when Brown started across the street, he hesitated?

A. He hesitated after he started as if he had seen a car coming or was waiting to see if it was coming or going to do.

Q. And then, at that time, what was the truck doing?

A. As well as I can remember, the truck had either backed up a little bit and kind of got straightened up and down the highway and stopped as if he was looking back to see if anything was coming.

James A. Guthrie.

Q. Well now, when that truck started forward, was there anything to obscure the vision of the driver of that truck—of Brown—where he was on the highway?

A. I don't think it would have been because he had a clear view in front of him.

Q. And how far was the truck at that time from the point where he struck the man?

page 101 } A. I would say approximately 15 to 20 feet.

Q. 15 to 20 feet. And he had backed up and stopped and then started forward?

A. That's right, sir.

Q. And by the time he started forward, this man was—was he in plain view of him?

A. Yes, sir; he could have been.

Q. Could you tell whether the man that was driving the car was looking forward or looking back?

A. I couldn't tell but it appeared to me that he was looking back to see if there was anything coming up the street before he pulled out into the lane.

Mr. Easley: That's all.

RE-CROSS EXAMINATION.

By Mr. Allan Garrett:

Q. Mr. Guthrie, you say that Brown was in plain view for the pickup truck?

A. Yes; I would say he could have been but now, whether he was looking at him, I don't know.

Q. Well, all right, sir. Wasn't the truck in plain view for Mr. Brown to see the truck?

A. Well, yes, it could have been for either one of them.

Q. If either one of them had looked, they would have seen the other?

page 102 } A. That's right; that's true.

Q. Was there anything at all to obstruct Brown's view of that pickup truck?

A. Not as I know of.

Q. And it was a red truck, I believe, wasn't it?

A. Yes, sir.

Mr. Allan Garrett: All right, sir; thank you. That's all.

The witness stands aside.

MR. ALFRED R. BROWN,
the plaintiff, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Edmunds:

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Q. After he stopped the car, what did you do?
A. Well, I got out and started across to Mr. Anderson's Grocery Store to get some things.
page 104 } Q. You were going to Anderson's Grocery Store across on the other side?
A. Yes.
Q. All right. Did you look before you started?
A. Yes, sir.
Q. Did you look as you went across the street?
A. Yes, sir.
Q. Do you recall whether or not there were any other vehicles on the street or passing at that time?
A. Well, it was one or two. One went one way and another went the other. That was when I was—I mean, just as I got out of the car, and I didn't move until they passed. You know, the one passed going that way (indicating) and the one passed going that way (indicating). I just stood there until they got by. I mean, until they went each way.
Q. Now, you waited for that vehicle to pass and you started across the street; is that right?
A. Yes, sir.
Q. How far did you get across the street before you saw this man's truck?
A. Well, I guess I got about the center of the street and I seed the truck coming up the street. Well, I stopped, and this man pulled into below there somewhere and when he pulled in there, then I started straight on across.
Q. You started across the street and you saw
page 105 } this man coming?
A. Yes, sir.
Q. And you saw him put in. Where did he pull in?
A. I don't remember now exactly which spot it was but it was down below where he hit me at.

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Q. How far down below?
A. Looked like to me it was about as far from here to the wall (indicating).
Q. Just about that?
A. Something like that. I don't remember exactly how far.
Q. Did he pull in there as though he was going to park?
A. Yes, sir.
Q. When you saw him do that, you started across the street?
A. Started across the street.

Mr. Earle Garrett: I don't mean to object unnecessarily but he is leading the witness there, I believe.
The Court: Yes; just let him testify.

By Mr. Edmunds: (continues examination)
Q. All right. When you saw him pull in there, apparently to park, what did you do then?
A. I just went on straight across.
page 106 } Q. Now, do you know how far you had gotten across the street when you were hit?
A. I had got over there on the white line. I thought I was over the white line. Fact is, I rushed until I got there, you know, in the clear, and I didn't go quite as fast then.
Q. Were you struck by a vehicle?
A. Yes, sir.
Q. What part of your body was struck?
A. I was struck up here in the hip (indicating)—in the back rather, just above my hip.

