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Record No. 5291

In the Supreme Court of Appeals of Virginia at Richmond

SADIE M. CORBETT

v.

SHIRLEY ANN BONNEY

FROM THE COURT OF LAW AND CHANCERY 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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 5291

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond Wednesday the 11th day of January, 1961.

SADIE M. CORBETT, Plaintiff in Error,

against

SHIRLEY ANN BONNEY, Defendant in Error.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of Sadie M. Corbett a writ of error and *supersedeas* is awarded her to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 27th day of July, 1960, in a certain motion for judgment then therein depending wherein Mrs. Shirley Ann Bonney was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of seventy-five hundred dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

* * * * *

MOTION FOR JUDGMENT.

To: Sadie M. Corbett.

TAKE NOTICE that the undersigned hereby moves the Court of Law and Chancery of the City of Norfolk, Virginia, at the Courthouse thereof, for a judgment and award against you in the sum of Twenty-five Thousand Dollars ($25,000.00) plus interest and costs incident to this proceeding, for this, to-wit:

1. That on the 15th day of August, 1959, at approximately 10:00 A. M., the Plaintiff was a passenger in a vehicle owned and operated and controlled by her husband, Maurice Bonney, and such vehicle was stopped in compliance with a traffic control facing west on Independence Boulevard near its intersection with Tryon Street in the City of Charlotte, North Carolina.

2. That at the time and place aforesaid, the said Defendant Sadie Corbett owned, operated and controlled a certain vehicle traveling in the same westerly direction on Independence Boulevard near its intersection with Tryon Street in the City of Charlotte, North Carolina, and that said

page 2 } Defendant Sadie Corbett operated her vehicle in a negligent and reckless manner thereby causing her vehicle to crash into the rear of the vehicle in which the plaintiff was riding as a passenger.

3. That as a direct and proximate result of the negligent and reckless manner in which the Defendant was operating her vehicle the Plaintiff was permanently and seriously injured.

4. That the said injuries sustained by the Plaintiff were through no negligence, fault, or failure of his own.

5. That these injuries to the Plaintiff, and the shock resulting from the accident, have caused and are continuing to cause, and will in the future cause to the Plaintiff great pain and suffering, both mental and physical, and that said injuries have required the Plaintiff to expend large sums of money for doctors, nurses and treatment, and said injuries are continuing to cause and will in the future cause the Plaintiff to expend large sums of money to effect a cure. Some of said injuries will have a permanent effect on Plaintiff's health and have caused her to be sick, sore, lame, disfigured and dis-

abled for a long time, and probably for the rest of her life she will continue to be maimed and disfigured and will suffer great physical pain and mental anguish. The Plaintiff has also been caused to lose time from work and engaging in any productive occupation, and has suffered and will continue to suffer loss of earnings. The said injuries will continue to permanently disable her *frim* all other activities formerly associated with her person and station in life.

page 3 } WHEREFORE, the Plaintiff moves the Court for a judgment and award against you in the sum of Twenty-five Thousand Dollars ($25,000.00) with interest as provided in the Code of Virginia, Section 8-223, together with costs aforesaid.

MRS. SHIRLEY ANN BONNEY,
By ROBERT S. COHEN
Of Counsel.

AMATO, BABALAS, BREIT and
COHEN, p. q.
Helena Building
Norfolk, Virginia.

Filed in the Clerk's Office the 23 day of October, 1959.

Teste:

W. L. PRIEUR, JR., Clerk
L. W. CALVERT, D. C.

* * * * *

page 4 }

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PROOF OF SERVICE.

Returns shall be made hereon, showing service of Notice issued October 23, 1959, with copy of Motion for Judgment filed October 23, 1959, attached.

Executed on the .... day of ....., 19 ...., in the City of ....., Virginia, by delivering a true copy of the above mentioned papers, attached to each other, to ..... in person.

.....
Sergeant, City of ....., Va.
By .....Deputy Sergeant.

Not finding Sadie M. Corbett at her usual place of abode, the above mentioned papers attached to each other, were executed on the 26 day of Oct. 1959, in the City of Norfolk, Va., by delivering a true copy of same to Mr. J. W. Corbett whom I found at the usual place of abode, a member of her family above the age of sixteen years, and by giving information of its purport to him he being her husband.

CHARLES H. LEAVITT
City Sergeant of Norfolk, Va.
By A. LESKO, Deputy.

Returned and filed the 27 day of October, 1959.

W. L. PRIEUR, JR., Clerk
By L. W. CALVERT, D. C.

page 5 }

* * * * *

PLEA OF RELEASE.

Now comes, Sadie Corbett and says that the Plaintiff should not be permitted to pursue this cause further because of the following:

1. That heretofore, on the 16th day of August, 1959, in the City of Charlotte, North Carolina, for and in consideration of the sum of One Hundred Ninety-Seven and 96/100 Dollars ($197.96), which sum was paid by the draft of the Celina Mutual Insurance Company of Celina, Ohio; the said Plaintiff, Mrs. Shirley Ann Bonney, did jointly with her husband, Maurice Bonney, release and forever discharge the said Defendant from any and all further claims, demands, rights and causes of action, of whatsoever kind or nature, arising from or by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, loss and damage to property, as a result of the accident which is the subject of this cause of action.

Wherefore, this Plaintiff should not be permitted to pursue this cause further and the Defendant moves that this cause be dismissed with prejudice; and if for any cause this issue

be tried, the Defendant asks that a separate jury try this issue separately and apart from any other matters involved in this controversy.

SADIE M. CORBETT
By ROBERT G. WINTERS
Of Counsel.

PILCHER, UNDERWOOD, PILCHER
AND WINTERS, p. d.
402 Equitable Building
Norfolk, Virginia.

Filed 11-6-59.

H. L. STOVALL, D. C.

* * * * *

page 6 }

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ANSWER AND GROUNDS OF DEFENSE.

Now come Sadie M. Corbett, the Defendant, and states she will rely upon the following as her Answer and Grounds of Defense to the Plaintiff's Motion for Judgment:

1. The Defendant denies that the automobile in which the Plaintiff was a passenger was stopped in compliance with a traffic control on the date and at the place as alleged in Paragraph 1 of the Motion for Judgment.
2. The Defendant denies she was guilty of negligence as alleged in Paragraph 2 of the Motion for Judgment.
3. The Defendant denies that she was guilty of any negligence which proximately caused or contributed to any injuries of the Plaintiff as alleged in Paragraph 3 of the Motion for Judgment.
4. The Defendant denies the allegations in Paragraph 4 of the Motion for Judgment.
5. This Defendant has no knowledge of the allegations contained in Paragraph 5 of the Motion for Judgment and calls for strict proof thereof.
6. This Defendant denies she is indebted to the Plaintiff in the sum of Twenty-Five Thousand Dollars ($25,000.00), or any other sum.

7. This Defendant reserves the right to amend her Answer and Grounds of Defense and to rely upon any defense which may become available to her whether before, during or after trial hereof.

SADIE M. CORBETT
By ROBERT G. WINTERS
Of Counsel.

PILCHER, UNDERWOOD, PILCHER
AND WINTERS, p. d.
402 Equitable Building
Norfolk, Virginia.

Filed 11-6-59.

H. L. STOVALL, D. C.

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page 7 }

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AT LAW #3073
#3074

NOTICE.

To Robert S. Cohen, Amato, Babalas, Breit & Cohen, Helena Building, Norfolk, Virginia:

TAKE NOTICE, that I will move the Court of Law and Chancery of the City of Norfolk, Virginia on Friday, February 26, 1960 at 10:00 A. M. or as soon thereafter as counsel may be heard for the consolidation of the two cases above for purposes of trial on the joint release executed by Shirley Ann Bonney and Maurice Bonney.

SADIE CORBETT
By ROBERT G. WINTERS
Of Counsel.

PILCHER, UNDERWOOD, PILCHER
& WINTERS
402 Equitable Bldg., 300 Boush St.
Norfolk, Virginia.

Filed 2-29-60.

L. M. CALVERT, D. C.

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page 9 }

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ORDER.

AFTER DUE NOTICE, this day appeared the Plaintiff by counsel and the Defendant by counsel and argument was had on the Defendant's Motion to Consolidate the matter of Shirley Ann Bonney *v.* Sadie M. Corbett and Maurice Bonney *v.* Sadie M. Corbett for trial on the Special Plea of accord and satisfaction, and the Defendant's motion for a separate trial of the Plea, and neither party desiring a consolidation of the cases on the merits of the personal injury claims;

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that the case of Shirley Ann Bonney *v.* Sadie M. Corbett and Maurice Bonney *v.* Sadie M. Corbett be heard together for trial on the Special Plea of accord and satisfaction, which shall be separate and apart from a hearing on the liability and personal injury aspects of the consolidated cases, and to which action of the Court the Plaintiff's duly except.

Enter March 4, 1960.

J. S. S., JR.

* * * * *

page 10 }

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INSTRUCTION NO. P-1.

The Court instructs the jury that if you believe from the preponderance of the evidence that the Plaintiff Shirley Bonney, executed the release in evidence under a mistake of any material fact inducing or influencing the agreement or some material matter to which the agreement is to be applied

then the release is invalid and your verdict should be for the Plaintiff Shirley Bonney on the special plea.

Granted 6/13/60.

J. S. S., JR.

page 11 }

* * * * *

INSTRUCTION NO. P-2.

The Court instructs the jury that if you believe from the preponderance of the evidence that the release in question was obtained by the agents of the Celina Mutual Insurance Company from the plaintiff Shirley Bonney by misrepresentation of a material fact relied upon by plaintiff, then such release is not binding upon the plaintiff Shirley Bonney.

Granted.

J. S. S., JR.

page 12 } INSTRUCTION NO. D-1.

The Court further instructs the jury if you believe from the evidence Shirley Anne Bonney signed the release of August 16, 1960, she is bound by the contents of such release and you shall find for Sadie M. Corbett unless you believe the release was obtained under a mutual mistake of a material fact between Shirley Anne Bonney and the agent for the Celina Mutual Insurance Company or a misrepresentation of a material fact by the agent for the Celina Mutual Insurance Company.

Granted.

J. S. S., JR.

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page 13 }

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INSTRICTION NO. P-4.

The Court instructs the jury that even if you believe that the release was not obtained by fraud or misrepresentation, but if you further believe that in execution of such release the plaintiff, Shirley Bonney and the Celina Mutual Insurance Company's agent were mutually mistaken as to either the expression of their agreement or in some matter inducing or influencing the agreement, or in some matter to which the agreement is to be applied, then the release is invalid and your verdict should be for the plaintiff Shirley Bonney.

Refused.

J. S. S., JR.

page 14 } INSTRUCTION NO. D-2.

The Court instructs the jury that before the release can be invalidated on the ground of mistake the plaintiff must show by a preponderance of the evidence that the mistake must be one that was common to both parties to the contract and further that the mistake must be material to the extent that it prevent a meeting of the minds.

Refused.

J. S. S., JR.

page 15 } INSTRUCTION NO. D-5.

The Court instructs the jury that if you believe from the evidence that the plaintiffs in this case were injured as a result of the alleged accident and knew of their injuries and if you further believe from the evidence that they then executed the release in question, then the severity of the injuries are immaterial and the release is not invalid simply because the plaintiffs were hurt worse than they thought they were at the time the release was signed.

Refused.

J. S. S., JR.

page 15A }

* * * * *

INSTRUCTION NO. P-3.

The Court instructs the jury that unless you believe from the evidence that the release was executed by the plaintiff without misrepresentation or fraud by the Celina Mutual Insurance Company's agent and was for valuable consideration, the release in nowise barred the plaintiffs and your verdict shall be for the plaintiffs.

Refused.

J. S. S., JR.

page 16 }

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VERDICT.

We the jury find the release invalid and find in favor of the Plaintiff Shirley Ann Bonney on the special plea.

VICTOR R. HAZELWOOD, Foreman.

(June 13, 1960).

page 17 }

* * * * *

In the Court of Law and Chancery of the City of Norfolk, on the 13th day of June, 1960.

* * * * *

ORDER.

This day came the parties in person and by counsel and thereupon on motions of the parties the above entitled actions at law, on the special pleas only, are to be heard together. And thereupon came a jury to-wit: Edward C. Armstrong, Linwood J. Burroughs, Victor R. Hazelwood, John T. LeGault, Ernest L. McCausey, Roy E. Meeks and Coight E. Parker, who upon being duly sworn the truth to speak upon the issues joined and having heard the evidence of the plain-

tiff, the defendant, by counsel, moved the Court to strike the evidence of the plaintiff, which motion after having been fully heard and maturely considered by the Court is overruled to which action of the Court the defendant, by counsel, duly excepted, and now at the conclusion of all of the evidence the defendant by counsel, renewed her motion to strike the plaintiffs evidence which said motion after having been fully heard and maturely considered by the Court is overruled to which action of the Court the defendant, by counsel, duly excepted. And now the jury having heard the evidence and arguement of counsel returned verdicts in the following words, "We the Jury find the release invalid and find in favor of the Plaintiff Maurice Bonney on the special plea." "We the jury find the release invalid and find in favor of the page 18 } Plaintiff Shirley Ann Bonney on the special plea," thereupon the defendant by counsel moved the Court to set aside the verdicts of the jury and grant her a new trial upon the grounds that the said verdicts are contrary to the law and the evidence which motion after having heard and fully considered by the Court is overruled, to which action of the Court the defendant, by counsel, duly excepted.

Whereupon it is considered by the Court that the special pleas are invalid and of no effect. To all of which actions of the Court the defendant, by counsel, duly excepted.

* * * * * *

page 20 } INSTRUCTION P-1.

The Court instructs the jury that the plaintiff is not guilty of contributory negligence and the defendant is guilty of negligence as a matter of law; therefore if you find by a preponderance of the evidence that the plaintiff has been injured as a proximate result of said accident or if a previously existing condition has been aggravated as a proximate result of the accident, you shall find for the plaintiff in an amount not to exceed the amount sued for; and in fixing the damages, if any, you may consider the extent of the injuries which she has suffered; and the duration thereof; you may also consider the extent, if any, to which any previous condition has been aggravated. You may also consider the bodily pain and mental anguish suffered and probably to be suffered as a result of this accident. You may further consider such sums as have been reasonably expended by her and such sums which will probably be expended by her as a proximate result of this accident.

Granted.

J. S. S., JR.

page 21 } INSTRUCTION NO. D-2.

The Court instructs the jury that the defendant would not be liable for anything other than those injuries, if any, proximately caused by the accident in question, or the aggravation, if any, of a pre-existing condition caused by the accident and it is not sufficient to prove that the plaintiff has suffered from injuries which may have possibly resulted from the accident. She can only recover for injuries, if any, which are shown by the preponderance of the evidence to have proximately resulted from the accident or the aggravation, if any, of a pre-existing condition caused by the accident.

Granted July 27, 1960.

J. S. S., JR.

page 22 } INSTRUCTION NO. D-1.

The Court instructs the jury that the defendant in any event would not be liable, if liable at all, for anything other than those injuries, if any, proximately caused by the accident in question, or the aggravation, if any, or a pre-existing condition caused by the accident and it is not sufficient to prove that the plaintiff has suffered from injuries which may have possibly resulted from the accident. She can only recover, if recovery be had, for injuries, if any, which are shown by the preponderance of the evidence to have resulted from the accident, or the aggravation, if any, of a pre-existing condition caused by the accident.

Refused.

J. S. S., JR.

page 23 }

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VERDICT.

We, the jury, find for the Plaintiff and fix her damages in the amount of $5,000.

JAMES J. McBRIDE, Foreman.

(July 27, 1960).

page 24 }

* * * * *

In the Court of Law and Chancery of the City of Norfolk, on the 27th day of July, 1960.

* * * * *

This day came the parties in person and by counsel, and thereupon came a jury to-wit: C. E. Austin, Chester F. Brown, Wilbur B. Charles, Richard M. Leighton, Earl F. Little, James J. McBride and M. Raymond Meador, whom upon being duly sworn the truth to speak upon the issue joined and having heard all of the evidence, the defendant by counsel moved the Court to strike the evidence of the plaintiff which motion after having been fully heard and maturely considered by the Court was overruled to which action of the Court the defendant by counsel duly excepts, thereupon the Court made the following statement to the jury, "The Court instructs you that if you find for the plaintiff you shall write "We the jury find for the plaintiff and fix her damages at such amount as you shall determine." If you find for the defendant your verdict shall read, "We the jury find for the defendant." I should correct the last statement and instruct you that there is no evidence upon which you can return a verdict for the defendant, and if you find for the plaintiff your verdict shall read "We the jury find for the plaintiff" and fix her damages at such amount as you shall determine." And now the jury having heard the evidence and argument of counsel returned a verdict in the following words and figures, "We the Jury, find for the Plaintiff and fix her damages in the amount of $5,000," thereupon the defendant by counsel moved the Court for a mis-trial or in the alternative set aside the verdict of the jury and grant the defendant a new trial upon the grounds of error of the Court in stating to
page 25 } the jury that there was no evidence upon which the jury could find for the defendant, and upon the further grounds that the said verdict is contrary to the law and the evidence, which motion after having been fully heard and maturely considered by the Court is overruled, to which action the defendant duly excepts.

Whereupon it is considered by the Court that the plaintiff

recover of the said defendant the sum of Five Thousand Dollars ($5,000.00) with interest thereon to be computed after the rate of six per centum per annum from the 27th day of July, 1960 until paid together with her costs about her suit in this behalf expended.

To all of which action of the Court the defendant, by counsel, duly excepts.

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page 26 }

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NOTICE OF APPEAL.

