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Record No. 6168

In the
Supreme Court of Appeals of Virginia
at Richmond

CHARLES LAURSE SEAWELL

v.

T. O. CARMINES, ADMR., ETC.

FROM THE CIRCUIT COURT OF YORK COUNTY

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. 6168

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 14th day of June, 1965.

CHARLES LAURSE SEAWELL, Plaintiff in Error,

against

T. O. CARMINES, ADMINISTRATOR OF THE ESTATE OF WILLIAM SIDNEY CARMINES, DECEASED, Defendant in Error.

From the Circuit Court of York County
Robert T. Armistead, Judge

Upon the petition of Charles Laurse Seawell a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of York County on the 11th day of January, 1965, in a certain motion for judgment then therein depending wherein T. O. Carmines, Administrator, etc., was plaintiff and the petitioner was defendant.

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

RECORD

* * * * *

page 26 } INSTRUCTION D-1.

The Court instructs the jury that if you believe from the evidence that Charles Seawell was exercising reasonable care in the operation of his vehicle in an easterly direction in his proper lane along Route 171, travelling at a lawful rate of speed and keeping a proper lookout, and if you further believe from the evidence that William Carmines drove his truck into the eastbound land of Route 171 from the private road or driveway when Charles Seawell who was in his proper lane and was too close, in the exercise of ordinary care, to avoid the collision, then you are instructed that Charles Seawell was not guilty of negligence and you must find your verdict in his favor.

Refused.

R. T. A.

page 26A } INSTRUCTION D.

The Court instructs the jury that if you believe from the evidence that Charles Seawell was exercising reasonable care in the operation of his vehicle in an easterly direction along Route 171, travelling at a lawful rate of speed and keeping a proper lookout, and if you further believe from the evidence that William Carmines drove his truck into the eastbound *land* of Route 171 from the private road or driveway when Charles Seawell was too close, in the exercise of ordinary care, to avoid the collision, then you are instructed that Charles Seawell was not guilty of negligence and you must find your verdict in his favor.

page 27 } INSTRUCTION NO. 3.

The Court instructs the jury that contributory negligence is never presumed and contributory negligence as a defense must be proven by a preponderence of the evidence by the defendant, unless such contributory negligence appears from the evidence in behalf of the plaintiff.

Contributory negligence as a defense must be a contributing cause of the accident. And unless it is shown by a preponderence of the evidence, or from the evidence in behalf of the

plaintiff, that the negligence of plaintiff's decedent, if any, was a proximate or contributing cause which combined with the negligence of the defendant, Charles Laurse Seawell, and contributed directly to the death of the plaintiff's decedent, he is not thereby barred from recovery by contributory negligence.

The Court further instructs the jury that if after weighing all of the evidence, they find it equally balanced or they are undecided as to whether or not plaintiff's decedent, William Sidney Carmines, is guilty of contributory negligence, then it is the duty of the jury to resolve such uncertainty or doubt in favor of the plaintiff.

* * * * *

R. T. A.

page 28 } INSTRUCTION NO. 1.

The Court instructs the jury that the following duties were imposed upon the defendant, Charles Laurse Seawell, as he approached the driveway in front of Irma Hopson's home:

(1) To exercise reasonable care to keep and maintain a proper and efficient lookout and to take advantage of whatever an efficient lookout would disclose.

(2) To drive his vehicle on the right side of the highway and not to pass other vehicles proceeding in the same direction across a solid line when such line by law forbade such passing.

The Court further instructs you that each of the above duties were continuing duties and if the jury believe from a preponderence of the evidence that Charles Laurse Seawell violated any one or more of the foregoing duties and that such violation, if any, was the proximate cause of the collision and death sustained therein by the plaintiff's decedent, William Sidney Carmines, and the plaintiff's decedent, William Sidney Carmines, was free of Contributory negligence, then you must find your verdict for T. O. Carmines, Administrator of the Estate of William Sidney Carmines, Deceased, and fix his damages in accordance with other instructions of the Court.

R. T. A.

* * * * *

page 30 } INSTRUCTION NO. 2.

The Court instructs the jury that while T .O. Carmines, Administrator of the Estate of William Sidney Carmines, Deceased, the plaintiff, must prove his case by a preponderence of the evidence, this does not mean that he must prove the negligence, if any, of Charles Laurse Seawell, beyond a reasonable doubt as in a criminal case.

Preponderence of the evidence means that if after hearing all of the evidence the jury is satisfied by the weight of the evidence that Charles Laurse Seawell was guilty of negligence which was a proximate cause of the collision and death sustained therein by William Sidney Carmines, then the plaintiff has carried the burden of proof.

The jury is entitled to draw all reasonable inferences from any facts proved, and in arriving at its verdict, can base its findings on such facts and reasonable inferences drawn therefrom.

R. T. A.

* * * * *

page 32 } INSTRUCTION G.

The Court instructs the jury that negligence is the doing of some act which a reasonable prudent person would not do under the same or similar circumstances; or the failure to do some act which a reasonable prudent person would have done under the same or similar circumstances.

R. T. A.

* * * * *

page 34 } INSTRUCTION A.

The Court instructs the jury that the burden is upon the plaintiff to produce evidence to prove negligence on the part of the defendant, Charles Seawell, by a preponderance of the evidence and further to show that such negligence, if any, was the proximate cause of this accident. The evidence produced must prove more than a probability of negligence and any inferences therefrom must be based on facts. There is no presumption of negligence arising from the mere happening of the accident or from the fact that Mr. Seawell was the operator of one of the automobiles involved in the accident.

The burden is upon the plaintiff to show how the accident happened and you cannot guess, assume or speculate as to any negligence on the part of the defendant.

If you find from the evidence, therefore, that the plaintiff has failed to sustain the burden of proving by a *preponderance* of the evidence negligence on the part of the defendant, or that the plaintiff has failed to prove that such negligence, if any, was the proximate cause of the accident and the injuries complained of, then it will be your duty to find your verdict for the defendant, Charles Seawell.

R. T. A.

page 35 } INSTRUCTION B.

The Court instructs the jury that as William Carmines was driving his automobile from the private road or driveway of the Hobson house on Route 171, he was required by law to exercise reasonable care in the performance of the following duties:

1. Immediately before entering Route 171 to bring his car to a complete stop if there was traffic approaching from either direction within 500 feet from the said point of entrance.
2. To yield the right of way to such traffic approaching on Route 171.
3. To keep a proper and effective lookout for all traffic using Route 171.
4. To act effectively on what such proper lookout disclosed or should have disclosed.
5. To use reasonable care to avoid a collision with the vehicle operated by Mr. Seawell.

You are further instructed that each of the above enumerated duties is a continuing duty to be exercised when the exercise thereof would be reasonably effective, and further that Mr. Seawell had the right to assume that William Carmines would obey each and every provision of the law as above set forth.

If you find from the evidence therefore that William Carmines violated any one or more of the above enumerated duties then he is guilty of negligence and if you further find that such negligence, if any, was an efficiently *oontributing* cause of this collision, then you are told that under the said circumstances you cannot find your verdict in favor of the plaintiff but must find your verdict for the defendant, Charles Seawell.

R. T. A.

page 36 } INSTRUCTION C.

The Court instructs the jury that if you find from the evidence that Charles Seawell was operating his vehicle in an easterly direction along Route 171 and that as he approached the private road or driveway of the Hobson house, he saw the vehicle operated by William Carmines approaching Route 171 along said private road or driveway at a slow rate of speed, then you are instructed that Mr. Seawell had the right to assume that Mr. Carmines would stop his truck before entering Route 171, and allow him to proceed safely along Route 171.

R. T. A.

* * * * *

page 50 }

* * * * *

In the Circuit Court of the County of York, the 11th day of January, 1965.

* * * * *

This day came T. O. Carmines, Administrator of the Estate of William Sidney Carmines, deceased, by Russell M. Carneal, his attorney, and likewise came Charles Laurse Seawell, by Daniel W. Wilkinson, Jr., his attorney, having heretofore filed his grounds of defense, and all parties announced they were ready for trial.

Thereupon came the jury of thirteen persons, duly summoned by the Sheriff of this County, pursuant to a writ issued by the Clerk of this Court, said names having been taken from the list as made up by the Jury Commissioners, all of whom appeared and were examined by the Court and found free from all legal exceptions and qualified to serve as jurors according to law.