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Q. Now, did you see this vehicle—you say you saw this vehicle kind of—operated by the defendant—turn in to park?
A. Yes, sir.
Q. Did you see him back out?
A. I didn't see him when he backed out. I seed him pull in there and then I went on across the street, but he did back out and went on around there and hit me in the back before I could move—before I could get out of the way, I mean.

Alfred R. Brown.

Q. Did you see him after he backed up; did you see him head back up the street here towards Volens, or Lynchburg, heading up the street towards where you were?
A. What you mean?
Q. After he backed back, and went up the street—

Mr. Earle Garrett: May it please the Court, we object to the leading form of these questions.
The Court: Let him say what he did after.
Mr. Earle Garrett: We believe he ought not to ask leading questions, if possible.

page 109 } By Mr. Edmunds: (continues examination)
Q. Did you see him after it backed out?
A. Yes.
Q. What did he do?
A. He come on back up the street. I seed him when he come up the street. Well, I kept going across and he just whipped it down there and hit me.
Q. He whipped it into your rear?

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CROSS EXAMINATION.

By Mr. Earle Garrett:

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Q. Yes, sir. Let's get back to the incident which happened on Main Street here in Halifax last February 18th. You were in a car of some kind being driven by John Anderson?
A. Yes, sir.
Q. And you were sitting in the back seat?
A. Yes, sir.
Q. You were sitting in the left rear of the back seat?
A. Yes, sir.

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Q. And the car stopped out here in front of the
page 126 } courthouse?
A. Yes, sir.
Q. It was headed south on Main Street in front of the courthouse building?
A. Yes, sir; headed that way (indicating).
Q. Now, do you know which parking space that car stopped in—whether it was the first one north of the courthouse steps or whether it was in the second one north of the courthouse steps?
A. No, sir; I don't.
Q. Now, did you get out of the car on the side towards the courthouse, or on the side towards the middle of the street?
A. I got out on the side towards the street.
Q. All right. You got out and shut the door and just stood there.
A. I got out and shut the door, and it was a car coming this way, going that way (indicating).
Q. That's north?
A. And one going that way (indicating).
Q. South.
A. And I stood there until they passed.
Q. So, as you got out of this car and stood by its side, you waited for a car headed north to pass and also waited for a car headed south to pass?
A. Yes, sir.
page 127 } Q. Then before undertaking to cross the street, did you look and, if so, which way did you look?
A. I looked both ways.
Q. Did you see anything coming?
A. It wasn't anything coming, but the truck coming from this way (indicating).
Q. That is, from the south to the north?
A. (The witness nodded his head.)
Q. You saw the truck coming?
A. Yes, sir.
Q. And when you first saw that truck, how far away from you was it?
A. Well now, I couldn't say how far away it was.
Q. Well, was it one car length, two car lengths, ten car lengths; can you estimate it?
A. It was further than one or two. I don't remember because I couldn't say how far it was.
Q. Well, could you locate it by a reference to some store

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down the street? You are familiar with Main Street here in Halifax. Now, could you locate it by reference to some other store?

A. Well, when I first seed the truck, it was coming up the street. That's all I know, and I had walked, I reckon, near the middle of the street and seed this truck coming up

page 128 } the street.

Q. All right.

A. Well, then I stopped.

Q. Now, you stopped now. Where were you with reference to the center of the street when you stopped?

A. Well, the truck was coming up (indicating) and I was going to let the truck go on by.

Q. But where were you, or where did you stop?

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By Mr. Earle Garrett: (continues examination)

Q. I asked you before and I'll ask you again. When you saw the truck, where did you stop with reference to the center of Main Street?

A. Say why did I stop?

Q. Where? When you stopped, when you saw the defendant's truck coming, where were you in the street?

A. Well, I was, I reckon, near the middleways of the street when I stopped.

Q. All right. You were in the middle or near the middle of the street when you saw the defendant's truck and stopped. Now, did you watch the defendant's truck to see what it was going to do?