Now comes the defendant, Sadie M. Corbett, and gives notice that she intends to appeal the Final Judgment entered against her by the Court of Law and Chancery on behalf of Shirley Ann Bonney the 27th day of July 1960; this notice is given pursuant to the Rules of Court, Rule 5:1(4) and to that end will prepare and present her petition for a Writ of Error pursuant to Rule 5:1(7) to the Honorable Mr. Chief Justice John W. Eggleston, Norfolk, Virginia, and request the Clerk to transmit the record to the honorable Mr. Chief Justice Eggleston.

SADIE M. CORBETT
By ROBERT G. WINTERS
Of Counsel.

Filed 9-23-60.

H. L. STOVALL, D. C.

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page 27 }

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ASSIGNMENTS OF ERROR.

Now comes the defendant, Sadie M. Corbett, by counsel and for her Assignments of Error states the Trial Court erred in the following particulars:

1. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in overruling the defendant's motion, which continued throughout the trial, to exclude evidence of prior or simultaneous conversations in reference to the terms of writing (release) executed by the plaintiff as such evidence was inadmissable under the parol evidence rule.

2. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in overruling the defendant's motion to strike the plaintiff's evidence of prior or simultaneous conversations in reference to the terms of the writing (release) executed by plaintiff as such evidence was inadmissable under the parol evidence rule.

3. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in overruling the defendant's motion to strike the plaintiff's evidence as the plaintiff failed to allege and prove fraud in the procurement of the release by clear, concise and credible evidence.

4. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in overruling the defendant's motion to strike the plaintiff's evidence as the plaintiff failed to allege and prove a mutual mistake of fact as to her alleged injuries.

5. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in granting plaintiff's instruction P-1 as the instruction improperly states the law of mutual mistake of fact and further is not a correct statement of the law of a mistaken belief induced by fraud or misrepresentation as it merely required the finding of a unilateral mistake to invalidate the release.

page 28 } 6. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in granting plaintiff's instruction P-2 as it is not a complete statement of the law of fraud in the procurement of the release as it fails to properly instruct the jury on the question of what is a material fact and specifically the material fact in issue which the plaintiff relied upon.

7. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in granting plaintiff's instruction P-4 as there was no evidence of a mutual mistake of fact as to the injury or the purport of the release.

8. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in refusing defendant's instruction D-2 as it is a correct statement of the law of mutual mistake of fact requiring the finding by the jury that the mistake was mutual and material to the issue.

9. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in refusing to grant defendant's instruction D-5 as it clearly stated the law requiring that there be an absence of knowledge of injuries rather than a difference in the degree of the known injuries.

10. In the trial of June 13, 1960 on the defendant's special plea of release, the Court erred in overruling the defendant's motion to set aside the jury verdict as the verdict was contrary to the law and evidence, as follows:

(a) The evidence before the jury of conversations regarding the contents of the release prior or simultaneous with the execution of the release were inadmissable under the parol evidence rule;

(b) The plaintiff failed to prove by clear, concise and credible evidence fraud in the procurement of the release;

(c) The plaintiff failed to allege or prove a mutual mistake of fact as to her injuries which was the basis for the mistake.

11. The Court erred in the trial of July 27, 1960 in overruling the defendant's motion to strike the plaintiff's evidence as the medical testimony failed to establish by a preponderance of the evidence with a reasonable degree of
page 29 } certainty the degree of aggravation of a pre-existing condition and to distinguish the treatment necessary to correct the pre-existing and to correct the aggravation thereof.

12. The Court erred in the trial of July 27, 1960 in verbally instructing the jury after closing arguments of counsel that there was no evidence on which the jury could return a verdict for the defendant.

SADIE M. CORBETT
By ROBERT G. WINTERS
Of Counsel.

Filed 9-23-60.

H. L. STOVALL, D. C.

* * * * *

EXH. D-8.

DEPOSITION OF DR. BASIL BOYD, JR.

Pursuant to notice hereto annexed, the deposition of Dr.

Dr. Basil Boyd.

Basil Boyd, Jr. was taken on February 27, 1960 in the office of Pierce, Wardlow, Knox & Caudle, Attorneys-at-Law, Johnston Building, Charlotte, N. C. at 10:00 o'clock A. M.

It is stipulated and agreed by both parties that this deposition may be used in both of the above cases and that further notice of time, place and taking of deposition is waived.

* * * * *

Dep.
2/27/60
page 2 } DR. BASIL BOYD,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Wardlow:

Q. Please state your name.

A. Basil Boyd, Jr.

Q. Are you engaged in the practice of your profession in this town?

A. That's right.

Q. What is your specialty, if any?

A. Orthopedic surgery.

Mr. Millette: We will stipulate Dr. Boyd is a medical expert specializing in orthopedic surgery.

Q. Are you duly licensed to practice in the State of North Carolina?

A. Yes, sir.

Q. Dr. Boyd, on or about August 15, 1959 did you have occasion to see professionally, Shirley A. Bonney?

A. Yes I did.

Q. Would you state the place and circumstance of your professional examination of her?

A. I was called to Presbyterian Hospital to see this lady who stated that on the morning of the 15th she and her husband had been involved in an automobile accident and at the time I saw her, she was complaining of pain in her back.

Dep.
2/27/60
page 3 } Q. Did you examine Mrs. Bonney?

A. Yes.

Q. Were X-rays made of her?

A. Yes.

Dr. Basil Boyd.

Q. Did you examine the X-rays?

A. Yes.

Q. What was your impression as to her condition?

A. My impression in going over her and examining her was she had a complaint of lombar cervical spine. The X-ray was negative.

Q. Did you give her any further treatment?

A. As I recall, I gave her emergency treatment which consisted of a sedative and muscle relaxer and told her to contact her physician on her return to Norfolk if necessary.

Q. Did you see her thereafter?

A. No, that's the only time I had seen her.

Q. What was her condition with respect to mental coherence and understanding?

A. Other than being extremely nervous and upset, I would say she was in contact with reality as well as I can state, never having seen her before.

Q. State whether or not she was able to give you an adequate narration of the reason for her complaints.

A. Yes, she could answer questions and as I say, she was oriented and so far as I know there was no mental aberration as some folks would say.

Dep. 2/27/60 page 4

Q. What was the specific date of your examination and treatment of her?

A. August 15, 1959.

Q. And is it true that she never called on you for any further treatment and you have never given her any further treatment or examination?

A. That's correct.

Q. Did you on or about the date of August 15, 1959, examine professionally or treat Mr. Maurice W. Bonney?

A. No.

Q. Have you seen or treated him professionally at any other time?

A. No.

That is all.

CROSS EXAMINATION.

Mr. Millette:

Q. Dr. Boyd, I believe you stated that on the 15th day of August, 1959 you were called to the Presbyterian Hospital here in Charlotte to examine and treat a Mrs. Shirley Ann Bonney, is that correct?

Dr. Basil Boyd.

A. That's correct.

Dep. 2/27/60 page 5

Q. Approximately what was her age, doctor, when you got to the hospital and saw her and talked to her?

A. Twenty four years of age.

Q. Doctor, did you know why she was in Charlotte?

Mr. Wardlow: Objection: Unless you know of your personal knowledge rather than what someone told you.

A. She told me she and her husband were here on a Jehovah's Witness Convention.

Q. I believe that many of the things you stated about the plaintiff Mrs. Bonney, concerned the history that developed during your examination and treatment of her, is that right?

A. That's correct.

Q. Did you determine anything concerning her educational background?

A. No.

Q. You don't know whether she finished high school or college or anything like that?

A. I have no knowledge.

Q. Do you have any knowledge as to what her occupation or profession was?

A. No.

Dep. 2/27/60 page 6

Q. Did she appear to you, doctor, to have any independent knowledge on medical matters or matters relating to her particular injury?

A. Not that I recall.

Q. In how much detail, doctor, did you go into in describing her injuries to her, or if you did?

A. There again as I recall, I told her that she had a sprained back and that's all I recall telling her.

Q. You didn't at that time, go into the matters of sprain of the musculator or dislocation or anything of that nature? You just said a sprain of the back?

A. That's all I recall.

Q And you don't know whether she understood that or not?

A. No.

Q. Doctor, at any time during your examination or treatment of Mrs. Bonney, did you come in contact with an insurance adjustor?

Mr. Wardlow: Objection. And move to strike.

Dr. Basil Boyd.

Withdrawn.

J. S. S., JR.

A. I do not know. I don't recall.

Q. Doctor, during any time over the period of the 15th and 16th days of August, 1959 do you recall talking to an insurance adjustor in connection with Mrs. Shirley Ann Bonney or Mr. Maurice Bonney?

Mr. Wardlow: Objection. And move to strike.

Withdrawn.

J. S. S., JR.

A. I remember talking to someone. Someone called me about her and asked—I remember someone called me about them and asked me some questions about them. I think it was an insurance adjustor. Further than that I don't remember.

Dep. 2/27/60 page 7 }

Q. Do you recall generally what you were asked about?

A. No, I don't.

Q. Do you recall generally what your answer to this person's questions was?

A. I have no idea.

Mr. Wardlow: Objection. And move to strike as to the whole line of the next preceding three or four questions.

Withdrawn.

J. S. S., JR.

Q. Doctor, did you have occasion to make a report to any insurance company or insurance adjustor on the 15th or 16th of August, 1959 concerning Mr. and Mrs. Bonney?

Mr. Wardlow: Objection.

Withdrawn.

J. S. S., JR.

Dr. Basil Boyd.

A. Not on those two days.
Q. On what days did you make a report, doctor, if you did?

Mr. Wardlow: Objection.

Withdrawn.

J. S. S., JR.

A. I have here on 9/11/59 to the James C. Green Company of Charlotte, a report regarding Mrs. Bonney. Mr. R. L. Frye, adjustor. Then on 9/11/59 a similar report, group insurance, under the name of the company. That's on 9/16/59 to Maccabees Life Insurance Society.
Q. Doctor, I believe you stated that you saw Mrs. Bonney in the emergency room of Presbyterian Hospital?
A. That's correct.
Q. She was not admitted to the hospital as a patient?
Dep. 2/27/60 page 8
A. No.
Q. And that is the sort of thing that you refer to as not being hospitalized, is it not?
A. That's correct.
Q. Doctor, what fee did you charge for your services in this matter?

Mr. Wardlow: Objection. And move to strike.

Withdrawn.

J. S. S., JR.

A. $10.00.
Q. Doctor, you didn't consider that she had a serious injury at the time, did you?
A. No.
Q. You saw her over a period covering about how much time, doctor, if you recall?
A. Well, it would take approximately an hour to examine her and get the X-ray, examine the X-ray and then go back and examine her, write the prescriptions and talk to her about the situation—approximately an hour.
Q. And after you had had X-rays made and examined the X-rays and examined the patient and had discussed matters

Dr. Basil Boyd.

with the patient, you did not feel that she had any permanent injury at all from that examination?

A. From that examination I would say probably not although you couldn't tell from an initial examination.

Q. But I say from what you did and your examination of her at that time and the X-rays, you didn't think she had any serious injury at all?

Dep. 2/27/60 page 9

A. No.

Q. Now doctor, most any injury that you should be called in for an examination on from a person who was in Charlotte from out of town, you would automatically refer that person back to his or her own physician upon returning to his or her home, would you not?

A. That's correct.

Q. And the fact that you referred Mrs. Bonney to her own physician at her home in Norfolk, did not necessarily mean you thought she had any continuing injury from the time you saw her in the hospital?

A. That's correct. I told her to contact her physician if she had further trouble.

Q. You did not anticipate that she would have any further trouble, did you?

A. No.

Q. Doctor, you know of no release of any sort having been signed by Mr. and Mrs. Bonney, do you? I am referring to an insurance company release.

Mr. Wardlow: Objection. And move to strike the word 'insurance company.'

Withdrawn.

J. S. S., JR.

A. Not specifically, no, I don't recall anything about it.

Q. You certainly did not act as a witness to one, did you sir?

A. No, sir.

That is all.

Signature waived.

* * * * *

A. A. Ramsey.

EXH. D-5.

DEPOSITION OF A. A. RAMSEY.

Pursuant to notice hereof annexed, the deposition of A. A. Ramsey was taken on February 27, 1960 in the office of Pierce, Wardlow, Knox & Caudle, Attorneys-at-Law, Johnston Building, Charlotte, N. C. at 10:45 o'clock A. M.

It is stipulated and agreed by both parties that this deposition may be used in both of the above cases and that further notice of time, place and taking of depositions is waived.

* * * * *

Dep.
2/27/60
page 2 } A. A. RAMSEY,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Wardlow:

Q. Would you state your name please, and your address.

A. Alfred Allen Ramsey, 4014 Paisley Place.

Q. And your occupation?

A. City policeman, city of Charlotte.

Q. Mr. Ramsey, what was your occupation on or about August 15, 1959?

A. City policeman.

Q. Was that here in the city of Charlotte?

A. That's right.

Q. Do you recall the occasion on August 16, 1959 of witnessing a paper in the presence of Maurice W. Bonney and Shirley Ann Bonney, here in Charlotte?

A. I do.

Q. I hand you herewith a paper writing and ask you to state whether or not this is your signature appearing thereon to-wit—A. A. Ramsey?

(Witness looks at paper).

A. That's my signature.

Q. And is this paper writing the paper you signed on August 16th?

A. A. Ramsey.

Dep. A. That's right.
2/27/60 Q. Where were you in the city of Charlotte when
page 3 } you signed this paper?
A. I was at Kiser's Garage.

(Paper marked for identification as Defendant's Exhibit #1).

Q. I show you Defendant's Exhibit 1 and show you thereon a name signed 'Maurice W. Bonney' and a name signed 'Shirley Ann Bonney.' Did you see Mr. and Mrs. Bonney affix their signatures to this writing?

A. That's right, with my pencil. They signed it right on top of the car.

Q. As best you recall, how long were you all there together on the occasion of the signing of this writing?

A. They were out there when I came out there. We stood and talked there approximately during the process of the signing and everything, I would say approximately ten or fifteen minutes.

Q. What did you all talk about?

A. Well, Mr. Bonney—he was talking about he had to get on back and just one thing and another, just general conversation. I don't remember exactly, but he said he was from out of town.

Q. Did you talk to Mrs. Bonney?
Dep. A. No. I talked to her but other than on the con-
2/27/60 versation, I didn't.
page 4 } Q. Did you know from the conversation you had
and from being there at that time, the general nature and purpose of this paper writing entitled 'Release'? What it was concerned with?

A. Yes, he explained to me what it was about. There had been a wreck or something. The main thing he was interested in he told me, was getting on his way.

Q. And it was your understanding this was a settlement of damages?

A. That's right. I heard him state he was satisfied, I remember that.

Q. Do you know Mr. Robert V. Kiser?

A. I do.

Q. Do you know whether or not he also was present at that time?

A. He was.

A. A. Ramsey.

Q. Do you know whether or not he signed the release identified as Defendant's Exhibit #1?
A. He did.
Q. Did you see him do that?
A. I did.

Dep. 2/27/60 page 5

Q. How long, as best you recollect, did you stay there in the presence of Mr. and Mrs. Bonney after the release had been signed by them and witnessed by you and Mr. Kiser?
A. Oh, I'd say approximately ten or fifteen minutes. I had some work to be done on my car and after I talked to them I went inside. I don't know whether they left before I did or not. He had seemed to be in a big hurry to get on his way. That's why he wanted to get it settled.
Q. Did he appear to you to be of a clear mental status and knew what he was doing and saying on that occasion?
A. He appeared perfectly normal to me. He was joking and cutting up.
Q. How about Mrs. Bonney?
A. She seemed to be normal to me as far as I know any normal person—normal as you and me are.
Q. Was she sitting down or walking about?
A. She got out of the car.
Q. Where did she go after she got out of the car?
A. Got out and stood beside the car.
Q. Where did you do the signing of this release at?
A. Right there on the top of the car.
Q. When you say the 'top,' do you mean the hood?
A. No, just on the side of the car.
Q. Is that where the release was being held when Mrs. Bonney and all of you signed it?
A. That's right.

Dep. 2/27/60 page 6

Q. Since that time have you ever had any contact or connection with this case, the release or any of the signers, that is Mr. and Mrs. Bonney?
A. No, that's the first I heard of it since last night.
Q. You mean last night when you were called and asked to come here this morning?
A. That's right.

That is all.

A. A. Ramsey.

CROSS EXAMINATION.

Mr. Millette:

Q. Mr. Ramsey, how long have you been on the Charlotte Police force?

A. Seven years.

Q. Do you recall the 16th day of August, 1959 in Charlotte when you signed a paper, a general release of husband and wife, as a witness, is that right, sir?

A. That's right.

Q. How does it happen you recall that day so well?

A. Well, I carried my wife to Sunday School as well as I remember and there was something wrong with my car. That's the reason I was out there and we stood out there and talked and he called me. Its the first time I been called as a witness to something since I been on the Police Department and that's why it stands out.

Q. Don't you sign a lot of accident reports?

Dep. A. Yes, but that's nothing like this.

2/27/60 Q. Don't you sign a lot of other reports?

page 7 } A. Yes, but I make the reports out myself. This was already made out here.

Q. Do you recall the names of the Bonneys involved—the first names?

A. No, I just remember them signing. I wouldn't know them if I saw them now.

Q. There must have been somebody else around beside you and Mr. Kiser and Mr. and Mrs. Bonney?

A. Not while we were talking. We were the only ones there.

Q. You and Robert V. Kiser and Mr. and Mrs. Bonney were the only ones there?

A. That's right, to my knowledge.

Q. Wasn't there a Mr. Robert L. Frey of the James C. Green Company there while you were there?

A. Not while I was there. If he was, I didn't meet him.

Q. You didn't see any other person around?

A. So far as the garage is concerned, there are people in the garage but this did not take place in the garage.

Q. I am asking about the general surroundings.

A. There were a lot of people walking outside but a lot of people couldn't understand the conversation.

Q. How far were you from the garage?

A. A. Ramsey.

A. I would say approximately 25 to 30 feet.
Dep. Q. From the garage?
2/27/60 A. That's right.
page 8 } Q. Were you on Walnut Street?
A. No, I wasn't on Walnut Street.