Thereupon came the plaintiff, by counsel, and the defendant, by counsel, and each struck from said list three of said veniremen and the remaining seven constituted the panel for the trial of this case, viz: Vance W. Nunn, Roland D. Higgins, Eldon T. Deskins, John S. Gee, Thomas H. Daniels, Levi Stephens and F. C. Barnes, were sworn to well and truly try the issue joined in this case and a true verdict render according to the law and evidence.

Thereupon the plaintiff introduced his evidence and the defendant introduced his evidence and the Court received the

instructions, heard the argument of counsels, and the jury retired to their room to consider of their verdict, and after some time returned into open Court having found the following verdict: "We the jury award the widow of William Sidney Carmines the decedent the amount of $8,000.00. Fance Nunn, Foreman".

On a motion to set aside the verdict as contrary to law and evidence and reasons as stated at the bar, motion page 51 } is over-ruled and the Court stands that firm judgment be entered against Charles Laurse Seawell in the amount of $8,000.00.

And the defendant having indicated his intention to apply to the Supreme Court of Appeals for a writ of error and *supersedeas,* it is ordered that no execution be issued if the defendant, or someone for him, shall within 30 days enter into bond in the penalty of $10,000.00 conditioned according to law with surety to be approved by the Clerk.

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page 60 }

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Filed in the Clerk's Office the 2nd day of March, 1965.

Teste:

MELVILLE I. BRYANT, Clerk
EDW. W. GOODE, D. C.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

Prior to the expiration of sixty (60) days from final judgment, the defendant, Charles Laurse Seawell, files herewith his notice of appeal and lists his assignments of error as follows:

The Court erred:

1. In refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence on motion of the defendant;
2. In refusing to strike the evidence of the plaintiff on motion of the defendant made at the conclusion of all of the evidence;
3. In granting Instruction 1 offered by the plaintiff over the objection of the defendant;

4. In granting Instruction 2 offered by the plaintiff over the objection of the defendant;

5. In refusing to grant Instruction A as offered by the defendant and in amending said instruction by eliminating the word "sole" over the objection of the defendant;

6. In refusing to grant Instruction C as offered by the defendant;

7. In refusing to grant Instruction D as offered by the defendant;

8. In refusing to grant Instruction D1 as offered by the defendant;

9. In refusing to set aside the verdict of the jury on the ground that the verdict was contrary to the law and the evidence and without evidence to support it;

10. In refusing to set aside the verdict of the jury for the reason that the evidence conclusively showed that the plaintiff's decedent was guilty of contributory negligence as a matter of law;

page 61 } 11. In refusing to set aside the verdict of the jury and enter up judgment in favor of the defendant;

12. In refusing to set aside the verdict of the jury and grant a new trial on all issues.

DANIEL W. WILKINSON, JR.
Counsel for Charles Laurse Seawell.

* * * * *

Stenographic report of all the testimony, together with all the motions, objections, and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the trial of the case of T. O. Carmines, Administrator of the estate of William Sidney Carmines, deceased, *v.* Charles Laurse Seawell, tried in the Circuit Court for the County of York, Virginia, on the 11th day of January, 1965, before the Honorable Robert Armistead, Judge of the said Court, and Jury.

Present: Mr. Russell Carneal, and Mr. Duane Holloway, Attorneys for Plaintiff.

Mr. Daniel Wilkinson, Jr., and Mr. Arthur G. Lambiotte Attorneys for Defendant.

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page 8 }

* * * * *

TROOPER WILLIAMS,
called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

Q. State your name, sir.

A. Trooper P. S. Williams.

Q. Your residence?

A. Yorktown.

Q. Occupation?

A. State trooper.

Q. How long have you been a state trooper?

A. Fourteen years.

Q. Directing your attention to February 10, 1964, were you called upon at that time to investigate an accident occurring on Route 171 in York County?

page 9 } A. I did, sir.

Q. Would you tell the Jury in your own words what you found there?

A. When I arrived at the scene, approximately 5:10 p.m., the scene, which was about a mile west of Poquoson city limits on Route 171, approximately 300 feet west of the intersection of Route 606. Characteristics of the highway there is a curve and approximately level surface. Surface was dry, there was no passing line, the country was open there.

Q. Mr. Williams, I wonder if you would come around and put a sketch on here? (Indicating cardboard).

A. It will be completely rough. (Witness complied with request of counsel).—I will put "C" for Carmines, and this is Seawell's vehicle. I will mark that with an "S".

Q. How wide is the road at this point?

A. The road at this point is 18 feet 2½ inches.

Q. What is this?

A. This is the drivewav.

Q. Note the width of that driveway.

A. The driveway—no, sir, I don't have the width of that driveway.

Trooper Williams.

Q. What is this line indicating here?

A. The red solid line is no passing for east-
page 10 } bound drivers, broken line for westbound traffic.

Q. Will you tell the Jury how far back in this direction the solid line extended?

A. This solid line extends back westerly not quite .2 of a mile.

Q. Does it continue to extend past the driveway?

A. Past the driveway approximately up to the intersection.

Q. What did you find when you arrived at the scene?

A. I found a 1963 Ford bearing Virginia license 544-549, and I was advised that was operated by Mr. Seawell. This vehicle was down the road approximately 81 feet from point of impact, which was opposite the driveway, sir. And I found the Carmines' vehicle, this '55 Dodge which I was advised was operated by William Sidney Carmines. This vehicle was approximately—the rear wheels of this vehicle, right rear wheel, was approximately 14 feet 10 inches east of the end of the culvert of this driveway.

Mr. Wilkinson: How far?

A. 14 feet 10 inches from the end of the culvert.

Q. Had the cars been moved to your knowledge?

A. To my knowledge, they had not.

page 11 } Q. What color was the truck?

A. The truck was a red truck.

Q. Mr. Williams, did you take a picture of the scene as you found it at that time?

A. I did, sir. This is the picture taken from west to east.

Court: I have marked this photograph, Plaintiff's Exhibit 1. Do you have any other photographs?

A. Yes.

Court: Let me mark them all now.

(At this time the Court marked for identification, photographs as Plaintiff's Exhibits 2, 3, and 4; and photographs were marked for identification, Defendant's Exhibits 1, 2, 3. and 4).

I hand you photograph marked Plaintiff's Exhibit 1. Would you identify that, please, and tell the Jury what it represents.

Trooper Williams.

A. This is a photograph of the accident scene taken from the west in an easterly direction. That would be towards Poquoson. This would be the intersection just past it.

Q. Show it to the Jury.

A. This would be the intersection of 606; this is page 12 } the driveway; this is the Carmines vehicle; and this is the Seawell vehicle.

Q. Do you know who the gentleman standing beside that vehicle is?

A. Mr. Percy Williams.

Q. I hand you Plaintiff's Exhibit 2 and ask if you can identify that?

A. This is the Seawell vehicle as I found it at the scene of the accident.

Q. Plaintiff's Exhibit 4?

A. This is the Carmines vehicle as I found it at the scene of the accident.

Q. What does plaintiff's Exhibit 3 represent?

A. This is a picture taken from position in a vehicle that we were stopped at the highway, leaving the driveway where the Carmines vehicle left from.

Mr. Carneal: We would like to have these marked also.

(Photographs were marked by the Court as Plaintiff's Exhibits 5, 6, and 7 for identification).

Q. Mr. Williams, I hand you Plaintiff's Exhibit 5, 6, and 7, and ask if you can identify those?

A. These are pictures of the Carmines vehicle, the Dodge pickup truck.

Q. Would you explain to the Jury, if you will page 13 } sir, where damage to the vehicle owned by Carmines was?

A. From Plaintiff's Exhibit 7, it will show the damage best. Where the major point of impact was between the front bumper and front left wheel.

Q. Do you recall whether the front tire was burst in any way or not?

A. No, sir, I believe it was still up at the time.

Q. Was there any damage to the Carmines vehicle back behind the wheel?

A. No, sir.

Q. Where was the primary damage to the Seawell vehicle?

A. Seawell vehicle was the right front, sir.

Trooper Williams.

Q. Did you determine from your investigation, any debris, the point of impact on the road?

A. The impact occurred in the west—the eastbound lane, sir.

Q. Did you determine with any closer proximity than that?

A. Mostly would be towards the south edge of the eastbound lane.

Q. The south edge?

A. Yes, sir.

Q. Would that be closest to the driveway or cen-
page 14 } ter line?

A. Closer to the driveway than the center line.

Q. It would be closer to the driveway than the center line?

A. Yes.

Q. Did you determine the width of the eastbound lane at that point, measured from the edge of the highway to the center line?