A. Yes, sir.

Q. What did it do?

A. It pulled in somewhere below there. (Indicating) Then I went across. Then I went on across.

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Alfred R. Brown.

Q. All right. Now, I just want you to understand the map. Here are the steps (indicating) and the car you were in stopped in here somewhere (indicating). This is Main Street (indicating) and over here is the 5 & Dime Store
page 131 } and the Medical Clinic (indicating), Anderson's Grocery (indicating), Hankin's Drug Store (indicating), a law office (indicating), a beauty shop (indicating) and a shoe shop (indicating). Now, can you tell now by looking at the map where you are?

A. Well, I was going across the street right straight to Mr. Anderson's place.

Q. You were going from where this car was parked (indicating), over to Anderson's Grocery Store?

A. That's right.

Q. Now, I've got you to the point that you said you waited for two cars to pass. You came on out to the middle of the street and you looked south or to your right?

A. Yes, sir; that's right.

Q. And you saw the defendant's red pickup truck coming?

A. Yes, sir.

Q. Then you said it did something. I want you to tell what it did and point out on the map where it did it—whatever it did.

A. It pulled in here somewhere (indicating). I don't know exactly where but he pulled in there somewhere and when it pulled in there, I lit across.

Q. And when it pulled in there, you lit across the street?

A. Yes, sir; and he pulled back. He pulled out
page 132 } and backed out and I thought he was going up the street and he just whipped in behind me (indicating).

I didn't see no sign of nothing that he was going to pull in there and he just whipped in behind me.

Q. I just want to follow you across that street now, step by step, if possible. You have now testified that when you first saw the red pickup truck of the defendant's, it was to your right and to the south an unspecified distance away, and you stopped at or near the center of Main Street. You then saw it pull in as though it was going to park?

A. Yes, sir; pulled in like.

Q. And then, as you said, you lit on across the street?

A. Yes, sir.

Q. Now, how many steps did you take—or can you estimate the number of steps that you took before you looked and saw that truck again?

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A. I couldn't say how many steps I took.
Q. Well, you said you lit on across the street—
A. Yes, sir.
Q. —and somewhere between the center of the street and where those other cars were parked over there, you say you turned and looked and saw the truck again?
A. Yes, sir; I did, back.
Q. When he backed out and was coming back
page 133 } down, or north, on Main Street in motion?
A. I said going that way (indicating).
Q. Well, that way, or pointing that way is North; right?
A. (The witness nodded his head.)
Q. Or towards Lynchburg?
A. Yes, sir.
Q. So when you looked again, it was in motion and going north towards Lynchburg?
A. Yes, sir.
Q. And how far was it from you then?
A. Well, I can't say exactly how far it was. I just don't know the distance.
Q. At one time you told the jury that—that is, on direction examination—that truck was as far as from where you are sitting to that wall. Now, when was that?
A. Well, that was after, as near as I can guess at it, after he pulled out from wherever it pulled in.
Q. All right. Now, how far would you estimate it is from where you are sitting to that wall?
A. Well now, I couldn't say accurately.
Q. Well, can you step it?
A. I can step it.
Q. Will you step from that chair to the wall and tell us how far it is?
page 134 } A. I can't step no good steps.

The Court: I think it's 25 feet, or so.
Mr. Earle Garrett: Could it be stipulated that that distance is 25 feet?
The Court: It is 39 feet across the courtroom.
Mr. Easley: That's approximately correct.
Mr. Earle Garrett: Then it is agreeable for the record to show that that distance is about 25 feet?
The Court: Yes; about 25 feet.

By Mr. Earle Garrett: (continues examination)
Q. So when this red pickup truck of the defendant was at a

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point 25 feet from you and in motion and headed north on Main Street, you still undertook to light across the street and get across before it got to where you were; is that right?

A. Well, when he backed up some and started out, I had when he went—as I mean to say, I was about middleway, as near as I can get at it, and when he turned in there,—when he pulled in some place, or when he pulled in, then I started on across the street.

Well then, he backed out back in and just whipped on around and hit me right there at the white line. I was over the white line—the other side of the white line—or something.