Q. Where were you?

A. In front of Kiser's garage on his property.

Q. Where is that?

A. Rozelle's Ferry Road.

Q. And you say you didn't see any other person who seemed to be connected with this transaction?

A. That's right.

Q. But you are not prepared to swear there was no such other person around?

A. I didn't talk to no other one and me and this gentleman who had the car—I don't remember his name—

Q. You are not prepared to swear there wasn't some other person there and you didn't see him?

A. I am prepared to swear I didn't talk to anybody in line with this conversation.

Q. Are you prepared to swear there wasn't anyone else near there?

A. Not at the time this signing was going on there was no one near there, I will swear to that. He wasn't there because I talk a lot and I would have versed with him if he had been out there.

Q. You weren't on duty this day, were you?
Dep. A. I was not—not at this particular time.
2/27/60 Q. Do you remember the amount of money in-
page 9 } volved in the release?
A. I don't remember the amount. It seemed to me it was a small amount but I couldn't swear to that.

Q. Did you see the amount written in the release?

A. No, I might have but I don't remember now.

Q. Did you see the names written in the release?

A. Like I say, I don't remember too much about the release. All I remember is signing the stuff and the conversation that took place. So far as actually reading the release I don't remember.

Q. It was a printed form release, was it not?

A. That's right. All parties agreed to the release while we were there.

Q. You don't know what was in it, do you?

A. A. Ramsey.

A. I don't recollect now.

Q. All you were supposed to do is to witness the signature. What was in the release didn't concern you?

A. That's right.

Q. You didn't pay any attention to it?

A. I read it but nobody seemed to be hurt. I thought it was a minor accident.

Q. You didn't know anything first hand about it?

Dep. 2/27/60 page 10

A. I just thought it to be a minor accident and this gentleman from out of town wanted to get away and we all stood there and talked and joked and I thought it was just a minor bump.

Q. You didn't know anything first hand about the accident itself?

A. He told me but I have forgotten. I didn't pay too much attention to them. I don't unless its a major accident or something.

Q. What was the occasion for you to read the release, Mr. Ramsey?

A. I don't sign nothing that I don't read.

Q. Weren't you just signing as a witness to someone else's signature?

A. That's right, but I don't take no one's word about something unless I read it.

Q. Who wrote in whatever you read, if you know?

A. I don't know.

Q. Do you know what was written in?

A. I did at the time but I don't remember now what was in there.

Q. You are prepared to swear at this time that every blank in this release was filled in at the time?

A. That's right. I am prepared to swear what I signed to so far as my protection is concerned.

Dep. 2/27/60 page 11

Q. I asked if you are prepared to swear this paper was completely filled out including the names, addresses, amount of money of the person being discharged and the dates and the reason for the release and everything filled out?

A. I am prepared to swear the man who signed it was there at the time I was.

Q. Did you sign as a witness—

A. He signed right there when I did. I stood and watched him sign and I signed.

Q. You did sign as a witness?

A. I witnessed him and his wife signing this thing.

A. A. Ramsey.

Q. Did you approve this form?
A. I must have. I put my signature on there.
Q. It says—"Witness our hands and seals, signed in the presence of A. A. Ramsey, 4014 Paisley Place, Charlotte."
A. That's right.
Q. You signed as a witness?
A. That's right.
Q. You didn't sign approving the form of the release, did you?
A. No, sir, they done that.
Q. And you can't swear that everything in this form was filled out when you signed it?
A. I couldn't swear everything was filled out right now.
Q. It didn't concern you and if these people wanted to sign, you were willing to sign as witness to their signature?
Dep. 2/27/60 page 12 } A. That's right.
Q. But you wouldn't necessarily approve the form or the content, would you?
A. That's right.
Q. This was your car that the people were—
A. No, it wasn't my car. It was the car they were in.
Q. What model car was it?
A. I don't recall now. As well as I remember it was a Chevrolet, something like a '52 or '53 black Chevrolet.
Q. And I believe you said you happened to be at Kiser's garage because something was wrong with your car and you wanted it looked at?
A. That's right.
Q. And you talked to Mr. Bonney there and he expressed the desire to be on his way to get out of town?
A. That's right.
Q. And do you recall where he stated he wanted to go?
A. No I don't, right offhand. As well as I remember, he was here on business or vacation or something or just coming through. I don't remember what kind of business he was in now.
Q. You don't remember where he said he was going or anything like that?
A. No, I don't.
Q. About what age man would you say he was?
Dep. 2/27/60 page 13 } A. I would say he was in his middle thirties.
Q. Now these people were already there near the garage when you came up, is that right?
A. I don't recollect. I was called out there. I

A. A. Ramsey.

was inside the garage and I was called out there and we talked a while.

Q. And he explained to you what it was all about?

A. That's right.

Q. Did she explain it to you?

A. No, she talked very little.

Q. And Mr. Kiser explained to you what it was about?

A. That's right.

Q. And how did he happen to know anything about it, if you know?

A. I don't know. I couldn't swear to it. It seemed like he had fixed the car or had traded on a car or something. I couldn't swear to it right now.

Q. And do you know what Mr. Kiser's address is—the man who runs that garage there?

A. No, its in the telephone book. I know where it is.

Q. You know where the garage is?

A. Yes.

Q. You don't know where his residence happens to be?

A. No.

Q. And you don't recall whether he wrote down his residence address when he signed it or not, do you?

Dep. 2/27/60 page 14

A. No I don't.

Q. I believe you stated you had gone by Kiser's garage after taking your wife and children to church, is that right?

A. As well as I remember. I don't remember whether I did or not. I can't swear to it. I go out so much—I go out some times when I don't need work done. I hang around there a lot.

Q. Do you recall approximately what time of day it was?

A. In the morning.

Q. Before noon?

A. Yes.

Q. Do you recall what sort of dress Mrs. Bonney was wearing at the time?

A. I do not.

Q. Do you recall what sort of dress or clothing Mr. Bonney had on at the time?

A. No, but I could just about describe him I believe. He was much shorter than I am.

Q. Did you see anybody fill out the form before you signed as a witness?

A. A. Ramsey.

Mr. Wardlow: Objection. You have been over that and he signed it.

Overruled.

J. S. S., JR.

A. I didn't pay any attention to it. I read it but don't remember anybody—watching anybody filling it out.

Dep. 2/27/60 page 15

Q. I believe you said something about your pencil being used.

A. That's right.

Q. What sort of pencil was it?

A. It was a ball point pen.

Q. It was a pen, not a pencil?

A. Its a ball point.

Q. But it doesn't write with a lead?

A. That's right.

Q. You didn't fill out the form yourself—you just signed it as a witness?

A. That's right.

Q. Do you recognize the writing on that release? And I hand you defendant's Exhibit #1. The handwriting other than the witnesses signature?

(Witness looks at Defendant's Exhibit #1).

Mr. Wardlow: Let the record show that Mr. Millette referred to the scribe writing in the body of the release.

A. I recognize the paper as a whole but so far as the actual writing on there, I couldn't swear that—I say that's the form I signed but the actual reading word for word I couldn't swear. I would say its a paper like this one. Whether this is the actual one or not I couldn't swear. I know that's my signature.

Dep. 2/27/60 page 16

Q. You don't recognize that writing?

A. That's right.

Q. And you couldn't now say who did that writing in the release from the center of the page to the top?

A. I'll say this. The paper I read was filled in and its similar to this but whether this is actually the one I couldn't

A. A. Ramsey.

swear this is the one because my signature is down there and it was filled in up there at the front. I don't know how to put it, but the paper was filled in.

Q. Didn't you say earlier that—

A. I didn't see it filled in. I read it and it was filled in when I signed it.

Q. Didn't you say earlier that you could not swear all of these things were written in at the time you signed it?

A. I say the paper was filled in.

Q. You don't know what amount was in there, do you?

A. No, I don't know the exact amount. I remember it was a small amount. I remember both stated it was just a minor thing. I remember that. We joked and cut up about the signatures and stuff on there.

Q. And you don't recall though, whether you knew about the amount from what somebody said or from seeing it on the paper, do you?

A. I don't recall what the amount they said was on the paper, but I remember that both parties stated it was a minor thing. So far as the actual amount is concerned—

Dep. 2/27/60 page 17 }

Q. You remember it more from statements than you do from anything written down, don't you?

A. That's right.

Q. Now when you mentioned earlier that your pen was used, did you mean that your pen was used to sign as witnesses, to let the witness sign, yourself and Mr. Kiser, or for what purpose did you mean it was used?

A. Well, I know I used my pen to sign. So far as filling it out, I don't remember anybody—he got in the car and reached for a pencil and I remember using my pencil to sign.

Q. You don't know the form was filled out with it?

A. I don't know that.

That is all.

RE-DIRECT EXAMINATION.

Mr. Wardlow:

Q. I show you again Defendant's Exhibit #1 and ask you to look at it and state whether or not as it there appears, is the writing that you saw and subscribed your signature to on August 16, 1959—

Sadie M. Corbett.

Mr. Millette: Objection. To leading and on the grounds the matter has been over before.

A. Yes, that's the paper I signed.

That is all.

Signature waived.

* * * * *

3/13/60
page 4 }

* * * * *

SADIE M. CORBETT,
the defendant, having been first duly sworn, testified as follows:

Examined by Mr. Winters:
Q. Would you state your name, and address, please, ma'am?
A. My name is Sadie M. Corbett, and I live at 1314 West 25th Street, Norfolk, Virginia.
Q. Thank you. Were you involved in an accident with Mr. and Mrs. Bonney in Charlotte, North Carolina, on August 15, 1959?
A. Yes, I was.
Q. At the time of that accident were you insured by The Celina Mutual Insurance Company?
A. Yes, I was.
Q. As a result thereof did you contact the James
3/13/60 C. Greene Company in Charlotte?
page 5 } A. Yes.
Q. As a result thereof did you have an interview with a Mr. Robert L. Fry of the James C. Greene Company of Charlotte, North Carolina?
A. Yes.

Mr. Winters: No further questions.

Robert L. Fry.

CROSS EXAMINATION.

By Mr. Breit:

Q. Mrs. Corbett, there is no question that this accident that occurred on August 15th was an accident in which you ran into the rear end of their stopped vehicle. Isn't that true, Ma'am?

A. Well, that seems to be the case. But, the way it really happened was that I had parked, and I had gotten out of my pocketbook a map which was for instructions as to where we were going to have the baptism. Forgetting my brake, I let go of my brake, and my car rolled into the back of theirs. That is the way it happened.

Q. You explained that to your insurance adjuster, Mr. Fry, did you not?

A. Yes, I did.

3/13/60 page 6 } Q. You know these folks, I believe, and had known them before the accident, and have known them since?

A. Certainly.

Q. Isn't it true, ma'am, that both Mr. and Mrs. Bonney have required a great deal of medical attention here in Norfolk?

Mr. Winters: I object, Your Honor.

The Court: I do not think that is a proper question for her to answer. They may testify to it, and a doctor. I sustain the objection.

Mr. Breit: If Your Honor please, if she knows of her own knowledge that they have been securing medical treatment, wouldn't that be admissible?

By the Court:

Q. Do you know that of your own knowledge?

A. I know that her trouble was before and after the accident. Whether she had medical treatment, I don't know. I could not say personally.

Mr. Breit: Then I withdraw the question. Nothing further.

3/13/60
page 7 } ROBERT L. FRY,

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

Robert L. Fry.

Examined by Mr. Winters:

Q. Would you state your name and home address?

A. Robert Lee Fry; 2701 Kilborn Drive, Charlotte, North Carolina.

Q. By whom are you presently employed, Mr. Fry?

A. John Ratterree Company.

Q. What is your position with them?

A. Claims adjuster.

Q. I direct your attention to the 15th day of August, 1959. At that time were you employed by the James C. Greene Company in Charlotte, North Carolina?

A. Yes, sir, I was.

Q. What was your job with them, sir?

A. Claims adjuster.

Q. On August 15, 1959 did you have any conversation with Mrs. Corbett?

A. Yes, I did.

Q. As a result of that conversation did you have any conversations with or did you meet the Bonneys?

A. Yes, sir, I did.

Q. Where did you meet them, sir?

3/13/60 page 8 } A. At May's Esso Station on South Tryon Street, Charlotte.

Q. What was the purpose of your meeting the Bonneys?

A. They had been involved in an accident.

Q. Did you assist them in any way as a result of the accident?

A. Yes, sir, I did.

Q. What did you do?

A. After getting authorization from Mr. Bonney to have his car removed to a garage, necessary repairs were made on his automobile. Mrs. Corbett had the Bonneys in her car and followd me to the hospital so that Mrs. Bonney could be checked.

Q. Did you have any further contact with them on August 15th?

A. That night, yes, sir.

Q. How was that contact made?

A. By telephone.

Q. Did you call them or did they call you?

A. As I recall, I believe they called me. They had my home number.

Robert L. Fry.

By the Court:

Q. Speak a little louder so that we can all hear you.
A. All right, sir.

By Mr. Winters:

Q. As a result of that conversation did you make
3/13/60 any arrangements to meet them thereafter?
page 9 } A. Yes, sir, the next morning.
Q. Where were you to meet them?
A. At the Carolina Restaurant on North Tryon Street in Charlotte.
Q. Did you meet them on the morning of the 16th at the restaurant?
A. Yes, sir, I did.
Q. It is my understanding that from there you proceeded to the Kiser Garage. Is that correct?
A. That is correct.
Q. Do you know who the owner of the Kiser Garage is?

The Court: Or was at that time.

By Mr. Winters:
Q. Or was at that time?
A. I believe his name is Ike Kiser.
Q. Did you have any conversation with the Bonneys at the Kiser Garage?
A. Yes, sir.
Q. Would you tell us what that conversation was, of what it consisted, please?
A. The discussion involved the amount of damage sustained as a result of the accident, what the doctor told Mr. Bonney at the hospital. After obtaining that information
we arrived at a figure of settlement of the claim,
3/13/60 which both agreed to.
page 10 } Q. I hand you a paper marked "Defendant's Exhibit 1" and ask you to identify that, please?
A. This is a "General Release, Husband and Wife," executed by Maurice W. Bonney—

Mr. Breit: The release speaks for itself. I do not think it is necessary for him to read it.
The Court: There is no reason why he should not do so.

By the Court:
Q. Go ahead and read it.

A. This release form was executed on August 16, 1959. The release was signed by A. A. Ramsey and Robert V. Kiser.

By Mr. Winters:
Q. At the time that they executed the release were you able to deliver a draft or drafts to the Bonneys?
A. No, sir.

Mr. Winters: I have no further questions.

CROSS EXAMINATION.

By Mr. Breit:
Q. Mr. Fry, this release was secured the day following the accident?
3/13/60 A. Yes, sir.
page 11 } Q. And you knew that if Mr. Bonney signed that release he was waiving any claim for his personal injuries?
A. Both Mr. and Mrs. Bonney.
Q. Both? Well, let's talk about Mr. Bonney first. At that time Mr. Bonney had not been seen by a doctor, had he?
A. He was at the hospital in the emergency room.
Q. But he was not treated or examined, was he?
A. He stated that he was not injured.
Q. So at that time both you and he thought that he was not injured?

Mr. Winters: I object, Your Honor, as to what they thought at that time. I do not think it is material to the issue.
The Court: Objection overruled.

By Mr. Breit:
Q. At that time you both thought, when he executed this release, that he had no injury and, therefore, no claim for any personal injury. Is that right, sir?
A. That is right.
Q. As to Mrs. Bonney's injuries you had only a statement of the doctor and the one examination in the emergency room the night before. Is that true, sir?
A. That was the report from the doctor as told
3/13/60 to me by Mr. Bonney.
page 12} Q. And that was all you used to assist you in securing a release for her injuries at the time?

Robert L. Fry.

A. That was the information.

Q. You knew, Mr. Fry, that they were in a hurry to get back to Norfolk, were they not?

A. He mentioned that he wanted to get back to work on Monday.

Q. He did not even want to leave his car there for a complete repair because of that. Isn't that true, sir?

A. He stated that it would be more convenient if he could get his repairs made in Norfolk.

Q. Did you not tell him, sir, that he could have his car repaired temporarily there, and that when he got to Norfolk and got his estimates, he would then be able to be in a position to get it fully completed and paid for up here?

A. I told him that he could have his car repaired in Norfolk, which would be all right, on the basis of the estimate figure in Charlotte.

Q. Do you have that estimate?

A. I don't have it with me, no, sir.

Q. Do you recall what the estimate was?

A. Approximately the figure of $75.46, I believe, sir.

Q. Isn't it true, Mr. Fry, that when you presented that form to them you told them that it was a routine form, and that unless they signed it they could not secure their automobile to go home?

3/13/60
page 13

A. When I presented that form to them it was explained to them that it was a release from any and all claims as a result of that accident.

Q. Who was present when you explained that?

A. When I explained that to them, just Mr. and Mrs. Bonney and myself.

Q. You had two people sign that form as witnesses. Why did you not explain what you just told us in front of those witnesses? Why did you have them execute the form and then get your witnesses to that form?

Mr Winters: Your Honor, I object to the question. There is no evidence that an explanation was not made in the presence of the witnesses. I think the question is argumentative as it was phrased.

The Court: It is cross examination. The court overrules the objection. Proceed.

By Mr. Breit:

Q. Do you remember the question, sir, or do you want me to repeat it?

A. Repeat the question, please.

Robert L. Fry.

Q. This explanation which you made when you presented the release to them was made without any witnesses being present—this conversation that you have just told us about—and yet you have got witnesses who signed the release. Why did you not have those witnesses available at the time you explained to these people what that form was?