A. The eastbound lane was 9 feet 1 inch.

Q. Did you get any statement, or did Mr. Seawell give you any statement relative to this accident?

A. No statements.

Q. One other question, had Mr. Carmines been removed when you arrived at the scene?

A. He had, sir.

Q. You did not see him then?

A. I did not see him until I was at the hospital.

Court: You mentioned this drawing. Did you wish to introduce that?

Mr. Carmines: Yes, sir, I wish to offer it as Exhibit for the plaintiff, Exhibit 8, I assume.

(Drawing was marked by the Court as Plaintiff's Exhibit 8, and was accepted in evidence).

page 15 } (Photographs previously marked for identification as Plaintiff's exhibits 1 through 7, inclusive, were accepted in evidence).

Mr. Carneal: Witness with you.

CROSS EXAMINATION.

By Mr. Lambiotte:

Q. Mr. Williams, what is the speed limit in this area, the area of the accident?

A. 55.

Q. And the place where the accident occurred, could you describe what type of roadway, driveway, or whatever it is there?

A. The drive there is a dirt driveway, the surface of the highway is tar and gravel.

Q. Do you know what this driveway is used for?

A. It is for a private dwelling.

Q. Is there any traffic controls or anything at this particular place, at the driveway, where the driveway joins the highway?

A. No, sir.

Q. 'And if you are coming out of that driveway, is there anything to obstruct your vision looking to the west?

A. There is a few trees there, but it is just the trunks of the trees, none of the limbs blocks your vision.

Court: As you come up to the driveway, would page 16 } the driveway be to the right or left?

A. The left, sir.

Court: You say there is nothing to the left?

A. Nothing except trunks of a few small trees.

Court: What is the visibility?

A. Visibility is from .2 to .3 of a mile.

By Mr. Lambiotte:

Q. You said Mr. Seawell did not give you a statement as to the way the accident occurred, is that right?

A. That is right.

Q. Did you ask him for one?

A. I am not sure about it at the time.

Q. Did you ascertain the names of any witnesses to the accident?

A. At the time, at the scene I talked with two witnesses, Mrs. Betty Deufel and Mr. Talmadge Watkins.

Q. How did you ascertain those witnesses?

A. Upon asking at the scene, they volunteered and I was also advised by Mr. Seawell that they were passengers in the car.

Q. No other witnesses came forward, is that correct?

Trooper Williams.

A. Not at that time.

Q. Referring to Plaintiff's Exhibit 1, would you
page 17 } explain to the Jury what that black mark is?

A. That is a skid mark of the left front wheel of the Seawell vehicle.

Court: I don't believe that is very helpful. If you wish, step over by the Jury, and I think they can see it.

A. Yes, sir. —this black mark here just south of the center line, going up to the vehicle, the Seawell vehicle.

Q. With relation to the house and driveway, where does this black mark begin?

A. It starts approximately, just east of the east end of the driveway.

Q. And approximately—do you recall what the distance is from the center line to the black mark?

A. No, sir, not the approximate distance.

Q. Now referring to Plaintiff's Exhibit 4, would you please explain that black mark?

A. No, sir, I can't explain that one, sir. Just a skid mark, and I couldn't swear to what vehicle it came from.

Q. Referring to Defendant's Exhibit 1, could you identify that photograph?

A. This is a photograph of the accident scene from west to east.

page 18 } Q. Which way was the Seawell vehicle travelling?

A. Coming from west to east.

Court: Going in the same direction as the photograph?

A. Yes, sir, going in the same direction as the photograph.

Q. Would you identify the Hobson drive?

A. This is the Hobson drive.

Q. You say this solid line extends .2—

A. A fraction less than .2 of a mile.

Q. From where?

A. From the point of impact back up to the end of the line, where the line first starts is approximately .2 of a mile.

Q. This is Defendant's Exhibit 2, could you identify that?

A. This is also the accident scene.

Q. Referring to Defendant's Exhibit 3, would you identify that?

A. This is also another picture of the accident scene.

Trooper Williams.

Q. Defendant's Exhibit 4, would you identify that?
A. Also another picture of the scene.
Q. Referring to Plaintiff's Exhibit—does this
page 19 } photograph show any debris?
A. Debris right opposite the driveway.
Q. Does it not extend from the center of the eastbound lane to the edge of the roadway?
A. Just south of the center on.
Q. So that the debris does cover approximately one half of the eastbound lane, is that right?
A. That is right.
Q. You did not find any debris off of the hard surface, is that right?
A. No, sir.
Q. What were the weather conditions?
A. Clear, sir. It was clear and dry.
Q. Were you able to ascertain the time the accident occurred?
A. I was advised at the scene of the accident that it occurred approximately 4:25 p.m.
Q. Was it clear, well lighted, at that time of day?
A. At that time of day, it was clear, the sun was still shining.
Q. Sun was shining?
A. Yes, sir.

Mr. Lambiotte: I believe that is all I have.

page 20 } (Exhibits formerly marked for identification as Defendant's Exhibit 1 through 4, inclusive, were accepted in evidence).

RE-DIRECT EXAMINATION.

By Mr. Carneal:
Q. Mr. Williams, you were asked about what the speed limit was on this road, and I believe you indicated it was 55 miles per hour?
A. Yes, sir.
Q. But as you approach from the east of this curve, is there not a sign back up in this area, indicating that safe speed of 45?
A. As you approach from the west?
Q. Headed east?
A. Yes.

Trooper Williams.

Q. Sign indicating safe speed of 45?
A. 45, yes, sir.

Mr. Carneal: I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Lambbotte:
Q. Do you know where the sign is?
A. Yes, sir, the sign is not over .3 or .4 of a mile to the west of the driveway, sir.

Court: .3 or .4 of a mile west of the driveway?

page 21 } A. Yes, sir, for a safe speed sign, yes.

Court: Does this pertain to the whole area, or just the curve?

A. There is a curve sign above it. Below it, it says, safe speed 45 miles an hour.

Mr. Carneal: That pertains to this curve we are talking about in this picture?

A. Yes, sir.

Court: And that is .3 of a mile away?

A. Approximately .3 of a mile. There are several curves in that road down there.

By Mr. Lambiotte:
Q. Now this curve you are referring to just a second ago which is west of the Hobson driveway, that is a rather steep curve?
A. Yes, sir.
Q. What is the distance of that curve from the Hobson roadway to that curve?
A. I would say approximately .3 of a mile.
Q. Now as you are approaching, after you round this curve and you are travelling east approaching the Hobson house, the road is essentially pretty well straight?

J. W. Taylor.

A. Fairly straight.

page 22 } Q. And there are no more further curves until after you pass the Hobson house and Davis' store?

A. I believe the curve starts just about the Hobson property.

Q. Which is to the east of the roadway?

A. I believe the first that curve starts gradually is just west of the driveway, but it is very gradually.

Q. After you get east of the roadway it gets rather steep?

A. Steep by Davis' store.

Q. Coming out of that driveway you can see approximately .2 of a mile to the left as you are coming out of Hobson's driveway, isn't that correct?

A. That is correct.

* * * * *

page 23 } MR. J. W. TAYLOR,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

Q. State your name please, sir.

A. James Wilbur Taylor.

Q. Where do you live?

A. Tabbs. Route 171 about a mile below Tabbs.

Q. How long have you lived there, sir?

A. 57 years.

Q. Mr. Taylor, are you in any way related to William S. Carmines and T. O. Carmines, either by blood or marriage, sir?

A. Not that I know of.

Q. Do you have any business association of any kind with Mr. Odell Carmines in any way?

A. No, I never have.

Q. Now, Mr. Taylor, in reference to the home of Irma Hobson, would you tell the Jury approximately how far you live from her home?

A. Approximately a mile.

Q. Do you have any interest in the vicinity of her home?

J. W. Taylor.

A. Yes, I farm the land there.

page 24 } Q. I hand you picture identified as Defendant's Exhibit 2, and ask you if you would point out that land that you farm?

(Witness complied with request of counsel).