Q. But you just said that before you finished crossing the street, you looked back and saw him again and
page 135 } he had backed out and was coming back down Main Street north and in motion?

A. Yes; he was coming this way (indicating).

Q. Now, I'll ask you that if, on direct examination, if you weren't asked this question:

Q. Did you see him after he backed up?

A. Yes, sir; I did.

Q. Did you see him head back up the street here towards Volens or Lynchburg, heading up the street towards where you were?

A. Yes, sir; I did.

Q. After he backed up and went up the street, did you see him after he backed out?

You answered, "Yes."

Q. What did he do?

A. He came on back up the street. I seed him when he come up the street. Well, I kept going across and he just whipped it down there and hit me.

Is that what you are telling this jury?

A. He didn't give no sign that he was going to turn in. I thought he was going up the street and I done
page 136 } got out of the road. I done got out of the road.

Q. All right. Now, after you had reached the middle of the street and lit on across the rest of it there and looked back and you saw him coming up Main Street, you say you had already crossed the street. Now, where were you then when you got hit?

Alfred R. Brown.

A. I was over there in the car lane when I got hit.

Q. In other words, you had already crossed the street and gotten across that white painted line and gotten into the parking space when he pulled in there and hit you from behind. Is that what you are telling the jury?

A. Yes, sir; yes, sir.

Q. Then you deny that you were struck by the truck while you were still in the traffic—north-bound traffic—lane of Main Street here in Halifax?

A. How's that you say?

Q. You deny that you were out in the street when you were hit?

A. No, sir; I wasn't in the street.

Q. Now, I believe you testified on direct examination that you rushed across the street. What do you mean by saying, "rushed across the street"?

A. Well, after when he pulled in there, I started out and rushed on across the street before anything else come along—

page 137 } wasn't anything else coming right then—and he just pulled out in the street. I mean, backed out and come on and that's the time when I rushed on and got over there in the clear, as I thought, and he just whipped in there behind me.

Q. Well, what I would like to understand—and I don't mean to try to confuse you when I ask you—if there was no other traffic and you had waited for the other cars to go by and if the defendant's truck was pulling in, as you thought it was going to pull in to park, then why was there any necessity for you to rush, because there was no other traffic and the defendant's truck was going to pull in there to park—then why did you have to rush?

A. Well, I just rushed to get on out of the way before anything come along.

Q. Now, wasn't it the other way around, that you started on across there and you looked at that truck and saw it headed in and thought that it was going to park, and then you decided, "Well, I'll just go on across the street and walk across the street," and you never looked again?

A. Yes, sir; I did. I looked again and seed him when he backed out and seed him when he was coming up the street.

Q. Well then, if you looked again, how was it that you were hit out in the traffic portion of the highway?

A. I wasn't hit in the traffic portion of the highway.

Q. Do you know where you were hit?

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A. I was hit over there on the other side of the
page 138 } white line, as near as I know.

Q. I say, do you know?

A. So far as I do know, I was hit next to the street from the traffic line.

Q. Well now, how do you know that you were hit on the other side of that white parking line?

A. Well, I said as far as I know. I done got that far and I thought I was in a safe place and I didn't know he was going to turn in and pull in there.

Q. In other words, when you turned, as you say, and looked again and saw the truck had backed out and was again headed towards you, you thought you had made it, didn't you?

A. Well, I had made it. I got out of the street and I thought he was going on by, but he whipped in there and I didn't know he was going to whip in there. I thought he was going on by and I rushed out. I did rush, until I got over there off the street and went in. I was bound to—and there was another car sitting there—and I got out where the other car was and he just whipped in there the other side of the other car and hit me.

Q. Are you in a position to tell that jury, under oath, that you were on the east side of that white painted line when you were struck by that truck?

A. I really think so.

Q. I know that you think so but I say, can you
page 139 } tell the jury positively of your own knowledge
exactly where you were when you were struck?

A. I can't and declare to it but I think it's so.

Q. You think so but you can't declare to it?

A. No, sir; I can't declare to it.

Mr. Earle Garrett: That's all.

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A Copy—Teste:

H. G. TURNER, Clerk.

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