3/13/60 page 14

A. As I recall, both of the witnesses were in the garage. We were in the car outside at that time.

Q. The question I have asked you, sir, is: Why did you not explain this in front of the witnesses, if you were so careful to have witnesses to execute that form?

A. The witnesses were to witness their signatures that they had executed that release form.

Q. They were not present when these people executed that form, were they?

A. Yes, sir, they were.

Q. They were present when the form was executed?

A. That is right.

Q. But they were not present when you explained what that form was?

A. I explained the form to Mr. and Mrs. Bonney when we were in the car.

Q. Mr. and Mrs. Bonney did not read that release, did they?

A. They did.

Q. They both read the printed material on that release?

A. They both read it. It was asked of them to be read.

Q. Where was it read?

3/13/60 page 15

A. While sitting in the car.

Q. Not in the presence of the witnesses?

A. They had already read it.

Q. They had already read it when you got the witnesses?

A. That is right.

Q. No word was ever mentioned during the two days that you negotiated with them as to Mr. Bonney's personal injury. Is that true, sir?

Mr. Winters: Your Honor, I must renew my objection as to that inquiry. I think it is immaterial as to this particular cause. The release speaks for itself.

The Court: Objection overruled.

Mr. Winters: I note an exception.

By Mr. Breit:

Robert L. Fry.

Q. I repeat the question. No mention was ever made during these two days of Mr. Bonney's personal injury?

A. I asked Mr. Bonney if he had sustained any injury and he said, "No."

Q. And that was the limit of any conversation about his injury?

A. It was up to him if he felt that there was any.

Q. So when this form was signed you did not intend to secure a release for injuries, because you did not think there were any as to Mr. Bonney.

3/13/60 page 16 } A. There was an allowance made—actual out-of-pocket expenses—to cover any inconvenience.

Q. Was there an allowance made for Mr. Bonney's personal injury?

A. There was an amount over and above the actual out-of-pocket expenses. There was no mention of any bodily injury at that time.

Q. You did not pay them this $197.00 that you have on that form at that time, did you.

A. At that time, no, sir.

Q. Was there any reason why you would take a release from these people, knowing that they were going to leave the state, without paying them for the release?

A. We did not have draft authority from the company that we were representing at that time. We had to forward the release, and the company would issue the drafts, made payable to the parties.

Q. Did you ever instruct these people that they were going to get a check for what they signed at a later date?

A. I told them that they were.

Q. Isn't it true that what you told them was that you were going to pay directly for the emergency room at the hospital and Kiser's Garage?

A. There would be separate drafts issued for that.

Q. You admit telling them that that was where those funds were going?

3/13/60 page 17 } A. The drafts were going to be made payable to the Bonneys and the garage, and the Bonneys and the doctor and the hospital, and over and above that amount would be paid directly to Mr. and Mrs. Bonney.

Mr. Breit: No further questions.

Mr. Winters: I have no questions at this time. I do not wish this witness excused, Your Honor.

Maurice W. Bonney.

Mr. Winters: I call the plaintiff, Mr. Bonney, as an adverse witness.

MAURICE W. BONNEY,
one of the plaintiffs, called as an adverse witness, having been first duly sworn, testified as follows:

Examined by Mr. Winters:
Q. I hand you a paper heretofore identified as Defendant's Exhibit 1, and ask if that is your signature?
A. Yes, it is.
Q. I hand you Loss Draft No. 576068 of The Celina Mutual Insurance Company—

3/13/60
page 18 } Mr. Breit: May it please the court, we object to the introduction of these.

The Court: Let him get his question in the record.
Mr. Breit: I do not want it in front of the jury and then have the court rule that it is inadmissible.
The Court: It is a tender of payment under the release, is it not?
Mr. Winters: It is.
The Court: I will send the jury out if you want me to. I do not see how the court can refuse to allow the defendant to put his case on, as to what it claims it did under the release. The court overrules the objection.
Mr. Breit: I note an exception.

By Mr. Winters:
Q. I hand you Loss Draft No. 576068, payable to Maurice Bonney & Shirley Bonney, and Kiser's Garage, and I ask you if you can identify that?
A. That is a draft payable to me and my wife and Kiser's Garage.
Q. Did you receive it?
A. No, not until now. I have not seen this before.

3/13/60 Q. I hand you Loss Draft No. 576069 of The Celina Mutual Insurance Company, payable
page 19 } to Maurice Bonney, Shirley Bonney, Dr. Basil Boyd & Presbyterian Hospital, and ask if you can identify that?

A. That is the draft that you just mentioned?
Q. Have you received that draft, sir?
A. No, sir.

Maurice W. Bonney.

Mr. Winters: Your Honor, to clarify the record, I offer Draft No. 576068 as "Defendant's Exhibit 2."

The Court: I am going to get all three of them identified, and if there has been no tender until this morning, then the objection is well taken. The court will sustain the objection.

By Mr. Winters:

Q. I hand you Loss Draft No. 576070 of The Celina Mutual Insurance Company, payable to Maurice Bonney & Shirley Bonney, and ask you to identify that, please?

A. That is payable to me and my wife.

Q. Have you ever received that?

A. No, sir.

By the Court:

Q. I understand that you have never had any of these drafts presented to you until this morning?

A. No, sir; that is correct.

The Court: The jury will retire to the jury room.

3/13/60
page 20 } (The following proceeding occurred in the absence of the jury:)

The Court: Do you renew your objection?

Mr. Breit: Yes, sir.

The Court: What is the relevancy of that now at this time after the case has been brought to trial, to use drafts which had never been tendered to the parties before?

Mr. Winters: Your Honor, I must state to the court that I am taken completely by surprise by his answer. I am advised that these drafts were tendered, that they were received, and that they were returned by Mr. Robert Cohen of the firm of Amato, Babalas, Breit & Cohen, and indicated that they had been received.

I ask that I be granted at least a ten-minute recess in order to have a subpoena issued for Mr. Cohen.

Mr. Breit: It is conceivable, Judge—and I don't know this to be true—that this insurance company, after Mr. Cohen got the case, sent him these checks. I don't believe this gentleman has ever seen these checks. If they came at all, they came to

Maurice W. Bonney.

Mr. Cohen and were returned by Mr. Cohen. Certainly this witness cannot testify as to what Mr. Cohen has done.

The Court: I see that the doctor is here.

3/13/60 page 21 } Mr. Winters: I don't know that it will be necessary to put him on.

The Court: We will take a short recess.

(Thereupon, a short recess was taken, after which the trial was resumed in the presence of the jury.)

Mr. Winters: Your Honor, it has been stipulated by counsel for Mr. and Mrs. Bonney and myself that these drafts were submitted to Mr. Robert Cohen of the firm of Amato, Babalas, Breit & Cohen, and that he returned them to the company.

Mr. Breit: They were mailed by letter of August 28th from North Carolina and returned by letter of September 1st.

The Court: They will be introduced in evidence as Defendant's Exhibits 2, 3 and 4.

By Mr. Winters:

Q. Mr. Bonney, on August 15, 1959 how old were you, sir?

A. Twenty-eight years old—I beg your pardon; twenty-nine.

Q. At that time could you read and write, sir?

A. Yes.

Mr. Winters: No further questions.

By Mr. Breit:

Q. Mr. Cohen, did you at any time read this

3/13/60 page 22 } piece of paper which you just acknowledged as having your signature on it?

A. No, sir.

Mr. Winters: Your Honor, I object and move that that be stricken. I do not believe that is material.

The Court: Objection overruled.

Mr. Winters: I note an exception.

By Mr. Breit:

Q. Why did you not read what you were signing, Mr. Bonney?

Shirley Ann Bonney.

Mr. Winters: Your Honor, I object.

The Court: That this is not responsive cross examination; is that your objection?

Mr. Winters: That is part of it.

The Court: The plaintiff has not rested yet. If you wish to recall him at the proper time, you may do so.

Mr. Breit: If the court wants me to have him come off the stand and call him as my witness—

The Court: I think probably under the circumstances it would be better.

Mr. Breit: No further questions at this time.

3/13/60
page 23 } Mr. Winters: I call Mrs. Bonney as an adverse witness.

SHIRLEY ANN BONNEY,

one of the plaintiffs, called as an adverse witness, having been first duly sworn, testified as follows:

Examined by Mr. Winters:

Q. I believe your name is Shirley Ann Bonney. Is that correct?

A. Yes.

Q. And you usually sign your name "Shirley A. Bonney"?

A. That is right.

Q. I hand you Defendants' Exhibit 1 and ask if that is your signature?

A. Yes.

Q. Mrs. Bonney, on the 15th day of August, 1959, how old were you?

A. Twenty-four.

Q. At that time could you read and write?

A. Yes, sir.

Mr. Winters: No further questions.

By Mr. Breit:

Q. Come down, Mrs. Bonney.

* * * * *

3/13/60
page 27 }

* * * * *

MAURICE W. BONNEY,
being recalled, further testified as follows:

Examined by Mr. Breit:

Q. You are Mr. Maurice Bonney who is one of the two plaintiffs in this case. Is that correct, sir?

A. Yes, sir.

Q. As to the description of the automobile accident as given by Mrs. Corbett today, was that or not substantially the correct way that the accident occurred?

A. The accident happened so fast that I don't know if she stopped before she hit me and started again, or if she did not stop before she hit me. I did not know what was coming off until she hit me. I don't know if she stopped prior to hitting me or not.

Q. At what time of day was the accident?

3/13/60 page 28 } Mr. Winters: Your Honor, I object. I believe this line of questioning is immaterial. The issue before the court is narrow.

The Court: Within certain limits the court will permit it.

Mr. Breit: I do not intend to go too much further.

By Mr. Breit:

Q. What time of day did the accident occur, approximately?

A. Approximately 10:00 o'clock in the morning.

Q. What time of day did you sign the release on the following day?

A. I would say approximately 10:00 or 11:00 o'clock.

Q. So, only a twenty-hour hour period elapsed from the time of the accident until the time you executed that paper and got your car?

A. Yes, sir.

Q. In that twenty-four hour period how many times had you seen or talked to Mr. Fry, the insurance adjuster?

A. I believe that we talked on the night of the 15th, and he came and got me on the morning of the 16th, which was Sunday, and carried me out to the garage where my car was.

Q. When did you and your wife go to the emergency room in the hospital?

3/13/60 page 29 } A. (Pause)—wait a minute now — (Pause) Saturday afternoon.

Q. On the morning when you went to get your car did you first have a conversation with Mr. Fry concerning the removal of your car to Norfolk?

A. Yes, sir.
Q. Tell us of what that conversation consisted. What did you discuss?

Mr. Winters: Your Honor, I object. I do not believe that particular conversation is material to the issue at hand.
The Court: The court overrules the objection.
Mr. Winters: I note an exception.

A. Mr. Fry said that in order for me to get my car from the garage I would have to sign this piece of paper, which he handed to me.

By Mr. Breit:
Q. Where were you at that time?
A. I was at the garage—Kiser's Garage.
Q. Did he describe to you what was on the paper?

Mr. Winters: Your Honor, I must renew my objection. I don't believe it is material.
The Court: I understand that your objection applies to all of this. The court overrules it, and an exception is noted.

A. Would you repeat the question, please?

3/13/60
page 30 } (Read by the reporter.)

A. He said that that would take care of my car in order to get it fixed at that garage, and that I could get it fixed later when I got back to Norfolk. The fixing that they did at the garage was only to put it in running condition. The rear end of my car is still damaged. I was supposed to get that fixed after I got back to Norfolk.
Q. Was there any discussion about any claim, other than that, for your personal injuries?
A. No, sir.

Mr. Winters: Your Honor, is it necessary that I make my objection to each one of these questions?
The Court: I thought I had taken care of that. Let the record show that you object to all of this line of interrogation, and the court overrules it and an exception is noted.
Mr. Winters: Thank you.

Maurice W. Bonney.

By Mr. Breit:

Q. At that time did either you or Mr. Fry know that you were injured?

A. No, sir, we did not.

Q. Subsequently when you got home did you or not discover that you had been injured in the accident?

3/13/60 page 31 } A. Yes, sir, I did.

Q. Have you had any medical treatment for that injury?

A. Yes, sir, I have.

Q. As between you and your wife, how much have you had to expend for your injuries?

Mr. Winters: Your Honor, I believe that particular question is objectionable on a different ground, in that it is immaterial and has no part so far as the release is concerned.

The Court: He stated that he discovered his injuries after he came back. I think that is too general. The court will require that he has to be more specific. He might have discovered it yesterday. When did he discover it, and what did he do?

By Mr. Breit:

Q. Did you feel anything at all immediately after the accident?

A. No, sir.

Q. When did you first discover it?

A. When we were coming back from Charlotte, in the process of coming from Charlotte to Norfolk.

Q. Describe what you felt.

A. I had pain in my neck.

3/13/60 page 32 } Mr. Winters: Your Honor, could we have a recess?

The Court: The jury will retire to the jury room, please.

(The following proceeding was had in the absence of the jury:)

The Court: What is the objection, other than what you have already stated?

Mr. Winters: I wish to make it clear that I do not wish to object, but there are certain questions that may have

different objections. I contend, Your Honor, that the release speaks for itself, and to permit any of this evidence to come in is in violation of the parol evidence rule.

The Court: You have already made that clear. The court does not agree with you. I have overruled it. The court has preserved your exception fully on that.

The parol evidence rule has no application where there is a question of mistake or fraud. That statement of the court is based purely in connection with his ruling. When evidence is introduced for the purpose of showing either mistake or fraud, then the parol or evidence rule does not apply.

Mr. Winters: You overrule my objection to all of this, and I must note my exception for the reasons given above, and from time to time I may have to renew my objection.

3/13/60
page 33 } The Court: If you feel that your general objection is not adequate, you may do so.

(The trial was then resumed in the presence of the jury.)

By Mr. Breit:

Q. Mr. Bonney, you were describing what you felt on your trip back from Carolina.

A. I felt a very severe pain in the back of my neck and into my left shoulder. I thought maybe it was from driving so much. I drove all the way back because my wife was so bad off that she was lying in the back seat, and I had to do all the driving myself. I thought maybe I was just tired. I had been going all day, and I thought that the pain was from that. But, it kept getting worse and worse, so after I got back I consulted my doctor.

Q. What doctors have treated you for that injury?

A. Dr. Gervas Taylor and Dr. Clarence Wright.

Q. For what period of time—I don't want to go into the injury itself, because that is not in issue here—but, over what period of time were you required to get these medical treatments?

A. When it commenced on the 17th day of August, that was the same day we got back. I will say that it lasted until the middle of October, approximately two months.

3/13/60
page 34 } Q. Approximately how many times were you required to see your physicians during that period?

A. Well, I only saw Dr. Taylor once. From then on I saw Dr. Wright. If I recall correctly, I went to him

three times a week: Monday, Wednesday and Friday, for a period of approximately two months.

Q. How much were the out-of-pocket expenses that you sustained as a result of this accident?

Mr. Winters: Your Honor, I do not believe that is material.

The Court: Is that material at this time?

Mr. Breit: The amount is material only to show that the release is an inadequate consideration.

The Court: Inadequacy of consideration is not a ground.

Mr. Breit: I withdraw the question, Judge.

By Mr. Breit:

Q. Now, sir, getting back to your conversations with Mr. Fry in relation to your wife, what if anything was said concerning your wife releasing any claim for her personal injury, either at or before the time of the execution of that paper?

The Court: What was that question again?

(Read by the reporter.)

Mr. Winters: I object.
3/13/60 The Court: The objection is overruled.
page 35 } Mr. Winters: I note an exception.

A. He said that this was in order to get her out of the hospital in Charlotte, and to get my car, and that that was all I was supposed to be signing for.

By Mr. Breit:

Q. Did he ever tell you that your wife—or did he ever tell your wife in your presence that the execution of that paper constituted a release of any future claims?

A. The word "Release" was not mentioned at all in any of our conversations.

Q. Was there any particular reason why you did not read the release before you executed it?

A. Well, I was so excited and so upset on account of my wife's injury, and I thought that Mr. Fry was being fair with me, so I just signed it thinking that he was being fair in telling me that I was only signing for my car and for my wife up until that point So, therefore, I signed it.

Maurice W. Bonney.

Q. Had he or not told you prior to your signing that paper that that was the only way you could get your automobile?

Mr. Winters: I object, Your Honor. That is a leading question.

The Court: Objection sustained.

By Mr. Breit:

Q. What if anything did Mr. Fry say concerning
3/13/60 your right to secure your car prior to the signing
page 36 } of that paper?

A He said that I could not get my car until I signed that paper.

Q. Was either of these witnesses to that release present when your conversation took place with Mr. Fry?

A. No, sir.

Q. Did he at any time tender those checks to you?

A. No, sir.

Mr. Breit: No further questions.

CROSS EXAMINATION.

By Mr. Winters:

Q. Mr. Bonney, how much were the repairs that were made at Kiser's Garage?

A. $20.00.

Q. Am I correct in understanding then that they were going to hold your car there for more than the $20.00?

A. For more than the $20.00?

Q. Yes.

A. No; just for the $20.00. That was what Mr. Fry said.

Q. You did not check, did you?

A. No, sir, I did not.

Q. Did you think that it was strange that a man could hold your car for more than $20.00?

3/13/60
page 37 } Mr. Breit: May it please the court, he said that he was not holding it for more than $20.00.

The Court: Objection overruled. Repeat the question, please.

By Mr. Winters:

Maurice W. Bonney.

Q. Didn't you think that it was strange that they could hold your car for more than $20.00?

A. Well, I know that insurance papers have to be filled out with formality. I thought maybe in order to get my car I would have to sign the paper. That was what Mr. Fry said. Whether it be true or not, I don't know, but that was what he told me.