Q. Would you point it out to the Jury, sir?

A. This tree is at Davis' store, and that dairy farm is over across this road on 171, on by where the accident happened.

Q. Can you identify this building here?

A. That is Davis' store. That is Hobson's.

Q. Mr. Taylor, directing your attention to the day of February 10, 1964, last year, were you on Route 171 when an accident occurred between Mr. Seawell and a truck operated by Mr. Carmines?

A. I was.

Q. Would you tell the Jury exactly what you saw in relation to this accident, sir?

A. Well I left home and turned down 171 and went back to the field, and the car ahead of me, Mr. Williams, was ahead of me, and I stayed behind him all the way down, and when I got to the low spot just before I got to the Hobson store, the Hobson dwelling, I heard brakes squealing behind me. I have been hit three times behind in the truck and I turned around and I saw this car and then this car pulled out around me and pulled in front of the Williams' car, or this

page 25 } Plymouth that was ahead of me.—

Q. Could you identify the driver of the car that pulled around you?

A. Mr. Williams.

Q. The one that pulled around you?

A. Yes, sir, Mr. Seawell.

Q. In relation to the Hobson house, could you give us some estimate how far it was from the Hobson house when he pulled around?

A. Not more than fifty feet under any circumstances.

Q. At the point that Mr. Williams pulled around you, is there any traffic control on the highway?

A. There is one solid line on the right going down and broken line on the left where he pulled around.

Q. What does that solid line indicate?

Mr. Wilkinson: Objection.

J. W. Taylor.

Court: Sustained. —The solid line is on the same side you were going, and the defendant was going?

A. That is right.

Q. Now did you see the accident happen, Mr. Taylor?

A. I saw the truck flying in the air. I couldn't see the impact because of the car in front of me. I was
page 26 } square up behind the car, and when he stopped ahead of me, I had to stop.

Q. You say when he stopped ahead of you? Did he stop before the accident or after the accident?

A. All happened so quick—approximately the same time.

Q. Did you see the Seawell vehicle cut in front or any way pass Mr. Williams' vehicle?

A. Yes, sir, I saw that.

Q. Would you describe for the Jury the manner in which he did?

A. Well I couldn't describe it no more than he pulled around me and pulled in there and when he pulled in front of the Williams car, the Williams car stopped and I had to stop.

Q. How fast were you driving at the time?

A. Not more than 25.

Q. Could you estimate the speed at which Mr. Seawell's car passed you?

A. No, sir, I couldn't.

Q. Mr. Taylor, did the Seawell vehicle pass you on this solid line, across this solid line? When the Seawell vehicle passed you, did he cross over a solid line to do it?

A. Oh, yes, he had to.

page 27 } Mr. Carneal: Answer Mr. Wilkinson's questions.

CROSS EXAMINATION.

By Mr. Wilkinson:

Q. You say Mr. Seawell had to cross the solid line to pass you?

A. That is right.

Q. Are you sure of that?

A. I am absolutely sure.

Q. As a matter of fact he passed your car as soon as you made the turn some distance back from the scene of the

J. W. Taylor.

accident, didn't he, and there is a broken line there, isn't there? There are two curves there, aren't there?

A. There was only one solid curve, isn't there?

Q. You were there?

A. Where the accident was only one curve.

Q. But there is a further curve, isn't there, further to the west approximately half a mile back?

A. Approximately, another curve below it.

Q. That is about half a mile from the scene of this accident, isn't it? When you say below, can we agree it is to the west?

A. You have almost an "S" curve there if you take it all in at once.

Q. The apex of the "S" is about half a mile
page 28 } from the bottom of the "S" curve, and a straightaway in between, isn't that right?

A. No, sir.

Q. It is not?

A. No, sir.

Q. How much straightaway is there from the Hobson driveway going west?

A. About a quarter of mile all the way up, as you come up to the next patch of woods over there.

Q. Isn't that the next curve?

A. Coming this way, yes. You were talking about the whole curve. At the store—

Q. No, sir, I am asking you—

Mr. Carneal: Let him answer the question.

Q. I want him to answer—I am asking the curve before you get to the scene of the accident?

A. That is coming right into the curve the accident was.

Q. The curve just before that?

A. That is quarter of a mile away.

Q. It is further than that. isn't it?

A. I don't know absolutely.

Q. After you had rounded that curve, isn't that when Mr. Seawell came by you?

page 29 } A. No, sir.

Q. It is not?

A. No, sir.

Q. When did you begin following Mr. Williams' car?

A. When I came out of my drive.

J. W. Taylor.

Q. How far is that from this curve before the accident?
A. That is about half or three-quarters of a mile.
Q. Did you follow him at around a speed of 25 miles an hour?
A. Right.
Q. What is the speed limit there?
A. I don't think they have one there. Up above there is 35. There is a place near Tabbs, 45. I haven't seen a speed limit there.
Q. You say you have lived there how long?
A. 57 years.
Q. And haven't seen a speed limit sign there?
A. No, I haven't.
Q. Did you know this was Mr. Williams' car before this accident?
A. No, sir.

Q. So you followed him down the road. How
page 30 } fast was he going?
A. Going the same speed I was.

Q. Just about 25?
A. Yes, I stayed behind him.
Q. You say you were about 20 feet behind?
A. 20, 30 maybe. Not more than 30.
Q. Any other traffic on the road?
A. Not that I saw, no.
Q. And the first thing you remember, you heard brakes squeal behind you?
A. That is right.
Q. No other traffic on the road, and you are going at a steady speed of 25, and the road is straight?
A. Yes, sir.
Q. Are you telling the Jury that Mr. Seawell ran up behind you and skidded his wheels and applied his brakes?
A. Probably I was going too slow for him, but I heard brakes squeal behind me and turned around and looked.
Q. Do you know that was from Mr. Seawell's car?
A. Yes, sir.
Q. How do you know that?

A. Because I saw it when the accident happened
page 31 } when the truck went up and it went out in the
road.

Q. You say you heard brakes squeal behind you?
A. I did before it come around.

J. W. Taylor.

Q. How did you know those brakes squealing, that they were made by Mr. Seawell's car, and you tell us because of the accident?

A. Because I saw it, it was the only car. Mine don't squeal.

Q. He came around you after you got to the solid lines?

A. Absolutely.

Q. How much of that area from this curve we are speaking of to the Hobson house is broken line? There are broken lines there, aren't there?

A. Yes, sir.

Q. How long are the broken lines?

A. I haven't measured it.

Q. Approximately? You haven't measured this other either, have you?

A. Well the solid lines starts at the curvert. He passed me at the culvert.

Q. What culvert?

A. Right at the Hobson driveway.

Q. That is where he passed you, at the Hob-
page 32 } son driveway and the culvert?

Mr. Carneal: Give him an opportunity to answer the question.

Court: He is examining the witness fairly.

A. The culvert comes across the highway and then one that comes out of the driveway. The culvert across the highway that lets the water from the woods to run.

Q. Where is that?

A. On Route 171.

Q. In relation to the driveway?

A. Probably 60 or 70 feet—maybe 50 feet. I don't know. It is at the Hobson yard.

Q. At the yard of the Hobson house?

A. Yes.

Q. And right near the Hobson drive, this particular culvert?

A. Yes.

Q. You are telling the Jury that Mr. Williams car was in front of you?

A. Yes.

Q. You were 20 to 30 feet behind the Williams car?

A. Yes.

J. W. Taylor.

Q. And that the Seawell car passed you at that
page 33 } culvert. and you say it was not more than 50 feet
from the driveway?

A. Approximately.

Q. Where was the Williams car?

A. In front of me.

Q. In relation to the driveway?

A. I suppose between the Williams car and driveway.

Q. Did the Williams car pass the driveway?

A. No. The Williams car hadn't passed the driveway. He stopped before he got to the driveway.

Q. Well you stated that Mr. Seawell started around you when you were within 50 feet of the Hobson Drive?

A. No, I said approximately.

Q. You said, Mr. Taylor, in answer to Mr. Carneal's question, "not more than 50 feet under any circumstances." Isn't that the answer you gave as the distance you were from the driveway?—Didn't you make that statement?

A. It is possible.

Q. Did you mean it when you made it?

A. No, but if there is any need, I will go back and measure it for you.

Q. You have testified in here, Mr. Taylor, that when Mr. Seawell passed you he was not more than 50 feet under any
circumstances from the Hobson driveway. Is that
page 34 } statement correct or not?