Q. What is your occupation, Mr. Bonney?

A. I am cashier and credit manager.

Q. For whom?

A. Miller Motor Express.

Q. In that capacity you have an opportunity to examine uniform bills of lading, freight bills, and that sort of thing?

A. I do.

Q. They are right complicated?

A. In a way.

Q. You are pretty good at your job?

A. I would say that I get by.

3/13/60 page 38 } Q. I ask you, what does that say up at the top?

A. "General Release, Husband and Wife."

Q. What does this say right here?

A. "Caution: Read before signing."

Q. Are you now trying to tell us that you did not read that before you signed it?

A. That is correct.

Q. When a man delivers goods to your company and asks for a credit, you read what he hands you before you sign it, don't you?

Mr. Breit: Objection, if Your Honor please. It is immaterial as to what he does at his work. The question is what he did here.

The Court: The objection is overruled. It is cross examination.

By Mr. Winters:

Q. You read those, don't you?

A. Yes, sir.

Q. You read them pretty carefully, don't you?

A. That is right.

Q. But you contend that on this day you did not?

A. That is true.

Q. Isn't it true that at the time you were satisfied with the amount paid you?

Maurice W. Bonney.

A. There wasn't any amount paid me.

3/13/60 page 39 } Q. The amount offered or agreed upon at the time.

A. There was no amount agreed upon, except to get my car.

Q. Let's go back. What was your wife's bill at the hospital?

A. $27.00.

Q. Did that include Dr. Boyd?

A. Yes, sir, I believe it did.

Q. What was the bill for the repairs to your car?

A. $20.00. That was just for the repairs that were done then, but there were to be more repairs that have not been done.

Q. The estimate that was prepared there was in the approximate sum of $75.00. Is that correct?

A. I did not see an estimate.

Q. You did not see it?

A. No.

Q. Did you expend or did your wife expend any monies for medicine?

A. In Charlotte?

Q. Yes.

A. No, sir.

Q. She did not?

A. No, sir.

Q. Did you make a phone call to Norfolk?

3/13/60 page 40 } A. Yes, sir.

Q. Were you reimbursed for that?

A. For the phone call?

Q. Yes.

A. No, sir.

Q. Were you to be reimbursed out of that sum?

A. There was no mention of that to me.

Q. I hand you a letter and ask you to identify that.

A. I wrote that letter.

Q. Would you read the date on it, please?

A. August 23, 1959.

Q. To whom was it addressed?

A. Kiser's Wrecker Service, Charlotte, North Carolina.

Q. Would you read the letter, please?

A. "On Sunday, August 16, 1959 your company put a universal (joint) in my car due to a wreck which I had while in your town. Enclosed is my check in the amount of

$20.00 to cover the repairs which you made. My car was a black 1951 Chevrolet four-door sedan.

"To help you identify this incident the insurance company's name was 'Greene' and the agent was named 'Mr. Fry.'" And I signed it.

Mr. Winters: I offer this in evidence.
The Court: Defendant's Exhibit 6.

By Mr. Winters:

3/13/60 page 41 } Q. You had no trouble on August 23, 1959, in knowing what transpired or with whom you dealt down there, did you?
A. No, I did not.
Q. Is this the check that you sent with that letter?
A. That is correct.

Mr. Winters: I offer that in evidence.
The Court: Defendant's Exhibit 7.
Mr. Winters: No further questions.

SHIRLEY ANN BONNEY,
being recalled, further testified as follows:

Examined by Mr. Breit:
Q. You are Mrs. Shirley Ann Bonney; is that correct?
A. That is right.
Q. Where do you live, Mrs. Bonney?
A. 1399 Willow Avenue.

By the Court:
Q. Speak a little louder.
A. 1399 Willow Avenue.

By Mr. Breit:

3/13/60 page 42 } Q. That is in Norfok, Virginia?
A. Yes.
Q. On August 15, 1959 you were in Charlotte, North Carolina. Is that correct?
A. That is correct.
Q. What were you attending at the time?
A. A religious convention.
Q. At the exact time of the accident where were you headed?
A. To an immersion.

Shirley Ann Bonney.

Q. Were you or not injured in that accident, Mrs. Bonney?
A. I was, yes.
Q. At the time, and the following day after it, did you or not know how badly you had been injured?
A. No, I did not know to what extent, but I knew I surely felt bad.
Q. You had been seen where prior to the time you executed that release—by what doctor and in what hospital?
A. By Dr. Boyd, an orthopedic surgeon, and I was in the Presbyterian Hospital as an out-patient.
Q. Were you present during the discussions that Mr. Fry had with your husband in regard to the execution of that paper that has been introduced?
A. Yes, I was.
3/13/60 Q. Tell the court exactly what was said prior to
page 43 } the time you signed that paper.

Mr. Winters: Your Honor, I must renew my objection.
The Court: Overruled, and an exception noted.

A. Would you repeat the question, please?

By Mr. Breit:
Q. Tell the court exactly what was said by Mr. Fry prior to the time you executed that paper.
A. He said that when people were injured in an accident, then the car was of less concern; that anyone who had been injured had to be looked after first, and that I was his responsibility then and he wanted me to be seen by a doctor, which I was. Then he had our car taken away.
The next day, Sunday, he offered us the use of his car, and he offered to take us out to breakfast. He was just so nice about everything. When we went to get the car he took us there. He said that our car was temporarily O. K., that we could drive it; that he wanted us to sign a form and then we could have our car. So, we did.
Q. Did he tell you what was in the form?
A. No. He said that I could now be turned over to my husband, that I was O. K. to go back, and that the car was all right to go, and that this was just a formality
3/13/60 that was routine, that had to be done on every
page 44 } occasion—(cries) I am sorry, but I can't go on.

The Court: Do you want to take a recess?
Mr. Breit: A short recess.

Shirley Ann Bonney.

(Thereupon, a short recess was taken, after which the trial was resumed.)

By Mr. Breit:

Q. Mrs. Bonney, prior to your execution of that release form did Mr. Fry in any way tell you that it was a release from your personal injuries?

A. There was nothing mentioned about it, because neither one of us knew if I was hurt badly or not.

Q. After you signed it did Mr. Fry ever say anything to you about getting further medical treatment in Norfolk?

A. When I went over and got in my car and we were getting ready to leave the garage—and, in fact, leave the City of Charlotte—he come over and I rolled down the window, and he said that he hoped I would be getting along all right, and to go ahead and have whatever medical attention I needed, and to do that until I got well, and that he hoped I would be feeling good.

Q. Did you read that paper before you signed it?

A. I did not.

Q. Why did you not read it?

A. (Pause) I thought he was telling us the
3/13/60 truth. I did not doubt him.
page 45 } Q. Answer this gentleman.

CROSS EXAMINATION.

Q. When you were examined by Dr. Boyd in Charlotte, Mrs. Bonney, did he indicate to you that you might have need for further treatment in Norfolk?

A. Yes, sir.

Q. You knew that at the time you signed that paper, did you not?

A. I knew that I would have to have something more done, because I was just in so much pain. I could not walk alone. I had to have the help of my husband. I knew that something was wrong.

Q. Did you get out of your car to sign that paper?

A. I signed it sitting inside the car.

Q. You did not sign it on the top of the car, as Mr. Ramsey said you did?

A. My husband did, but I did not. He was standing outside of the car when he signed it.

Q. Eliminating those holes that have been punched in there,

you can read those words across the top, can't you?

3/13/60 page 46 } A. "General Release, Husband and Wife."

Q. And over your signature and your husband's signature what does it say?

A. "Caution: Read before signing." I might mention, too, that at the time my husband was asked to sign this he was nearly crazy. He did not know what was wrong with me. He, himself, was having pain. He would have stood on his head, I suppose, if the man had asked him to.

Q. So that your husband had pain at the time he signed it?

A. He was beginnuing to feel very bad in here, in his neck and shoulder.

Q. Up until the time this paper was signed Mr. Fry had been most helpful, had he not?

A. He had been one of the nicest, friendliest persons I have ever met to be a complete stranger.

Q. Didn't he meet you all at the hospital?

A. He met us at a service station lot where our car was.

Q. And from there did you go to the hospital, you and your husband?

A. Yes. I was in the back seat of Mrs. Corbett's car. She took us to the Presbyterian Hospital in Charlotte.

Q. And that was where you were examined by Dr. Boyd?

A. And I had X-rays.

3/13/60 page 47 } Q. How many times did you see Mr. Fry?

A. Most all of Saturday, and then Sunday morning, and then again today.

Q. How long were you all together Saturday morning?

A. The accident was at 10:00, and it wasn't long after that when I met him. He stayed with us the better part of the day at the hospital, and finally he had to excuse himself around 5:00 o'clock to go home.

Q. I meant on Sunday morning, how long?

A. Maybe a few hours. It was in the morning part, I know.

Q. How long did you have that paper in your possession before you signed it?

A. About three seconds.

Q. Just long enough to sign it?

A. Just long enough to sign it.

Q. Who handed it to you?

A. My husband handed it to me.

Q. Your husband handed it to you?

A. He signed it, and he handed it to me and I signed it

and gave it to Mr. Fry, and then Mr. Fry turned and wrote something—whether he wrote on that paper, I can't say, but he was writing something. Then he said, "I am going to go and see if I can't find two witnesses," and he got out of the car then.

3/13/60 page 48 } Q. So that these witnesses you contend were not present when you signed?

A. They were not there at the car. They were quite a few feet away. I can't say how many. But, they did not hear any of the conversation. But, I do not deny signing it, if that is what you mean.

Mr. Winters: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Breit:

Q. How many times have you had to visit a doctor because of these injuries since the date of this accident?

Mr. Winters: Your Honor, I presume that my objection applies.

The Court: The objection is overruled.

Mr. Winters: I note an exception.

By Mr. Breit:

Q. Approximately how many times?

A. Eighty-seven visits.

Q. You have made eighty-seven visits to the doctor?

A. Eighty-seven.

Q. All because of this accident, or was there anything else?

3/13/60 page 49 } A. No; because of this. I was all right until that accident.

Q. At the time you executed that release, if you had known the nature and extent of your injuries, and had further known that that was in fact a release from those injuries, would you or not have signed it?

Mr. Winters: I want to make sure, Your Honor, that my objection is in the record.

The Court: It is understood that you object. The court overrules the objection.

A. If I had known of my injuries would I have signed it?

Shirley Ann Bonney.

By Mr. Breit:

Q. If you had known of the extent of your injuries, and known that it was a release, would you have signed it?

A. No, I would not have signed it. When there are humans involved you don't know what injury you might have.

Mr. Breit: No further questions.

Mr. Winters: I have no further questions.

Mr. Breit: The plaintiffs rest.

(The following proceeding was had in the absence of the jury:)

3/13/60 page 50 } Mr. Winters: Your Honor, I move to strike the evidence of the plaintiffs in regard to the signing of the release. They admit that they signed it. Under the Carolina Law they were required to know what they were signing at the time they signed it. Whether or not they thought the condition was different from what it actually was, it is all bound up in the release.

It is my understanding that the sole issue presented before the court today is as to a mutual mistake of fact. If I am incorrect in that I wish to be corrected by the plaintiffs' counsel. But, it is my understanding that there is no evidence to show any mutual mistake of fact. She knew of her own knowledge that she would require future treatment. She had been so advised by Dr. Basil Boyd. So, as to Mrs. Bonney there certainly can be nothing in regard to a mutual mistake of fact. The severity of the injury or the increased expense in connection therewith has no bearing on this matter, as it has all been merged in the release.

As to Mr. Bonney, I again refer the court to the fact that he was aware of what he was signing. He had an opportunity to read it. He did not do so. He assumed the risk in that regard. Any evidence which has been produced here today is in violation of the parol evidence rule. It is all merged in the release, and the release should be affirmed, and I ask for judgment.

3/13/60 page 51 }

(The motion was further argued, overruled, and an exception noted.)

(The trial was then resumed in the presence of the jury.)

Robert L. Fry.

Mr. Winters: I wish to recall one witness. I desire to recall Mr. Fry.

Mr. Breit: May it please the court, I assume that he is recalling Mr. Fry not for some new matter but for rebuttal.

ROBERT L. FRY,
being recalled, further testified as follows:

Q. Mr. Fry, did you discuss with Mr. Bonney his wife's condition?

A. Yes, I did.

Q. What did Mr. Bonney tell you was Mrs. Bonney's condition as he understood it?

3/13/60 page 52 } Mr. Breit: May it please the court, let me suggest this: If this is a conversation that is to bind Mrs. Bonney, she has got to be present for this to be admissible.

By Mr. Winters:

Q. Was Mrs. Bonney present at the time you had this discussion?

A. Yes, sir.

By the Court:

Q. They were both present?

A. Yes.

By Mr. Winters:

Q. Where was this discussion held?

A. It was at the garage.

Q. What was that conversation, as you recall it?

A. As I recall, it was to the extent that it was what the doctor had told Mr. Bonney as to the condition of Mrs. Bonney at that time.

By the Court:

Q. Speak louder. We can't understand you. Repeat it. I could not hear you.

A. It was a condition that Mr. Bonney had related as to what the doctor had said.

Q. What was the rest of it? Your voice dropped and I did not hear you. All I am asking you to do is to talk a little louder. Go right ahead.

Robert L. Fry.

3/13/60
page 53 } By Mr. Winters:

Q. Do you recall what Mr. Bonney understood to be the doctor's appraisal of Mrs. Bonney's condition as to the necessity or absence thereof for further treatment?

A. Mr. Bonney told me that the doctor had told him there would possibly be additional treatment of five and not more than eight treatments by an orthopedic doctor here in Norfolk.

Q. There is a sum written in the release of $197.96. Would you tell us how that figure was arrived at?

A. As I recall—

Mr. Breit: May it please the court, I object on the ground that it is not in rebuttal of any testimony. He has already had this witness on the stand.

The Court: Objection overruled.

By the Court:

Q. Answer the question.

A. As I recall, the amount of damage to the automobile was $75.46, plus the temporary repairs for the universal joint was $20, and the doctor's visit was $15.00, and $15.00 for the emergency room, making a total of $30.00.

As I recall, Mr. Bonney stated that he had made a phone call to Norfolk to his employer, or somebody here
3/13/60 in Norfolk, and we allowed $5.00 for that. The
page 54 } rest was for additional treatment, if necessary, when Mrs. Bonney got back to Norfolk.

By Mr. Winters:

Q. And that was how that figure was arrived at; is that correct?

A. Yes, sir.

Q. How long did Mr. and Mrs. Bonney have that paper writing in their possession, to your knowledge?

A. That I could not say, the length of time on that.

Q. Did you deliver the paper to them?

A. It was filled out in their presence.

Q. Were you present when both of them signed it?

A. Yes, sir.

Mr. Winters: I have no further questions.

Mr. Breit: No questions.

* * * * *

3/13/60
page 62 } EXCEPTIONS TO THE INSTRUCTIONS.

Mr. Winters: The defendant, Sadie M. Corbett, excepts to the refusal of the court to grant Instruction D-2, in that it is a clear and correct statement of law as to the burden on the plaintiffs in this particular case to attack the validity of the release. As a result thereof I believe it is applicable and should have been granted.

Mr. Winters: The defendant, Sadie M. Corbett, excepts to the refusal of the court to grant Instruction D-5 of the defendant on the grounds that this is a clear and correct statement of the law in connection with the mutual mistake of fact, which was one of the bases for the suit of the plaintiffs, and therefore we believe that this instruction should have been granted.

Mr. Winters: The defendant excepts to the granting of Instruction P-2, in that it is a broad statement of the law and does not specifically spell out the material fact which they allege was misrepresented, as a result of which
3/13/60 the jury may consider any fact whether material
page 63 } or not, believing it to be a material fact; and, therefore, the broad, general statement is misleading and confusing to the jury; and, further, is a broad statement of the law applicable without limiting it to the case at hand; and, further, the instruction is erroneous in that the wording "some material matter to which the agreement is to be applied" is an indefinite and vague application of the law, not limiting the jury to the issues at hand as brought about by the evidence that has been introduced, but permits them to speculate as to applicable law and facts.

Mr. Winters: The exceptions to the granting and refusal of the instructions in the matter of Maurice Bonney, above referred to, are also applicable to the same instructions in the Shirley Bonney case.

Mr. Winters: The defendant excepts to the granting of Instruction P-4 of the plaintiffs on the ground that there is no evidence to sustain the instruction as granted, either that there was a misrepresentation or that it was with-
3/13/60 out consideration. Further, the defendant excepts
page 64 } to the granting of the instruction on the grounds that the instruction is so vague and indefinite in

the matter of the "misrepresentation or without consideration" that it is misleading and confusing to the jury, and further is not a full and complete statement of the law, and it should not be granted as it is a finding instruction, not containing all the necessary elements to properly guide the jury.

As to Instruction P-4 as relates to Shirley Ann Bonney, the defendant excepts to the granting of the instruction on the ground that there is no credible evidence to sustain the instruction. Secondly, that the instruction does not correctly state the law, and is a finding instruction, and should contain all of the elements in reference to the alleged misrepresentation, and further should be limited to the case under consideration.

* * * * *

NOTICE OF APPEAL.

To Mr. Calvin W. Breit, Attorney for Shirley Ann Bonney:

PLEASE TAKE NOTICE, That on the 20th day of September, 1960, the undersigned will present to the Honorable J. Sydney Smith, Jr., Judge of the Court of Law and Chancery of the City of Norfolk, Virginia, at the courthouse of said city, the stenographic report of the testimony and other proceedings of the trial of the above-entitled case for certification by said Judge, and will, on the same date, make application to the Clerk of said court for a transcript of the record in said case, for the purpose of presenting the same to the Supreme Court of Appeals of Virginia with a petition for a writ of error and *supersedeas* to the final judgment of the trial court in said case.

SADIE M. CORBETT,
By ROBERT G. WINTERS
Attorney.

Legal service of the above notice is hereby accepted, this 12 day of September, 1960.

CALVIN W. BREIT
Attorney for Shirley Ann Bonney.

Shirley Ann Bonney.

* * * * *

7/27/60
page 3 } Norfolk, Virginia, July 27, 1960.

* * * * *

SHIRLEY ANN BONNEY,
the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Breit:
Q. Will you please state your full name?
A. Shirley Ann Bonney.
Q. Where do you live, Mrs. Bonney?
A. 1399 Willow Avenue.
Q. Is that in the City of Norfolk?
A. Yes, sir.
Q. How old are you, ma'am?
A. Twenty-five.
Q. How long have you resided at that address?
A. Seven years.
Q. Is that an apartment or your own home?
A. That is our home.
7/27/60 Q. How large a house is that?
page 4 } A. Five rooms.
Q. You live there with your husband?
A. Yes.
Q. Prior to August 15, 1959 were you employed?
A. No, sir.
Q. You were a housewife?
A. That is right.
Q. On August 15, 1959 were you involved in an automobile accident in Charlotte, North Carolina?
A. Yes, sir.
Q. Were you driving or riding as a passenger in the car that you were in?
A. I was a passenger.
Q. Who was driving your car?
A. My husband.
Q. Where were you heading at the time of the accident?
A. To a baptism.
Q. You are going to have to speak just a little louder,

Shirley Ann Bonney.

Mrs. Bonney, so that everybody can hear you.

By the Court:

Q. Speak to the jury so they can hear you.

A We were going to a place where some people were going to be baptized.

By Mr. Breit:

Q. Prior to this accident did you know Mrs. Corbett?

7/27/60 page 5 }

A. Yes, sir.

Q. Do you know where she was going on that day?

A. She was going to the same place.

Q. At the time the accident occurred was your car in a stopped position or was it moving?

A. We had stopped for a red light.

Q. What part of your vehicle was struck?

A. The back.

Q. Did you have occasion to talk to Mrs Corbett after the accident? Let me ask you this first: Was it Mrs. Corbett's vehicle that struck your car?

A. That is right.

Q. Was she driving the vehicle?

A. Yes.

Q. Did you have occasion to talk to her after the accident to find out what had happened?

A. Well, we had in our car three children and two more adults. Only my husband and I got out. We went to see what the damage was to our car. Mrs. Corbett did not get out, so we went to talk to her and asked her what happened. She told us.

Q. What did she tell you happened?

A. That she was looking at a map, and that she felt the car rolling. We were kind of on a hill like. She was still looking at the map, and she went to hit the brake and instead she hit the accelerator.

7/27/60 page 6 }

Q. Did you notice any pain or discomfort after this impact?

Mr. Winters: I object, if Your Honor please. It is a leading question.

The Court: It is leading. Change it slightly. The objection is sustained.

Shirley Ann Bonney.

By Mr. Breit:

Q. What did you first notice after the accident in relation to your body?

A. Well, the instant the car hit us I went forward to the dash, and then back, and right away I had a terrific pain in my back, which went away just that quickly.

Q. What portion of your back, Mrs. Bonney?

A. The right side in the lower spine. I got a headache right then.

Q. When did your headache start developing?

A. As soon as I got that pain. The headache stayed with me, but the pain went away for a little while.

The Court: Let me interrupt just a moment. Will counsel approach the bench?

(The court conferred with counsel outside the hearing of the jury.)

By Mr. Breit:

Q. What did you then feel, and when?

7/27/60 page 7 } A. Well, we managed to get our car to a service station nearby. It would not run except in second gear. So then I told my husband that I just felt real bad. He said, "Well, we are going to have to find Mrs. Corbett." So, we found—

Q. Don't tell us about Mrs. Corbett. I want to know about your injury, and what you then did in relation to the injury?

A. We went to the hospital.

Q. To what hospital did you go?

A. The Presbyterian Hospital.

Q. How much time elapsed from the time of the accident until the time you went to the hospital? Do you know approximately?

A. About two hours.

Q. About two hours?

A. Yes.

Q. In the hospital did you receive any treatment of any sort?

A. Well, they took X-rays. Then they gave me something to relax me.

Q. When you say "they," was a doctor called in?

A. A doctor was called—Dr. Boyd.

Shirley Ann Bonney.

Q. Dr. Boyd?
A. He examined me. He is an orthopedic surgeon.
Q. What treatment did he give you?
7/27/60 page 8 } A. He did not give me any treatment. He examined me and said for me to return to my family doctor.
Q. I show you this bill for $10.00 from Dr. Basil Boyd and ask you is this his charge for examining you on that day?
A. Yes.

Mr. Breit: I offer this as "Plaintiff's Exhibit 1."

(Received and marked.)

By Mr. Breit:
Q. I show you this bill from the Presbyterian Hospital for $17.00 for emergency room treatment. Is that their bill for that day?
A. Yes.

(Received and marked "Plaintiff's Exhibit 2.")

By Mr. Breit:
Q. After you left the hospital when did you then go home?
A. We went right on to where we were staying, and I went right to bed.
Q. Describe how you were feeling then after you left the hospital.
A. I had a headache like I had never had before—a real bad headache. My back hurt. I had no feeling in
7/27/60 page 9 } my right leg at all. I could pinch it and not feel anything.
Q. What about being able to move your right leg?
A. It was just as if it had gone to sleep, or something. You know how the feeling is.
Q. Did you attempt to walk on it?
A. Yes. I would only stumble. I had to have my husband help me.
Q. Your husband took you home to Norfolk; is that correct?
A. That is right.
Q. How did you get home?
A. I had to go to another doctor on Sunday. He said to return to Norfolk immediately, and to lie down on the back

seat with a pillow under my back. That is how I returned to Norfolk.

Q. After you got to Norfolk what doctor did you see?

A. I went to Dr. Wright.

Q. Dr. Wright?

A. That is right.

Q. What did Dr. Wright do for you?

A. He also took X-rays. He gave me therapy.

Q. Do you know what type of therapy he gave you?

A. Physical therapy; rehabilitation therapy, ultrasonic treatment, electrical heat treatment, exercise, and chiropractical adjustments.

7/27/60 page 10 } Q. How often did you visit Dr. Wright for the first thirty days after the accident?

A. During the first part, every day.

Q. And then—

A. Then every other day through November.

Q. In November were you feeling any better, or worse?

A. Yes. I was feeling much better; as good as I did before the accident, but I was still nervous.

Q. Let me take you back to before the accident. Did you ever have any trouble of any nature with your back or your leg prior to this accident?

A. No, sir.

Q. Did you ever have any difficulty in performing your household chores prior to this accident?

A. No, sir.

Q. Did you or not ever have any colored help in the house before the accident?

A. I did the first four years I was married.

Q. What was the reason for that?

A. I worked out of the home and I needed help.

Q. You had a job then?

A. Yes.

Q. Since you became a housewife and gave up your work did you have any colored help to do your household chores?

A. Not when I quit work.

7/27/60 page 11 } Q. You say that you had no difficulty with your back prior to this accident?

A. No, sir.

Q. From August 15th until November then while the doctor was treating you were you able to perform your household chores?

A. No, sir.

Q. Did you require any help in the house to do that work?

Shirley Ann Bonney.

A. Yes, sir.
Q. How often did you have help?
A. One time a week.
Q. What did you pay for that help?
A. I gave her $5.00, and then I gave her transportation money and her dinner?
Q. How long did you maintain help in your house?
A. Until January of this year.
Q. As to the numbness you had in your leg after the accident, how long did that numbness continue?
A. Right after the accident for about two weeks.
Q. During that two-week period did you have the numbness constantly or did it come and go?
A. Almost constantly.
Q. After that two-week period describe the numbness and how it improved?

7/27/60 page 12} Mr. Winters: I object, Your Honor. It is leading.

The Court: Ask her to describe her condition after the period she mentioned.

By Mr. Breit:
Q. Describe your condition after those two weeks in relation to the numbness in your leg?
A. My headaches started going away. I would have to use an electric heating pad all night long, turned on low, and sometimes during the day. I was beginning to use my right leg pretty good.
Q. Have you had any further numbness after those two weeks in your leg?
A. Yes, sir.
Q. Describe that, if you will.
A. I guess it would be about once a month, or something—it was very seldom—until about January when I started doing my own housework, and then I got the same thing again. It started getting paralyzed again. I could not use it at all. It would last for a week or maybe eight or ten days. It was a long time. Then it was not that way again until one month ago. My husband and I were in the market and it became that way again. We called Dr. Wright at his home and asked him—

Shirley Ann Bonney.

7/27/60 page 13 } Q. Don't tell us what the doctor said. You are not permitted to do that. Mrs. Bonney, did you ever have any such numbness or feeling in your leg prior to this accident?

A. Never before the accident.

Q. You said something about your headaches disappearing. When did you notice the last headache similar to the one you had after the accident?

A. The last one was last month when I had trouble with my leg. Then it went away and I have not had it since.

Q. In other words, your headache came on with your leg trouble?

A. That is right.

Q. Referring to the pain that you described in your back, tell us exactly how it felt, and the progress of that pain in your back from the date of the accident until now.

A. It was just like a toothache. It was real bad sometimes. Eventually it got better and better.

Q. You say "eventually." When did it start improving?

A. Before December. It was the latter part of '59.

Q. It started improving then?

A. That is right.

Q. When you started doing your own housework again in January what, if anything, occurred as to your back?

A. The first day I tried to do anything I had to go to the doctor that evening. He said to limit the work; just gradually each day to do more. It was hard at first.

7/27/60 page 14 } Q. Are you experiencing any difficulty with your back now?

A. My last visit was last Wednesday to the doctor.

Q. How often have you been visiting the doctor in the last sixty days?

A. One time a week.

Q. One time a week?

A. Yes.

Q. What kind of treatment does he give you?

A. The same thing, with the exception of the ultrasonic. I don't need that any more.

Q. Do you or not notice any improvement after your treatment?

A. I feel like a new person after the treatment. It will

last for about a week, and then I begin to feel discomfort again.

Q. Where is that discomfort?

A. In the same part of my spine, on the right side.

Q. Answer Mr. Winters, if you will.

CROSS EXAMINATION.

By Mr. Winters:

Q. Do you recall what day of the week this accident occurred, Mrs. Bonney?

7/27/60 page 15 } A. Yes, sir. It was on Saturday morning.

Q. When did you leave Charlotte?

A. On Sunday afternoon.

Q. Between the time of the accident and the time you left Charlotte you attended a conclave, or a meeting of this convention that you were attending, or service, or whatever it was. Is that correct?

A. What did you say?

Q. Did you not between the time that this accident occurred and the time you departed from Charlotte attend a religious meeting or conclave that you came to attend?

A. I attended one hour, and I had to be taken to the doctor there at the colosseum on a stretcher.

Q. When did you leave—actually leave—Charlotte to return to Norfolk?

A. After the hour of lecture at the colosseum then we went to where we were staying and got our luggage and returned to Norfolk. It was about 6:00 o'clock in the evening when we began our journey home.

Q. That was at 6:00 o'clock on Sunday. Is that correct?

A. Just about 6:00 o'clock.

Q. And this accident occurred at what time on Saturday?

A. Ten after 10:00; just around the hour of 10:00.

Q. That is A. M.?

7/27/60 page 16 } A. That is right.

Q. Mrs. Bonney, when did you first see Dr. Wright?

A. On Monday.

Q. How did you get to Dr. Wright's office on Monday?

A. My husband drove me on Monday.

Q. Did your husband continue to drive you to Dr. Wright's office every time that you went to see Dr. Wright?

A. Oh, no.

Q. If he did not drive you, how did you get there?

Shirley Ann Bonney.

A. He drove me on Monday. He returned to work on Tuesday, so I was going to have to drive myself. Well, he let me use his automobile because it doesn't have a clutch. We thought that might help. I drove his car that day, that Tuesday.

Q. That was on Tuesday?

A. That is right.

Q. And ever since then you have been driving the car?

A. No, sir.

Q. When did you cease driving the car?

A. That Tuesday. I almost had an accident, myself, because it hurt me so bad trying to drive.

Q. How did you then get to Dr. Wright's office?

A. My mother would take me, and some neighbors would take me. My mother-in-law took me a couple of times. Then I started going on the bus, which is only two blocks
7/27/60 from my house, and I would return on the bus.
page 17} Q. When did you last see Dr. Wright in 1959?
A. I don't recall the date, but it was in December.

Q. Was it the early or the late part of December, or the middle? Do you recall?

A. I went every other day or twice a week. I am not sure of the dates. I can find out for you.

Q. Were you examined by Dr. Hollins in the Wainwright Building?

A. Yes, sir, I was.

Q. Did you give any indication to him at that time as to how you felt?

A. Yes, sir.

Q. Do you recall what you told him?

A. I just told him the same thing that I have said here today.

Q. Did you indicate to him that you had completely recovered at that time?

A. No, sir, I did not.

Q. You deny telling him that?

A. I did not tell him that I had completely recovered; no, indeed.

Q. In connection with the numbness of the right leg did you not think that it was dangerous to drive an automobile with your leg being numb?
7/27/60 A. Yes, I did. I drove with my left leg.
page 18} Q. In connection with this maid, she came once a week. Is that correct?

A. That is right.

Shirley Ann Bonney.

Q. What day did she come?

A. She did not come the same day every week. She started first coming on Monday, I believe it was, and something happened in her own personal life so that she had to switch the date. I think she changed to Wednesday or Thursday.

Q. When did she first come to work for you?

A. The week after the accident—the Monday after, which would be the 22nd of August.

Q. During the days that she did not come what did you do?

A. I did without. My husband would have to do what had to be done when he would come home at night.

Q. Who did the cooking?

A. My mother helped me a lot.

Q. Did you do any cooking?

A. Some. It was very little.

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

A. No, sir, I hadn't.

Q. I beg your pardon?

A. No, sir, I had not had any trouble.

7/27/60 page 19 } Q. You are sure that you never had any difficulty with your back in any way prior to this accident?

A. No, I hadn't.

Q. When did you discharge the maid?

A. In January of this year.

Q. You discharged her in January?

A. She was going to leave. She got married and she was going to leave and go to North Carolina, so it was all the same.

Q. So she left in January?

A. Yes, and since then she has returned.

Q. When did she return to work for you?

A. I don't mean that she returned to work. I mean that she returned to Norfolk.

Q. Since January you have been without the assistance of a maid then?

A. That is right.

Q. I understood that this difficulty flared up sometime in March?

Mr. Breit: Objection, if Your Honor please. There has been no evidence that it flared up in March. She said that it flared up in January.

Shirley Ann Bonney.

Mr. Winters: I misunderstood the answer, Your Honor.
The Court: Ask her whether that is correct or not.

7/27/60
page 20 } A. January was the time I had the trouble, and then not again until last month.

By the Court:
Q. Last month?
A. Last month.
Q. That would be June?
A. Yes.

By Mr. Winters:
Q. So you had a little difficulty in January. Is that correct?
A. Yes, sir.
Q. And you did not employ a maid to assist you after the other one left, did you?
A. No, sir, I didn't.
Q. When you had this difficulty in June you did not employ a maid to assist you?
A. No, sir, I did not.
Q. Are you working at the present time?
A. I am working parttime for the Telephone Company.
Q. When did you go to work parttime?
A. Whenever they call me.
Q. When did you start your parttime work?
A. I worked for them in November and December of '58, and then I quit work altogether, and in March I
7/27/60 went to work parttime.
page 21 } Q. And you have been working whenever they have called you since March on a parttime basis. Is that correct?
A. Yes. I have been on two jobs—relief work.

Mr. Winters: They are all the questions I have.

RE-DIRECT EXAMINATION.

By Mr. Breit:
Q. What type of work do you do at the Telephone Company when you do work?
A. I am a telephone operator.

Q. You are seated all the time?
A. That is right.
Q. One further question which I forgot to ask you prior. Will you describe what, if any, change you have noticed in your nervous condition as before the accident and after the accident?

Mr. Winters: Your Honor, I must object. This is redirect, and not direct examination.
The Court: The court will overrule your objection.
Mr. Winters: Note my exception.

7/27/60
page 22 } By Mr. Breit:
Q. Do you understand the question?
A. Yes, sir. I am nervous a lot. The least little thing sets me off.
Q. Did you have any of that prior to the accident?
A. No, sir.
Q. Has it improved since the accident?
A. Oh, yes, a great deal.

Mr. Breit: No further questions.

MAURICE W. BONNEY,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Breit:
Q. What is your full name, sir?
A. Maurice Wright Bonney.
Q. You are Mrs. Shirley Bonney's husband; is
7/27/60 that correct?
page 23 } A. Yes.
Q. Mr. Bonney, in August 1959 did you have occasion to attend a religious meeting or conclave with your wife?
A. Yes, sir.
Q. Were you involved in an automobile accident at that time?
A. Yes, sir.
Q. Who was driving your vehicle?
A. I was.
Q. Who was driving the vehicle that collided with you?
A. Mrs. Corbett.

Maurice W. Bonney.

Q. At the time of the accident was your car moving or stopped?

A. Stopped.

Q. What part of your car was struck by Mrs. Corbett?

A. The rear of the automobile.

Q. What damage was done to your car as a result of the accident?

A. The universal was broken and the deck lid was damaged and the left rear right.

Q. Did you talk to Mrs. Corbett after the accident as to what happened?

A. Yes, sir, I did.

Q. What did she tell you that she did?

7/27/60 page 24 } A. She said that she pulled up behind my car and stopped, and her car commenced to roll and she put her foot on the brake, she thought, but apparently it slipped off and hit the accelerator; that she was looking at a map during this time.