A. Yes, sir, absolutely correct.

Q. Now you say when he passed you, your car was at this culvert, which you say was 50 feet to 60 feet from the driveway?

A. No, I said between the culvert and where Mr. Williams was.

Q. That is the first time you said that?

A. I said past the culvert.

Q. And you say the culvert was around 50 to 60 feet from the driveway?

A. I don't know absolutely.

Q. Well approximately?

A. Well, did you measure it?

Court: Don't ask him a question. He has you at a slight disadvantage, he can ask you questions, but you can't ask him questions.

J. W. Taylor.

Mr. Wilkinson: I don't mean to have him at a disadvantage. I just want to get it.

Mr. Carneal: If you will let him testify.

Q. Am I letting you testify all right?

A. Yes, I am satisfied.

page 35 } Q. So now you have your car between 50 and 60 feet and you have got a gap of 20 to 30 feet between you and Mr. Williams, haven't you? —When he started by?

A. I said approximately.

Q. All right, approximately, when Mr. Seawell started by. —Both of you are continuing to drive at 25 miles an hour?

A. Yes.

Q. And you say Mr. Seawell passed both of you, passed your car. passed Mr. Williams' car, then cut back along his side, and had this accident at the driveway,—all this distance, and all of this occurring within 50 feet?

A. That is right.

Q. You can't tell us the speed of the Seawell car, I believe you said?

A. That is right.

Q. And you don't know whether Mr. Williams stopped his car before the accident or after the accident?

A. He stopped it before the accident, he had to.

Q. I thought your answer on direct examination was it happened so quick, you didn't know?

A. No, sir.

Q. Now you say he stopped before the accident?

A. Yes.

page 36 } Q. Did you see Mr. Carmines' car before the accident?

A. No, sir.

Q. Was Mr. Seawell's car at all times on the hard surface portion of the road?

A. Yes, sir.

Q. He never got off the hard surface?

A. No, sir.

Q. And the lane or driveway we have been referring to, this is a private driveway to Mrs. Hobson's home, isn't it?

A. Yes, sir.

Q. The road there from the driveway looking west is unobstructed?

A. Looking west?—yes, sir.

J. W. Taylor.

Q. That is the direction from which Mr. Seawell was coming, and Mr. Carmines was coming out of the driveway?
A. Yes.
Q. So from Mr. Carmines' vantage point, he had an unobstructed view of the west?
A. Yes, sir.
Q. Did you stay at the scene of the accident?
A. I stayed until they put Mr. Carmines on the
page 37 } stretcher and carried him away.
Q. Were you there when the state trooper arrived?
A. No, sir.
Q. Why didn't you stay there until the state trooper arrived?

Mr. Carneal: What difference does that make?
Court: If you have an objection, you will address your objection to the Court, I will rule on it, but I do not want you to interrupt with observations and comments. Make your objection and let me rule on it.
Mr. Carneal: It is irrelevant and immaterial and inconsequential and no bearing on the case.
Court: Overruled.
Mr. Carneal: Note our exception.

Q. Why didn't you stay there until the state trooper arrived?
A. I was going in the field about a hundred yards away, and there was no particular use of me staying there, and I didn't even know the state trooper was coming.
Q. Did you see him?
A. No, sir.
page 38 } Q. You were still in the field, and did not see him?
A. No, sir.
Q. You did not?
A. I never paid any mind. I was working.
Q. But a fatal accident had just occurred, hadn't it?
A. No, it wasn't fatal at that time. I heard later it was fatal.
Q. Are you related to the sister of Mrs. Carmines?
A. Not that I know of in any way, shape or form.
Q. You don't know that your wife is?
A. My wife is no relation to the Carmines.

Percy Williams.

Q. Didn't your sister marry Mr. Carmines?

A. I have a sister that married a Carmines. I don't even know if they are related.

* * * * *

MR. PERCY WILLIAMS,
called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

page 39 } DIRECT EXAMINATION.

By Mr. Carneal:

Q. State your name, please, sir.

A. Percy Williams.

Q. Where do you live?

A. 16 Northwood Drive.

Q. What place?

A. Hampton.

Q. How old are you, Mr. Williams?

A. 60.

Q. Where were you living on February 10, 1964?

A. I was living in Poquoson.

Q. Whereabouts in Poquoson?

A. 22 Buntings Lane.

Q. Mr. Williams, are you in any way related to Odell Carmines, or the late William Sidney Carmines, either by blood or marriage?

A. No, sir.

Q. Have you had any close business association with either one of these gentlemen?

A. No, sir.

Q. Mr. Williams, I direct your attention to the day of February 10, 1964, did you witness an accident on Route 171 in York County?

page 40 } A. Yes, sir.

Q. Would you in your own words tell the Jury what you saw happen?

A. Well I was approaching this truck coming out of a driveway, and he rolled down to the asphalt on the edge of the road and stopped his truck, and about the time he stopped his truck, a car came by me and swerved around in front of me and hit him on the front, in the front of his left wheel. Didn't hit the wheel, just the front of the left wheel, and

knocked him out of the truck, and turned the truck all the way around.

Q. What did you do?

A. I stopped my car and got out and went to the man, and he was still alive, and put my coat under his head, and directed traffic most of the time.

Q. Would you tell the jury just how far you were from the truck when it was struck?

A. I would say maybe 50 or 60 feet. It could have been 10 or 12 feet, more or less.

Q. Who was the driver of the car that came around you and struck the vehicle?

A. At the time the car came around me, I didn't know. After the accident occurred, I recognized the man, his face. It was Mr. Seawell.

Q. He was the driver of the car?

page 41 } A. Driving the car, yes, sir.

Q. Did you see the truck that Mr. Carmines was in before the accident ?

A. Yes, sir.

Q. Would you again tell the Jury what you saw that truck do before the accident?

A. The truck came down out of the yard, straight down to the road, square down to the road.

Q. Do you have your glasses with you?

A. No, sir, I forgot them.

Q. Can you see without them?

A. Yes, sir, I think I can see without them.

Court: I don't believe it is going to be helpful for him to look at the photographs.

Q. I hand you Plaintiff's Exhibit 1, and ask if you can identify that?

Court: It seems obvious he is having such difficulty.

A. This is the driveway right here where the truck came out. Came down to the edge of the road. My car was behind here and another car behind me, and this car came down—

Q. Would you come to these gentlemen. These are the ones that have got to see and hear.

page 42 } (Witness complied with request of counsel and explained the photograph to the Jury as follows):

Percy Williams.

A. This would be the driveway right here, coming down here. This truck came down to the pavement and stopped, and I was approaching right here, and this car came around me, swerved around in front of me, and struck him at about a 45° angle—

Reporter: I cannot hear you.
Court: Please speak louder.

A. This truck was coming down out of this driveway from this yard. He rolled down to this asphalt and stopped. All right, I was approaching this truck from this way. This car came around me and swerved in front of me and struck this truck on the lefthand fender right in front of the right wheel, and turned it all the way around, headed it back to me, and Mr. Carmines came out of it when the truck turned, and fell crosswise from my automobile.

Q. How far ahead of you?

A. It might have been about two lengths.

Q. But you did see the vehicle at the time and the vehicle was stopped at the asphalt when it was struck?

A. Yes.

Q. When this vehicle passed you, Mr. Williams, could you estimate the speed of the car as it passed you?

page 43 } A. Sir?

Q. Could you estimate the speed of his vehicle?

A. No, sir, I wouldn't know exactly how fast the car was going.

Q. Do you know how many people were in the car?

A. There was three people got out.

Q. Now is there a solid line on the highway there where Mr. Seawell came in front of you?

A. Yes, sir.

Mr. Carneal: Answer Mr. Wilkinson's questions.

CROSS EXAMINATION.

By Mr. Wilkinson:

Q. Mr. Williams, you made a statement near the end of your testimony that something was two lengths ahead of you —at least that is what I understood?

A. That was two lengths in front of me about where the body fell.

Q. Two lengths of what?

Percy Williams.

A. Automobile.
Q. Two car lengths?
A. Yes, I judge about two lengths.
Q. Was where the body fell?
page 44 } A. Yes, you see my car was rolling, when the car hit, and I went closer to him when he fell out.
Q. Hadn't you stopped your car before the accident?
A. No, not before the accident because the accident was so quick, I rolled a few feet before I stopped.
Q. Your car was still going when this accident occurred?
A. Yes.
Q. And you say you were about 50 to 60 feet from the truck, or driveway, when this accident occurred?
A. I would say so.
Q. And the Taylor truck was behind you?
A. Yes, sir.
Q. Now you saw Mr. Carmines' truck as it was going down the driveway from Mrs. Hobson's home?
A. It was coming out of the yard.
Q. It was in the yard coming out of the driveway?
A. Yes.
Q. Was there anything to obstruct your vision of this car?
A. Beg your pardon?
Q. Was there anything to obstruct your vision of this car?
page 45 } A. No, there wasn't anything, the man just pulled down and stopped his truck.
Q. Was there anything to keep you from seeing him?
A. No, sir.
Q. You say he stopped his truck?
A. Right.
Q. Where did he stop his truck, on the driveway or hard surface?
A. His truck was on the driveway and wheels against the asphalt surface.
Q. But not on the hard surface?
A. Not on the hard surface.
Q. Did Mr. Seawell's car leave the hard surface before the accident?
A. No, sir.
Q. So his car stayed on the hard surface and the Carmines truck was on the dirt road, is that right?
A. Yes.
Q. How did the cars come together if one was on the dirt road and one on the hard surface?

Percy Williams.

A. It turned all the way around.

Court: I don't think you understood him. You said the Carmines truck did not get on the hard surface, is that correct?

page 46 } A. Yes, sir.

Court: You said that the Seawell vehicle did not leave the hard surface?

A. Right.

Court: His question was, how did the accident happen?

A. His bumper was over on the highway, and the car struck him when his come around in front of me, struck him on the corner of his bumper right at the end of the chassis of the truck, and spun it.

Q. Wasn't the left front wheel of the truck hit?

A. No, sir, not as far as I know.

Q. Did you examine the truck after the accident?

A. I didn't closely examine it. I looked at it and there wasn't any damage done to the wheel.

Q. These pictures are 5, 6, and 7, of Plaintiff's Exhibits. They show the Carmines car, do they not?

A. Yes, sir.

Q. And Plaintiff's exhibit 4, also shows the car and the scene of the accident?

A. Yes, and it struck right there.

Q. And you pointed to the left front bumper?

page 47 } A. That is right.

Q. Now I understood you—can you hear me?

A. Yes, sir.

Q. I understood you, Mr. Williams, when you were describing to the Jury one of the pictures, you said that the Carmines—the Seawell car struck the Carmines truck at about a 45° angle?

A. That is right.

Q. And then you say it was going down and hit the left front bumper?

A. The left front bumper of the truck was facing him. When he came down out of the driveway, and the car coming this way was facing him.

Betty Deufel.

Q. Wasn't Mr. Seawell's car going straight down the eastbound lane?
A. He hadn't straightened out.
Q. He hadn't straightened out at the time of the accident?
A. No, sir.
Q. And you stayed there and directed traffic?
A. Yes, sir.
Q. Were you there when the state trooper arrived?
A. Yes, sir.
Q. Did you tell him you saw this accident?
page 48 } A. No, sir, nobody asked.
Q. He was inquiring for witneses, wasn't he?
A. I suppose so, but nobody asked me.
Q. Why didn't you volunteer?
A. I was looking for him to come say something to me.
Q. That is the reason you did not tell him you saw the accident?—As a matter of fact you were some distance down the road when this accident occurred, weren't you, Mr. Williams?
A. It happened about 50 or 60 feet in front of me.
Q. That is just a random guess on your part, isn't it?
A. No, sir.
Q. Did you pace it off or have any mark to go by for this 50 or 60 feet?
A. No. I didn't have any particular mark to go by, but the distance I would say was about 50 or 60 feet.
Q. As a matter of fact, you had just rounded the curve about a half mile back when Mr. Seawell came by you?
A. No, sir.
Q. Are you sure of that?
A. Yes, sir.

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page 56 }

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MRS. BETTY DEUFEL,
called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lambiotte:
Q. State your name, please.

Betty Deufel.

A. Mrs. Betty Deufel.
Q. Where do you live?
A. 911 Poquoson Avenue, Poquoson, Virginia.
Q. Where are you employed?
A. Naval Weapons Station, Yorktown, Virginia.
Q. Directing your attention to February 10th of this past year, 1964, did you have occasion to be with Mr. Seawell, riding in his automobile?
A. Yes, I did.
page 57 } Q. Where were you riding?
A. I was in the back seat on the left side.
Q. And where were you coming from?
A. We were coming from work at the Naval Weapons Station.
Q. Now would you please—you, of course, were involved in an accident on that day?
A. Yes, sir.
Q. Would you please relate to the Jury in your own words how this accident occurred?
A. As we were coming east on 171 ahead of us, I believe, were two vehicles, at close range. We passed two vehicles and directly ahead of us then in the righthand lane was this huge truck loaded with water pipe or sewer pipe of some kind. About a hundred feet ahead of us was a driveway and the red old pickup truck was coming out of the driveway with a man in it. He did not look at us at all, he was concentrating on—

Mr. Carneal: I object to that. She can tell what she saw, but as to what he may or may not have concentrated on, is opinion.
Court: I agree with you. I instruct you to disregard her statement.

Q. Go ahead. —You saw the truck coming out of the driveway?
page 58 } A. Yes, he was coming out of he driveway and he did not turn to look at us at all.
Q. Are you referring to his head?
A. Yes.
Q. Go on.
A. And he came out of the driveway, and assuming and expecting for him to stop, he did not, he came along and hit him then.
Q. Did this truck stop?

Betty Deufel.

A. Which truck? The truck with the load of pipe?
Q. No, the one—
A. No, he did not turn his head to look at us at all, because I watched him, and I was hoping I could yell out to him, turn, or to do something, but he didn't—

Mr. Carneal: I object to what she was hoping she could do.
Court: Would you confine your statement to things you saw, and not any mental statements you may have had.

Q. Could you estimate the speed of Mr. Seawell's vehicle?
A. I would judge or estimate 35 to 45.
Q. Do you know the speed limit in this area?
A. Yes, it is 45, I believe.

page 59 } Mr. Carneal: I didn't hear her answer.
Court: The answer was, "45, I believe."

Q. Where was the truck in which Mr. Carmines was driving when you first saw it?
A. I would say two car lengths back in the driveway.
Q. And approximately how far was Mr. Seawell's vehicle from the driveway when you first noticed the Seawell truck —the Carmines truck, excuse me.
A. About—I would say, a hundred feet.
Q. Do you recall approximately the distance between the Seawell vehicle and this truck loaded with pipe you referred to?
A. Roughly a hundred feet, I would—I would imagine.
Q. And could you estimate the distance approximately how far your automobile was from the driveway when the Carmines vehicle came out of the driveway onto the hard surface.
A. Say that again.
Q. When the Carmines truck came out of the driveway onto the hard surface, about how far was your vehicle from the truck at that time—if you know?
page 60 } A. I don't know.
Q. After you realized that the truck was not going to stop, what then occurred?
A. Well we just met there and the right fender hit Mr. Carmines' left front fender, our right front fender hit Mr. Carmines' left front fender, I guess almost in the middle of the wheel.

Betty Deufel.

Q. Do you know what happened to the vehicles after the impact?

A. I know the Carmines truck spun around and landed in the ditch going west, and we stopped about two or three car lengths past that.

Q. Do you know where this impact occurred?

A. Right in the driveway as he came out.

Q. Where in relation to the driveway and the hard surfaced road?

A. As he came out the driveway, we were in the righthand lane, after having passed these two other cars, and he came right out, in which we had no alternative—

Mr. Carneal: I object. She wasn't driving the car, she can only tell what she saw.

Court: I agree with you, Mr. Carneal. Would you try to refrain from making the statements such as "he had no alternative" and just make a statement of fact.

page 61 } Q. Did the impact occur on the hard surfaced road?

A. Yes.

Q. Did Mr. Seawell ever leave the hard surfaced road?

A. No, sir.

Mr. Lambiotte: Answer Mr. Carneal's questions.

CROSS EXAMINATION.

By Mr. Carneal:

Q. Is it Mrs. Duffle?

A. Deufel.

Q. Mrs. Deufel, you were sitting in the back seat?

A. Yes, sir.

Q. And what type of automobile were you riding in?

A. I think it was a 1964 Ford, I believe.

Q. Now you have been—I believe it was your first day back at work from having been in an accident yourself?

A. Yes, sir.

Q. And you were going home with Mr. Seawell?

A. Right.

Q. You ride with Mr. Seawell regularly?

A. Off and on, yes, sir.

page 62 } Q. Been riding with him since February of last year?