Q. After the accident, the following day, did you have occasion to drive your wife home to Norfolk?

A. Yes, sir, I did.

Q. Before you drove her home did she have any medical treatment in Charlotte?

A. Yes, sir, she did.

Q. When you drove her home how was she required to remain in the automobile?

A. Well, she had to lie down in the back seat all the way except for about every twenty-five or thirty miles I had to stop the car for her to change positions, because it was so painful lying in any one position. She had to get out and walk around for a minute or so, and then get back into the car and lie down some more. Of course I had to drive all the way back from Charlotte. She could not help at all.

Q. What, if any, assistance did you have to render her in getting in and out of the car and in moving about?

A. Well, I gave her all the assistance that I could in helping her up and down the steps on our porch and

7/27/60 page 25 } getting in and out of bed and in the automobile. I had to almost carry her. Of course she put all of her weight that was possible on me at the time I was carrying her along.

Q. How long did this assistance have to last? How long did you have to keep doing that for Mrs. Bonney?

A. It lasted for approximately three weeks.

Maurice W. Bonney.

Q. What, if any, change have you noticed in her nervous condition prior to the accident, as related to after the accident?

A. Well, prior to the accident she did not have any nervous condition. After the accident her nervous condition seemed to build up. But, since these treatments it has been going down, and her nervous condition is a lot better now than it was approximately six months ago.

Q. When did you first notice any improvement in her nervous condition?

A. Approximately three months after she began visiting the doctor.

Q. Prior to this accident had your wife ever made any complaints concerning any injury to her back or to her leg?

A. No, sir, none at all.

Q. To your knowledge did she ever have any difficulty in performing her household chores?

7/27/60 A. None, whatsoever.

page 26 } Q. Since the accident have you been required to assist her at all around the house in doing any of her work?

A. Yes, sir, I have. I have done a lot of the lifting, which I knew she could not have done without me.

Q. Have you been required to have any outside help in the house?

A. Yes, sir.

Q. Answer Mr. Winters.

CROSS EXAMINATION.

By Mr. Winters:

Q. Mr. Bonney, what was your wife's condition on the Tuesday morning immediately following the accident?

A. Her condition was very bad. She was just as painful as she was the day before. Her leg was very numb. She said that it felt like it was almost completely paralyzed. Her back was bothering her real bad. Of course her nervous condition was really high-strung.

Q. Was she in any fit condition to drive an automobile that day?

A. No, sir, she was not.

Maurice W. Bonney.

Q. Why did you leave the automobile there for
7/27/60 her to drive, herself, down to the doctor's office
page 27 } that day?

A. We have two cars. I could not drive them both.

Q You made no arrangements, though, for someone to drive her to the doctor's office, did you?

A. No, sir.

Q. You thought that she was in a good enough condition to drive the automobile to the doctor's office that day, didn't you?

A. She said that she would try.

Q. Of your own knowledge do you know whether or not she continued to drive the automobile to keep these appointments with Dr. Wright?

A. She did not.

Q. Were you present at the time, sir?

A. No, sir.

Q. How do you know then?

A. I only know what she told me.

Q. All right. Of your own knowledge then, the only thing you know is that the car was available and she kept the doctor's appointments. Is that correct?

A. That is correct.

Q. I believe you stated that for two weeks you had to help her in and out of bed. Is that right, sir?

A. I had to help her? I did not understand you.

Q. I believe you testified that you had to help
7/27/60 her in and out of bed. Is that right?
page 28 } A. Yes, sir, that is correct.

Q. Even in spite of that you would permit her to drive the automobile, wouldn't you?

A. I did not permit her to drive it. She said that she thought she could drive it. So, apparently she drove it one time, but that was all.

Q. You only know what she told you in that regard, too, don't you?

A. That is correct.

Q. Are you aware of any receipts showing payment to this colored woman who helped you all?

A. No, sir.

Q. Did you keep any record of it?

A. No, sir.
Q. What was her name?
A. We had two or three. I don't recall their names.
Q. In other words, there wasn't just one, but you had two or three from when to when?
A. From August until the first of this year.
Q. You had two or three during that period of time?
A. Yes, sir.
Q. You did not have just one?
A. Not two or three at the same time.
Q. I understand.
7/27/60 A. Two or three at different times.
page 29 } Q. Since January has your wife had any help, to your knowledge?
A. No, sir.
Q. You do not know of your own knowledge what your wife could or could not do following your return to Norfolk, do you?
A. No, sir.
Q. All right, sir. During that period of time did your wife go shopping, to your knowledge?
A. No, sir.
Q. Who did the grocery buying?
A. I did some of it, and occasionally the colored maid we had did some of it.
Q. Did your wife do any?
A. Not to my knowledge, no, sir.
Q. How many people were in your car, sir, at the time this accident occurred?
A. I believe there were six.

Mr. Winters: I have no further questions.

7/27/60
page 30} DR. CLARENCE S. WRIGHT,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Breit:
Q. What is your full name, sir?
A. Clarence S. Wright.
Q. And your occupation?
A. Doctor of Chiropractic.
Q. Doctor, how long have you been practicing chiropractic medicine?

A. Twenty years.

Q. Prior to that time did you intern and train under any other licensed chiropractor?

A. I interned for seven years under Dr. Harry R. Bybee, Sr.

Q. Did you have any college training in chiropractic medicine prior to that?

A. Yes, sir, four years.

Q. Are you a licensed chiropractic physician for the State of Virginia?

A. Yes, sir.

Q. Doctor, did you have occasion to examine and treat Mrs. Shirley Bonney for injuries received on August 15, 1959?

A. Yes, sir.

7/27/60 page 31 } Q. Did you take x-rays at that time?

A. Yes.

Q. Would a view of those x-rays to the jury and to the court help you better to explain the injuries that she sustained?

A. Yes, sir.

Q. Is this an x-ray that you took of Mrs. Bonney?

A. Yes, sir.

Q. Did you take that, yourself, sir?

A. Yes, sir.

Q. Doctor, would you come up here and explain to the jury and the court what you found on Mrs. Bonney when you first examined her, and what injuries she sustained to her spine?

By the Court:

Q. Was the date of your first examination?

A. August 17th.

By Mr. Breit:

Q. 1959?

A. 1959. This is an x-ray that I made of Mrs. Bonney on August 17, 1959, after she complained to me that she had suffered an injury to her spine in an automobile accident two days previously. She also complained of pains through the neck, through the spine.

On examining Mrs. Bonney I found that the 7/27/60 muscles through here, through this area of the page 32 } spine, were very tight—"contracted" is the word that we use—and there was some contraction of the muscles through here, which indicated to me that the spine had been subjected to a severe strain.

Dr. Clarence S. Wright.

So I made this x-ray examination of her. I find that she has a spinal curvature, as you can readily see there. Whenever a condition like this exists the curvature itself would not necessarily be caused by an accident that happened two days previously. It takes quite a little time for a condition like this to develop. However, when one does have a condition like this, an injury which might have little effect on one person would have a much greater effect on a person with a condition of this type, in that the curvature of the spine here causes a cross-gravity pull as though one were leaning over like this, and a concussion of forces would cause a greater pull to that one side than would be normal if we had equal support on both sides of the spine. If you will notice the space between these two bones here and compare that with the space between these two bones here, you will see that this space is not as great as this space. I do not intend to confuse you by saying that the narrowing of this space was caused by the accident. It would take more than an accident like that to cause it. This would have to develop over a period of time. However, a strain to this area could aggravate this condition here, affecting the sciatic nerve which comes from the spine here and goes down the leg, to the extent that it could cause pain and discomfort in a patient who had never had any pain previously.

7/27/60
page 33

Our big problem with a case like this is, after the pain in the sciatic nerve is relieved, to reeducate the muscles of the spine to properly support it. We will have a patient that we treat and relieve the symptoms altogether, but that patient might go out and work in their yard and bend over and use these muscles more than usual, and the symptoms would recur. That is similar to a person who sprains his ankle. If you sprain your ankle the muscles and tendons of your ankle are stretched beyond their capacity. As a result of that you might be able to walk in a short time, but if you should strain that ankle the slightest bit later it would be much easier to strain, and of course the pain and so forth would recur.

If you will notice, the spine makes a secondary curve here. So that would make this area here susceptible to being strained more easily than would be normal. However, her strain through this area was not nearly as great as it was down here. This was much more simple to handle.

Q. Doctor, let me ask you this: How do you account for the

numbness that she experienced in her leg?

7/27/60 page 34 } A. That is what I was referring to here. The narrowing of the space and the injury sustained increased the pressure on the sciatic nerve to the point that it would interfere with the ability of that nerve to function properly.

Q. Does that nerve run through the leg?

A. It goes all the way down the leg to the toes.

Q. Did you obtain any history of any previous back trouble or sciatic nerve trouble from this patient?

A. I asked if she had ever had any difficulty before, and she said that she had never had any pain in her back or legs prior to the accident.

Q. What kind of treatment did you give this lady to correct the pain and the trouble that she was having?

A. We gave manipulated treatment in an effort to separate this in here to take the pressure off the sciatic nerve, and then we gave electrical muscular stimulation treatments through here to try to strengthen those muscles.

Q. When those muscles are stretched, as you described them here, how do they heal? Do they heal normally?

A. Not always.

Q. Assuming that this patient was completely free of any symptoms prior to the accident, even though she had this curvature that you explained here, what is the causal connection between the accident that she sustained on August 15th and the pain and difficulty that she was having immediately thereafter?

7/27/60 page 35 } A. Would you restate that?

Q. What effect did that accident have on her to cause her pain?

A. Any concussion would aggravate this condition in her, because it is already weak. The spine would not be able to withstand the same amount of force subjected to it as it would if it were normal, and thereby would aggravate this condition here which would affect the sciatic nerve.

Q. It is or not probable then that if she had not had the accident or this trauma to her low back that she would have remained free of any symptoms of pain?

A. It is highly probable, yes.

Q. Doctor, how many visits did this patient have to make to you as a result of this accident?

Dr. Clarence S. Wright.

A. I think to date I have seen her 87 times.
Q. Do you have your bill?
A. Yes.
Q. How much is your bill?
A. I will have to check that.

By the Court:
Q. You can go back to your seat, Doctor.
A. Thank you. That is 81 office visits, instead of 87.

By Mr. Breit:
7/27/60 page 36 } Q. Do you have the dates listed?
A. Yes. I have it itemized.
Q. Is this your bill for treatment to date?
A. Yes, sir.
Q. And that is $465.00?
A. Yes, sir.

Mr. Breit: I would like to offer this as plaintiff's next exhibit.
The Court: Plaintiff's Exhibit 3.

By Mr. Breit:
Q. Doctor, when did yon first notice any improvement in her condition as a result of this accident?
A. We were able to alleviate the continuous pain in the leg about two weeks after I started treating her.
Q. What about the back pain?
A. The back pain was constant. I would not be able to say exactly for what period of time. After you relieve the back pain in a condition such as that, the muscles are in such a state that the slightest exertion, or even getting in and out of an automobile, something that simple, can aggravate it. I would say that in the latter part of November we had her in such condition that she could go about her normal movements, and so forth, without suffering as a result of it.
Q. Did you see her subsequent to November?
7/27/60 page 37 } A. Yes. At that time we reduced her treatments. We have been seeing her every week since then.
Q. Did you release her from your care in November?
A. Oh, no. I just released her from daily treatment at that time.
Q. You have continued to treat her since, intermittently?
A. Yes.

Dr. Clarence S. Wright.

Q. And those are the dates that are reflected on your bill?
A. Yes, sir.
Q. Doctor, knowing this lady's condition, and the treatment you have given her so far, do you feel that she is completely cured now so that she will not need any further treatment from you?
A. No.
Q. What in your medical opinion is the probable length of time that this patient is going to have any more difficulty?

Mr. Winters: Your Honor, I must object. I believe that is a leading question.
The Court: He said that he has not discharged her, so I think the question is proper. Objection overruled.
Mr. Winters: I note an exception.

7/27/60 page 38 } A. I would say that if this patient responds as similar cases I have treated in the past, I would continue to see her probably once a week for another six months, and then possibly once every two weeks for another six months. Of course that is an estimate.

By Mr. Breit:
Q. Is it probable then that at the end of the one-year period she will be substantially cured from the results of the accident?
A. It is probable, yes.
Q. What do you charge for one of these visits, Doctor?
A. $5.00.
Q. Answer Mr. Winters.

CROSS EXAMINATION.

By Mr. Winters:
Q. Doctor, did you treat Mrs. Bonney for any condition prior to August 17, 1959?
A. No, sir.
Q. Doctor, as to this condition of the spinal curvature that you found, were you able to pick a time at which you began the treatment relating to the correction of the curvature of the spine, or can you say?

7/27/60 page 39 } A. After November the regularity of the treatment was reduced, because at that time I felt that the acute pain as a result of the accident had been eliminated.

Dr. Clarence S. Wright.

Q. So that your treatment from the latter part of November to this date, and as to the future, relates to the correction of the condition that you found: the curvature of the spine. Is that correct?

A. Not alone the curvature of the spine. I am also treating the muscles of her lower back. You see, if I treat a spinal curvature, since that spinal curvature is supported by muscles, I also have to treat those muscles to give that spine proper support. Do you follow me?

Q. Yes, sir. Can you separate, Doctor, the treatments necessary for the correction of the curvature of the spine and the condition which is alleged to have resulted from this accident on August 15, 1959?

A. Let me get that question straight. Can I separate a treatment for correction of the spine and a treatment for the accident? Is that what you are saying?

Q. Can you distinguish between the two, or are they all a part of the whole?

A. They are all a part of the whole.

Q. I understood you to state, Doctor, that this spinal curvature which you found is in no way related to the accident of August 15, 1959. Is that correct?

A. No, I did not say that.

7/27/60 Q. Was that a preexisting condition?

page 40 } A. Yes. But the fact that it did exist means that it was related to the accident in what it made this patient more susceptible to injury to the spine.

Q. But there is no question but what the spinal curvature itself was not the result of this accident?

A. Oh, you are absolutely right. That is my opinion.

Q. Further, in your opinion, the narrowing which you found in the lower vertebrae which resulted in affecting the sciatic nerve, that also was a preexisting condition. Is that not correct?

A. The narrowing to a degree I am of the opinion was a preexisting thing, but not to the point that where it affected the sciatic nerve.

Q. I presume, Doctor, that you have treated a number of the so-called whiplash injuries?

A. Yes.

Q. Would you describe for us what is the condition that creates a whiplash injury, and how that comes about?

A. Very definitely. I would love to do that. You see, all of these vertebrae of the spine are separate and distinct. They are all moveable. They are made in that way so we can bend our bodies and still have constant support. Therefore, they are

dependent entirely upon the muscles and the ligaments here for their support.

7/27/60 page 41 } In a whiplash injury, you can have a whiplash injury here or you can have a whiplash injury here (referring to x-ray). It means a sudden whipping of the neck like that (illustrating), like you were driving an automobile and you would hit against a concrete abutment. That would snap the head. Actually there have been cases where a person would be found dead under the wheel—

Mr. Winters: Your Honor, I must move that the answer be responsive to the case at hand, and not what conceivably might happen in other instances. I move that the jury be instructed to disregard it.

By the Court:

Q. Doctor, I think perhaps if you will proceed from that point on—

A. You said, "a whiplash injury." You did not say "her whiplash injury.' That is the reason I went into that. In a whiplash injury the snapping effect on the neck would subject the supporting structures through here to such strain that they are no longer able to support it properly, just like you would stretch a rubber band beyond its endurance. It is the same thing here. The same thing applies down here, except in this case it would affect the nerves. In this case it would affect the nerves of the arms and of the neck.

By Mr. Winters:

7/27/60 page 42 } Q. Doctor, in that regard, when a person is riding in an automobile, or is seated in an automobile, which is struck from behind, is it not the usual and customary thing for the head to snap back and then come forward?

A. Yes.

Q. Is it the backward movement then immediately followed by the forward movement that produces this strain of which you are speaking. Is that correct?

A. No. It is really, usually the forward movement that causes the strain. The backward movement, if it is severe enough, causes a fracture of the vertebra, in that if you feel along your spine you feel a series of knots. Those are long prongs that extend behind the vertebrae. The backward movement would force those prongs together, one against the other, and might cause a fracture of the vertebra. The forward movement is really the one that causes a strain.

Dr. Clarence S. Wright.

Q. Doctor, this condition of the low back in reference to the sciatic difficulty that you have described, I believe you testified that that could be produced by the simple act of bending over. Is that correct?

A. No, sir. I said that it could be aggravated.

Q. Aggravated, rather?

A. Yes, sir, after it has been strained.

Q. Could not bending over produce a strain?

A. Not normally speaking, no.

7/27/60 page 43 } Q. In a person with curvature of the spine as this woman had, would that not be likely to produce a strain of the area?

A. Not in a person who has never had any pain before. You could not assume that.

Q. One other question, Doctor. Mrs. Bonney never indicated to you that she had received any treatment for her back prior to this time. Is that correct?

A. Oh, no. She received attention to her spine at the site of the accident.

Q. I mean insofar as prior to this accident?

A. Oh, no.

Mr. Winters: No further questions.

The Court: Will counsel approach the bench?

(The court conferred with counsel, after which the following occurred:)

Mr. Breit: Gentlemen, we have stipulated that Dr. Gervas Taylor, who also examined this patient, has a bill for $25.00. Dr. Taylor was subpoenaed, but is out of the city, and that is why he is not here to testify. The date of his examination, according to this, was August 29, 1959.

The Court: We will take a short recess, Gentlemen.

7/27/60 page 44 } (The following proceeding was had in the absence of the jury:)

The Court: You have rested, haven't you?

Mr. Breit: Yes, sir. I am through.

The Court: The plaintiff rests.

Mr. Winters: Your Honor, I move to strike the plaintiff's evidence in that there is a preexisting condition which has been established by the medical testimony of the plaintiff; and, further, the doctor is not able to separate the treatments re-

quired for the correction of that condition and that which would be necessary to correct any condition allegedly resulting from this accident. In view of that fact I believe the two are so merged as to be inseparable and not sufficiently clear to the jury to properly pass on the issue. I believe in that regard that the plaintiff has failed to carry the burden of proof to prove by a preponderance of the evidence that those injuries and the treatment were due directly to the accident, and I move for judgment.

The Court: Do you oppose the motion?

Mr. Breit: Yes, sir.

The Court: Overruled.

Mr. Winters: I note an exception.

(The trial was then resumed in the presence of the jury.)

7/27/60
page 45 } DR. GEORGE G. HOLLINS,

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

DIRECT EXAMINATION.

Examined by Mr. Winters:

Q. Would you state your name and address, please, sir?

A. Dr. George G. Hollins. My address is in the Wainwright Building, Norfolk.

Mr. Breit: Dr. Hollins' qualifications are stipulated.

By Mr. Winters:

Q. What is your specialty, Doctor?

A. Orthopedic surgery.

Q. What does your specialty entail?

A. Treatment of the conditions of bones, joints and muscles.

Q. Did you have occasion to examine a Mrs. Shirley Ann Bonney?

A. Yes, I did.

Q. What was the date of your examination?

A. The date was March 7, 1960.

Q. Would you tell us what were the lady's complaints to you at this particular time, sir?

A. The whole course of it, or just the time that
7/27/60 she came to me?
page 46 } Q. Just the time she came to you.

A. She said that she had no symptoms except occasional aching in the lower back if she lies on her back long

in bed, and that this goes away when she turns on her side. That was the only complaint she had at that time.

Q. Did she indicate to you at that time, Doctor, what her activities were, if any?

A. Yes, she did.

Q. What were they?

A. She said that she did all of her housework, and could go back to work if she wanted to, although she was not employed at the time immediately prior to the accident.

Q. What did your examination disclose as to her condition at that time?

A. I examined her neck and her back, and there were no findings either objectively or subjectively within the neck or back.

Q. Based on that examination what was your conclusion as to her condition on the date of March 7, 1960?

A. It was my conclusion that she had completely recovered from her injury.

Q. I believe you did form a conclusion, Doctor, as to the injury, or alleged injury, that she may have sustained in this accident. Is that correct?

7/27/60 page 47 } A. Yes. Based on the story that she gave me of the accident and her symptoms and treatment, I formed the opinion that she apparently had a sprain of the cervical and lumbo-sacral spine.

Q. Dr. Wright has testified, Dr. Hollins, that she had a preexisting condition known as a curvature of the spine. With that preexisting condition, in your opinion, could you distinguish between the injury or the aggravation which is alleged to have occurred as a result of this accident and that condition which was brought about as a result of the curvature of the spine which preexisted the accident?

A. You mean assuming that I had seen her when she did have some findings?

Q. Yes.

A. No, it would not be possible to estimate how much percentage would be due to the preexisting condition and how much percentage to the injury.

Q. Of necessity, therefore, Doctor, would it be that in rendering treatment for the correction of the curvature of the spine you would automatically cure any other condition which may exist in that area as relates to the muscles in that area?

A. Of course the curvature of the spine would not be cured, but the symptoms from it would be treated in the same man-

ner, yes. It would not be possible to distinguish as to the treatment of one from the other.

7/27/60
page 48 } Mr. Winters: No further questions.

CROSS EXAMINATION.

By Mr. Breit:

Q. Dr. Hollins, you have seen a number of people with curvature of the spine, have you not

A. Yes.

Q. It is quite common?

A. Yes.

Q. Isn't it true, Doctor, that in most cases, or a great many cases, as far as the patient is concerned she never knows that she has it? She walks around completely free of pain?

A. It depends entirely on the degree of curvature and the age of the patient. Usually patients as they get older will in time have symptoms.

Q. Assuming the patient is twenty-five years old, which is the age of Mrs. Bonney—

Mr. Breit: Let me withdraw that.

By Mr. Breit:

Q. Did you take x-rays of her spine?

A. No.

Q. You did not, sir?

7/27/60 A. No.

page 49 } Q. You were called in by the defendant's attorney, were you not, Doctor?

A. Yes.

Q. You were called in specifically to examine her so that you could testify in court in regard to her injuries?

A. Yes.

Q. You were not called in to treat her?

A. That is correct.

Q. I assume your bill was paid by Mr. Winters?

A. I don't know whether it was paid or not.

Q. Let me reword it. I presume then that you have no bill to Mrs. Bonney, but that your bill will be directed to whoever sent her to you?

Mr. Winters: Your Honor, I must object. I do not see how that is material.

Dr. George G. Hollins.

The Court: The doctor has said that he was retained at the request of defense counsel. Obviously he cannot charge her.

By Mr. Breit:

Q. And yet, Doctor, you did not take x-rays of her back to determine what, if anything, was wrong with it?

A. No, for the reason that I did not find any findings on examination to be investigated further by x-rays.

Q. Would your examination without x-ray reveal a slight scoliosis of the spine, or is that an x-ray finding?

7/27/60 page 50 } A. Well, any more than a slight degree of scoliosis would be observed clinically. But, it is true that a very slight amount of curvature would not be seen by examination.

Q. And you did not see any?

A. No.

Q. So that if she in fact did have one, it would have been a very slight one in March?

A. Yes.

Q. And if it were a slight one, Doctor, then what you said before concerning the age of the patient and the degree of the curvature of the spine would apply here, and probably she would have been completely free of any pain or suffering from that curvature of the spine in the absence of trauma or a blow to her back, wouldn't she?

A. Yes, I think that is most probable.

Q. In your examination of her, and in taking her history, she told you, did she not, Doctor, that she did not have any trouble prior to this accident with her spine or with her back?

A. Yes.

Q. Was there any reason for you to disbelieve what she was telling you? Was there any medical reason for you to disbelieve what she was telling you?

A. No. As I said, I did not find any positive findings on my examination. There was no reason to disbelieve her.

7/27/60 page 51 } Q. That examination was made in March of 1960?

A. That is true.

Q. You did not see her after the accident, or immediately after the accident?

A. No, I did not.

Q. Did you check her clinical records or discuss with either Dr. Wright or Dr. Gervas Taylor the nature of her injuries?

Sadie M. Corbett.

A. No, I did not.
Q. Have you seen her since?
A. No.

Mr. Breit: That is all.

RE-DIRECT EXAMINATION.

By Mr. Winters:
Q. Doctor, when you examined Mrs. Bonney on March 7th did she indicate to you that she was still receiving treatment?
A. No, she did not.
Q. The conclusion that you have come to is that she had completely recovered on March 7, 1960. Is that correct?
A. Yes, that is correct.

Mr. Winters: No further questions.

7/27/60
page 52 }

RE-CROSS EXAMINATION.

By Mr. Breit:
Q. Doctor, how do you account for the complaints that she was making on that day?
A. I mentioned that before. As far as my examination was concerned she apparently was completely recovered. Her only symptom was that she was occasionally aching in the lower back, if she lies on her back long in bed, and that this goes away when she turns on her side. I have no way of verifying that other than to relate that that was what she told me.

Mr. Breit: No further questions.

SADIE M. CORBETT,
the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Winters:
Q. Would you state your name, please, ma'am?
A. My name is Sadie M. Corbett.
Q. Mrs. Corbett, would you relate to the jury the incidents that resulted in the collision between your vehicle and the Bonney vehicle, and the time?

7/27/60
page 53 }

A. Yes. In August of last year we had gone down to Charlotte to attend this convention. The lead car

had gotten ahead of me. There were about five cars between the lead car and me. There were two additional cars had pulled in front of me, which made me about the seventh one behind. The map that I was reading was the instructions that I had been given as to the directions of where to go to the immersion. So, when the two cars pulled in I knew that we we would be lost without the instructions. That was why I was reading the map. When we stopped I reached down on the side to get the map. I was reading it. I did not even know that the car was moving, or anything, until I heard the crash. I kept on looking because I just knew it wasn't me. I looked up to see who it was, and my car had rolled into the back of theirs. When I looked up, Mrs. Bonney was halfway to my car. She had gotten out and was coming around to see who was driving the car.

That is what happened, as far as I know. As far as hitting the gas, I did not do that.

Mr Winters: No further questions.
Mr. Breit: No questions.

(The following proceeding was had in the absence of the jury:)

7/27/60
page 54 } Mr. Breit: If Your Honor please, in view of the fact that counsel states that his other witness, whoever it may be, is here solely for the purpose of discussing injury and not liability, I move the court at this time, pursuant to 8-218 of the Code, to strike the evidence in regard to liability and direct a verdict for the plaintiff, instructing them only on the question of damages in order to arrive at their amount.

Mr. Winters: I object to any action by the court which in any way instructs the jury that they are obligated or duty-bound to return a verdict for the plaintiff in this particular case as to liability, on the ground that it would fail to take into account the fact that the jury has a right to test the credibility of the witnesses and determine whether or not this lady has suffered any injuries as a result of this accident. Further, there is evidence of a pre-existing condition which she has; and further, the evidence is that the doctor is not able to distinguish between the treatments necessary. Therefore, there is no element of damage in that regard, and I believe that would be highly prejudicial to instruct the jury as the attorney for the plaintiff requests.

(Thereupon, an off-the-record discussion was held, after which the following occurred:)

7/27/60 page 55 } The Court: The court sustains the motion of counsel for the plaintiff as to the negligence of the defendant, and rules that under the evidence the plaintiff is not guilty of any contributory negligence, and that the defendant, as a matter of law, is guilty of negligence which was a proximate cause of the collision. The court will grant an instruction to the above effect, with the provision that if the jury believes from a preponderance of the evidence that the plaintiff sustained injuries as a proximate result of the negligence of said defendant, or said accident, or that a previous condition was aggravated as a proximate result of said accident, then they shall find in favor of the plaintiff in such amount as the usual instruction on damages would outline.

(The trial was then resumed in the presence of the jury.)

MRS. WILLIAM A. CORBELL, JR.
called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Winters:

7/27/60 page 56 } Q. Would you state your name and address, please, ma'am?

A. Mrs. William A. Corbell; 5638 North Park Avenue.

Q. Do you know the plaintiff, Mrs. Bonney?

A. Very well.

Q. How long have you known Mrs. Bonney, Mrs. Corbell?

A. Since 1954 when I went to work at the place where she worked.

Q. Where is that?

A. Nu-Car Carriers, Newton Park.

Q. I believe you also know Mrs. Corbett; is that right?

A. Yes, for a longer period of time.

Q. Do you know of your own knowledge anything about the condition of Mrs. Bonney prior to August 15, 1959?

A. Yes. In 1956 she and I engaged in a charm school together.

Mrs. William A. Corbell, Jr.

By the Court:

Q. What kind of school?

A. Charm—modeling school. She was known to have a curvature of the spine which she said bothered her occasionally. Whether she took treatments for that, I don't remember, but it was shortly after that she started going to a chiropractor. I remember it particularly, because I thought it was rather extravagant and foolish to keep going so frequently to a chiropractor. I don't have much confidence in them. I felt like he was taking her money unnecessarily.

7/27/60
page 57 } By Mr. Winters:

Q. That was in 1956?

A. It has been since 1956. Whether she actually started the treatments that year, I could not swear to it.

Q. Was it before August 15, 1959?

A. Oh, most definitely.

Mr. Winters: No further questions.

CROSS EXAMINATION.

By Mr. Breit:

Q. When did you work with Mrs. Bonney?

A. I think it was in 1954, because that was when I moved to the location where I now live.

Q. When did you quit working with her?

A. I believe I worked there about six or seven months.

Q. It was during that six or seven-month period that she went to a chiropractor?

A. Within that period of time. I could not say for sure. But, we have been close friends since then, even after I quit work.

Q. Do you know the name of the chiropractor that she went to see?

A. No. I am not real sure of that.

7/27/60 Q. Did she tell you that she was going to a
page 58 } chiropractor, or did you hear it from others?

A. No. She told me, herself, because she related experiences that she had there with him as to how it felt and the results she was getting from it.

Q. And that was before 1959?

A. Most definitely.

Q. Were there any other people who knew about her taking chiropractic treatments?

A. There should be, but I really can't name any. There

were friends of ours that were going to the same doctor. I have been trying to think all morning who they are, but I don't know.

Q. You can't think of your friends' names, either?

A. As to who were taking these treatments.

Q. You can't think of the name of the doctor?

A. No.

Q. But you specifically know that this lady went to that doctor, from your conversations, back in '54, '55 and '56?

A. Yes, because we are close friends. We often related things back and forth to one another.

Q. You just walked in the courtroom a few minutes ago, didn't you, Mrs. Corbell?

A. Yes.

7/27/60 page 59 } Q. You were not subpoenaed to come here?

A. I was called on the telephone by Mrs. Corbett's lawyer.

Q. And asked to come down?

A. Yes.

Mr. Breit: No further questions.

Mr. Winters: No further questions, Your Honor. The defendant rests.

SHIRLEY ANN BONNEY,
the plaintiff, having been recalled, further testified as follows

DIRECT EXAMINATION.

Examined by Mr. Breit:

Q. Mrs. Bonney, you heard Mrs. Corbell just testify in regard to your previous back condition?

A. Yes.

Q. Will you tell the court and jury exactly when, if at all, you had ever received medical treatment, and what the purpose of that treatment was?

A. Well, at the time I received treatment, I was a telephone operator for this firm. It had gotten on my nerves so bad. In fact, I had to quit the job two times. Each time they 7/27/60 would call me back and say, "Try it again." They page 60 } just wanted me to stay with them. I was with them for three years. Telephone work is sometimes nerve-racking. I had been going to doctors and going to doctors and taking nerve medicine, which only relieved me, but it did not seem to really get me right.

So, I went to visit a lady and I told her what was wrong.

Shirley Ann Bonney.

She said that she had been to a doctor who had really fixes your nerves, and told me who it was.

Q. Who was that doctor?

A. Dr. Charles Rawlings.

Q. How many times did you visit him?

A. I went to him four or five times.

Q. Is that the doctor to whom Mrs. Corbell was referring?

A. He is a chiropractor doctor. He is the only one I have gone to.

Q. Was there any trouble with your back, as distinguished from your nervous condition, when you went to see him?

A. Nothing aside from nervousness, no. Anyone who knows me can tell you that I am very high-strung.

Mr. Breit: Nothing further.

CROSS EXAMINATION.

By Mr. Winters:

7/27/60 page 61

Q. Mrs. Bonney, did you attend the charm school with Mrs. Corbell?

A. Yes. She talked me into going over and taking a charm course, and I did.

Q. Did you have difficulty at that time in walking straight because of the curvature in your back?

A. I had just about the same symptoms that anyone would have at certain times.

Q. I must repeat the question. I regret to say that I do not understand your answer. Did you have any difficulty with your back which prevented you from walking straight while you were attending the charm school?

A. I could walk straight. I could walk straight then and I can now.

Q. Could you hold your back straight?

A. I certainly did hold it straight. We were instructed to, and we were given exercises as to different ways to walk. I am sway-back, if that is what you mean.

Q. As to the treatments you received from Dr. Rawlings, they were manipulations of the neck and the spine, were they not?

A. Not the spine. He did something to my neck. I would be relieved of nervousness for awhile, and then I would go back to him, as best as I can recall, on Tuesday and Thursday

afternoons for an hour. It lasted for about four or five visits.

7/27/60 page 62 } Q. When did you have this treatment, ma'am?
A. What year you mean?
Yes, ma'am.

A. It was in 1954 that I had the treatments.

Q. It was not after you attended the charm school?

A. Oh, no. That was, I think, in '57. I don't remember the year. I have got my certificate with the date on it.

Mr. Winters: No further questions.

Mr. Breit: We rest.

Mr. Winters: We rest.

7/27/60
page 63 } EXCEPTIONS TO INSTRUCTIONS.

Mr. Winters: The defendant excepts to the granting of Instruction P-1, because the defendant does not believe that the instruction is a correct statement of the law, in that it does not clearly indicate to the jury that even though they believe the defendant to be negligent—the court having ruled that the defendant was negligent—the jury must further pass on whether or not they believe that the injuries were a proximate result of the negligence of the defendant. The instruction in effect requires the jury to return a verdict for the plaintiff in this instance, whereas we belive that it is for the jury to determine whether or not the plaintiff has suffered any injuries as a result of this accident.

Mr. Winters: The defendant excepts to the action of the court in refusing Instruction D-1, offered by the defendant, for the same reason: that it does not allow the jury to determine that the plaintiff has suffered no injuries as a result of the accident, but the effect of the ruling of the court is that they find for the plaintiff and assess her damages. As a result thereof the defendant offered Instruction D-2.

7/27/60 page 64 }

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas Awarded*	1
Record	2
Motion for Judgment	2
Proof of Service	3
Plea of Release	4
Answer and Grounds of Defense	5
Notice	6
Order, March 4, 1960	7
Instructions	7, 11
Verdict	10, 12
Order, June 13, 1960	10
Judgment, July 27, 1960	13
Notice of Appeal	14
Assignments of Error	14
Depositions:	16
Dr. Basil Boyd, Jr.	17
A. A. Ramsey	23
Witnesses:	
Sadie M. Corbett	33, 91
Robert L. Fry	34, 59
Maurice W. Bonney	41, 45, 74
Shirley Ann Bonney	44, 53, 63, 95
Dr. Clarence S. Wright	78
Dr. George G. Hollins	87
Mrs. William A. Corbell, Jr.	93
Proceedings	42, 47, 58, 86, 92
Exceptions to the Instructions	61, 97
Notice of Appeal	62