Betty Deufel.

A. No, sir.

Q. Do you live near Mr. Seawell?

A. I would say three blocks, two blocks, something like that.

Q. Now as you came along, what time had you gotten off work?

A. 4:00 o'clock.

Q. Does that mean you get off work at 4:00 o'clock, or left the Weapons Station at 4:00 o'clock?

A. We get off from work at 4:00 o'clock.

Q. How far do you have to walk to get to the automobile in which you ride?

A. Mr. Seawell went out of his way to pick me up.

Q. Was he waiting for you to come—you got off work at 4:00 o'clock—or did you have to wait some little time for him?

A. No, I think Mr. Seawell was waiting for me, because I have the type of job I cannot leave on the dot of 4:00 o'clock.

Q. So it would be a few minutes after 4:00 o'clock?

A. It could have been.

page 63 } Q. And you all proceeded on home?

A. Yes, sir.

Q. Now as you came to the Hobson property,—I hand you Defendant's Exhibit 1—point out the Hobson home in that picture, if you will, please.

A. This is the only home. I assume this is the Hobson home. I don't know any people down there and I didn't know at the time, because I had only been there two months.

Q. You are not living there now?

A. Yes, I am.

Q. So you have lived there at least the last eleven months?

A. Yes.

Q. And you assume this is the Hobson house?

A. I would imagine it is the Hobson house.

Q. If that is the Hobson house, would you point out on there approximately where you passed these two vehicles you are talking about?

A. I would say it was about 50 feet back here from these —from this mailbox. I would say it would be about 150 feet back.

Court: Stand in front of the Jury.

Q. Would you mind coming over here?

Betty Deufel.

page 64 } (Witness complied with request of counsel).

Q. You say this is the mailbox to which you referred?
A. This one here, yes, sir.
Q. And that the cars you referred to, you passed back in this direction about how far?
A. I would say between 50 and 100 feet.
Q. Back from this mailbox?
A. Yes, sir.
Q. And that is where you passed the two cars to which you referred?
A. Yes, sir.

Court: What exhibit?
Mr. Carneal: It is Exhibit D-1, and she said 50 to 100 feet back of that mailbox.
Court: You passed the two cars?

A. Yes, sir.
Q. Now at what speed would you estimate Mr. Seawell was going at the time he passed these two vehicles in that area?
A. I would judge 45.
Q. 45?
A. Yes.
Q. Do you know what type vehicles he passed?
page 65 } A. No, I do not.
Q. Well, were they cars, Mrs. Deufel, or trucks, or one a truck and one a car?
A. I cannot honestly say, I don't know.
Q. There were two vehicles?
A. Yes, sir.
Q. Well, now, Mrs. Deufel, as he passed back here, and again I am referring to Exhibit D-1, he passed across this line in the road, did he not?
A. Back here he did, but he was in the right-hand lane about a hundred feet this side here.
Q. But he did cross across the line?
A. Yes.
Q. Solid line?
A. Yes.
Q. Now would you describe for the Jury—would you mind coming over here, please—assuming this would be the driveway of the Hobson home, would you in this red, unless I have another color here—yes, I do, I have a blue—

Betty Deufel.

Mr. Wilkinson: This is the officer's diagram. I don't believe the witness should mark it.

Court: I think she may mark on it with pencil or something. Do you understand the diagram?

page 66 } Mr. Wilkinson: She will be changing the officer's testimony, if it please the court.

Court: I don't think so. First see if she understands the diagram.

A. Yes, I understand the diagram.

Q. You understand this is 171?

A. Yes, sir.

Q. Would you put the position of the truck on this where it was struck?

A. I would say he comes out of the driveway in the middle and came right straight out.

Q. Right straight out in the middle?

Court: If she made a mark, you have to identify the mark in some way.

Q. Put your initials on it, if you will, please.

(Witness complied with request of counsel).

Q. But he came right flush out on that highway?

A. Yes.

Q. I am referring again to Defendant's Exhibit D-1, he came out flush in this highway, into the road right in a straight angle straight into the road?

A. Yes, sir.

page 67 } Q. And at that time Mr. Seawell was proceeding in this lane right straight down the road and struck him on the right side?

A. Yes, sir.

Q. Is that how you say the accident happened?

A. On the—Mr. Carmines left front wheel, our right front wheel.

Q. This is the one in my right hand as being the vehicle coming out of the driveway, and you take this please and show me exactly how he struck it.

(Using two tablets to indicate the cars, witness complied with request of counsel).

T. M. Watkins.

Q. In other words, you are saying Mr. Carmines struck Mr. Seawell's car?
A. Yes.
Q. And not Mr. Seawell struck Mr. Carmines?
A. No, sir.

Mr. Carneal: Thank you, ma'am.
Court: Do you have further questions?
Mr. Carneal: Yes, sir.

Q. After the accident, you stayed there?
A. Yes, we stayed.
Q. Until the officer was there?
A. Yes, sir.

Mr. Carneal: Witness with you.
page 68 } Court: Do you have any redirect examination?
Mr. Wilkinson: No, sir.—Just a minute.

RE-DIRECT EXAMINATION.

By Mr. Lambiotte:
Q. Referring to Defendant's Exhibit 1, you referred to this mailbox earlier?
A. Yes.
Q. Do you know the distance from the Hobson driveway to this mailbox? Could you estimate that distance, if you know?
A. A hundred feet, I would judge.
Q. And your testimony is that when Mr. Seawell passed these two vehicles, he was approximately 150 feet past the mailbox, is that correct?
A. Yes, east of the mailbox.
Q. West?
A. West of the mailbox, O.K.

* * * * *

page 69 } MR. T. M. WATKINS,
called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lambiotte:
Q. State your name, please.

T. M. Watkins.

A. Talmadge M. Watkins.
Q. Where do you live?
A. 124 Little Florida Road.
Q. Where are you employed?
A. U. S. Naval Weapons Station, Yorktown, Virginia.
Q. Do you know the defendant, Mr. Seawell?
A. Yes, I know him very well.
Q. Directing your attention to February 10, 1964, were you a passenger in his automobile?
A. Yes, I was.
Q. Where were you coming from?
A. We were enroute from the Naval Weapons Station to Poquoson.
Q. Where were you riding?
A. I was on the front seat on the right side.
Q. What time of day was this?
A. I would say it was approximately 4:20. We usually get to my place about 4:30 and I would think it
page 70 } would take ten minutes to get there, somewhere in that neighborhood, plus or minus a minute or two.
Q. Would you describe the events that led up to the accident with Mr. Carmines truck, which you saw?
A. Yes, we were, we had come around what we call Half Way House, and come on down there and in front of Mr. Willie Wilson's house, deceased, we came behind an old truck, old model truck, and there was a passenger car travelling very slowly.
Q. Could you estimate their speed?
A. No, I couldn't estimate it, but I would say they were blocking traffic. I would say that.

Mr. Carneal: That is opinion, if your Honor please.

A. That is my opinion.
Q. We don't want your opinion, just tell what you saw. Now proceed.
A. And Mr. Seawell, he passed these two motor driven vehicles, and came back in his right lane, on the righthand side, after he had passed these two vehicles. And he came on down to within, I would say, about a hundred feet of the Hobson dwelling house, in our own lane where we were supposed to have been, and looking over on the right I saw a red pickup truck.

T. M. Watkins.

Q. Where was this pickup truck?

page 71 } A. In the Hobson yard, this lady by the name of Hobson, and perhaps a hundred feet on further back, I saw this truck, and as we came closer, the truck proceeded to come out on the highway. In the meantime, there were some colored boys in the yard—this is what I saw—the other witness may not have seen it—and there were colored boys on either side of the pickup truck reaching in at Mr. Carmines. I could see them before he came out in the road. We came on and Mr. Carmines proceeded to come on out in the road and I was looking right at him, right in the eye, he never turned his head, neither to his right or left, he looked right straight ahead, and came on out and Mr. Seawell's car struck Mr. Carmines' pickup truck in the center of his wheel, in the center of the lefthand fender, in the center of the wheel.

Q. Could you estimate the distance Mr. Seawell's car was from the Hobson driveway when Mr. Carmines came out of the road?

A. I would say it was about a hundred feet I would guess.

Q. When Mr. Carmines came into the road?

A. No, when he started.

Q. Now, as Mr. Carmines entered onto the hard surfaced road of 171, could you estimate the distance the Seawell vehicle, the car in which you were riding, what the

page 72 } distance that car was from Mr. Carmines' truck?

A. That would be pretty hard to determine, because I could see there was going to be an accident.

Q. Now if you can estimate it, estimate it, but we want you to leave out opinion?

A. I don't know.

Q. When you saw Mr. Carmines' truck come onto the hard surface, would you please relate what happened as you know it from that point?

A. Mr. Carmines just came out, never looked, just came on the highway just a bit.

Q. Could you describe the action of Mr. Seawell, as you know it?

A. Mr. Seawell said—

Mr. Carneal: I object to what he said.

Court: That might be permissible under the *res gestae*, I will overrule it.

A. Mr. Seawell said, "I don't believe he is going to stop."

T. M. Watkins.

Q. Then what happened?

A. The crash occurred. I braced myself by my hands against the dashboard, and propped my feet as hard as I could.

Q. Do you know the speed limit in this area?

page 73 } A. 55 miles an hour.

Q. Could you estimate the speed of Mr. Seawell's vehicle?

A. I would say between 30 and 35, something like that. He had got back in his lane and slowed down.

Q. Did Mr. Carmines' truck stop before coming onto the highway?

A. It did not.

Mr. Lambiotte: Answer Mr. Carneal, please.

CROSS EXAMINATION.

By Mr. Carneal:

Q. Mr. Watkins, a moment ago, you correct me if I am wrong, first of all I believe you said Mr. Seawell's car struck Mr. Carmines' truck?

A. Absolutely.

Q. Mr. Carmines' truck did not strike Mr. Seawell's car?

A. No, sir.

Q. That is not the way it happened?

A. No, sir.

Q I believe you said a moment ago, Mr. Watkins, that you were looking Mr. Carmines right in the eye and never—

A. I didn't say, right in the eye, I said I was

page 74 } looking inside of his face.

Mr. Carneal: Would the Court Reporter please read back—

Court: The jury heard what was said. The jury can pass on the question instead of reading it back.

Mr. Carneal: I ask that it be read back.

Court: The jury judges what he said, and they heard him.

Q. You did not say you were looking Mr. Carmines right in the eye?

A. I did not. I said I was looking at Mr. Carmines as he

T. M. Watkins.

came out of the driveway, and Mr. Carmines didn't turn one way or the other.

Q. You didn't say you were looking at him right in the eye, Mr. Watkins?

A. I did not.

Q. Now, you travel that road a great deal and have for some years?

A. Yes, all my life practically.

Q. Now, Mr. Watkins, would you describe for the jury, the manner in which Mr. Carmines came out—and by manner I mean, whether he came out in a right turn, or left turn, or right straight out?

page 75 } A. Straight out.

Q. Right straight out in the road?

A. That is right.

Q. And how far in the road did he get before Mr. Seawell's car struck him?

A. I already stated that, about the center of the wheel—I don't mean his bumper—the center of the fender, that is where Mr. Seawell struck him.

Q. And struck him from the side?

A. Absolutely.

Q. And struck him with the Carmines car coming out directly at right angles to him?

A. Right straight ahead.

Q. Using these tablets, the left hand the Carmines vehicle, the right hand, the Seawell vehicle—would you describe how it happened?

A. This is the Carmines truck here, here is the road, we were coming down here.

Q. I want you to use this as the other vehicle. You tell me exactly how it struck.

A. We will say this is Carmines—you have the book in the wrong place—this is us. (indicating).

Q. And it struck flush, is the way you describe it?

A. Yes, just about the center of the wheel.

page 76 } Q. Just like that (indicating)?

A. That is right.

Q. Now these vehicles that Mr. Seawell passed, just where did he pass them?

A. I imagine he was a little past Mr. Wilson's property there. I would say about 25 feet.

Q. Don't let's use Mr. Wilson's house, let's use Irma Hob-

son's house. In relation to Irma Hobson's house, how far away was he from there when he passed?

A. I don't know.

Q. Have no idea?

A. No idea.

Q. Do you know what kind of vehicle he passed?

A. No, I don't, one was a pickup truck and the other was an old model.

Q. One a pickup truck and one an old model?

A. Yes.

Q. Do you know who was operating the pickup truck?

A. No. I don't.

Q. Do you know who was operating the old model car?

A. No, I don't.

Q. You know Mr. Bill Taylor, lives at Tabbs?

A. I have seen him.

page 77 } Q. Well you have lived there a long time out there?

A. Not close to that.

Q. Do you remember seeing him on the road there?

A. I don't remember seeing him.

Q. I believe you estimate the speed of Mr. Seawell's car to be 45?

A. No, I did not, between 30 and 35.

Q. Now, Mr. Watkins, would you please give some reflection again to tell us how far away from Mrs Hobson's house you passed these two vehicles?

A. I don't know.

Q. No idea?

A. No, I don't know.

Q. How far is the Wilson's house from Mrs. Hobson's house?

A. I don't know.

Q. No idea?

A. No.

Q. But he passed the Wilson house?

A. Yes.

Q. There are two Wilson's, which one are you talking about?

A. I am talking about the first one.

Q. Can you estimate for the jury how far it was?

page 78 } A. No, I can't.

Q. And you travel up and down that road?

A. Yes.

T. M. Watkins.

Q. And you can't testify the distance from Mrs. Hobson's?
A. I cannot.
Q. You have no idea how far or close you were to the Hobson driveway when you passed these two cars?
A. No, I do not.
Q. It could have been 50 feet?—if you have no idea, it could have been 50 feet.
A. I refuse to answer.
Q. It could have been 25 feet then, Mr. Watkins? If you have no idea, it could have been that distance?
A. I refuse to answer.

Court: You have to answer his questions. The question is could it be as little as 25 feet?

A. I don't know.
Q. Then you have no idea at all?
A. Right.

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

page 79 } RE-DIRECT EXAMINATION.

By Mr. Lambiotte:
Q. Do you know what type of highway markings there were at the time Mr. Seawell passed Mr. Williams and Mr. Taylor?
A. You mean did Mr. Seawell go over the solid line, is that what you are referring to?—No, on the Seawell side there was a broken line, and that line led clear down to the Hobson house. Of course when Mr. Seawell passed, he went back in his proper lane as anyone would do.
Q. Again how far were you from the Hobson driveway at the time you saw the Carmines truck, when you first saw it? You were able to estimate that distance.
A. I said about a hundred feet.

Mr. Lambiotte: I think that is all.

RE-CROSS EXAMINATION.

By Mr. Carneal:
Q. You have been able to estimate distances for Mr. Lam-

biotte here all right, won't you try again to answer my question?

Mr. Wilkinson: I think the question is how long are we going to belabor the point.

Court: He answered he doesn't know. I will permit you to answer the question once more.

page 80 } A. I wish to state—

Mr. Carneal: I object to the comments he makes.

Court: Just answer counsel's questions.

A. Just ask it.

Q. Would you try to estimate again?

A. I do not know.

Court: Let me ask you this. You say the broken line in the direction in which you were proceeding—

A. When Mr. Seawell ran up behind these, it was broken.

Court: And the broken line—

A. Came on down to the Hobson house. I stopped this morning and checked.

Court: I am talking about the line on your side of the road?

A. Righthand side—that line was broken all the way to the Hobson home.

Court: Is it broken on both sides?

A. No, it is solid line on the lefthand side.

Court: So as you were going to the Hobson home, there was a broken line indicating you could pass on
page 81 } your side, but solid line indicating that you could not pass in the opproaching lane?

A. That is right.

Court: How far back were you when Mr. Seawell said he didn't believe this car was stopping?

A. We were right there.

Court: You don't know whether he applied brakes or not?

A. I do not.

Court: Was there a truck loaded with pipe in front of you?

A. I don't recall.

MR. CHARLES L. SEAWELL,
called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lambiotte:

Q. State your name, please.

page 82 } A. Charles L. Seawell.

Q. I will ask you to raise your voice a little bit. Where do you live?

A. Poquoson. 38 Forrest Road.

Q. Where are you employed?

A. Naval Weapons Station.

Q. You were involved in an accident with Mr. Carmines on February 10, 1964, is that correct?

A. That is right.

Q. Where were you coming from?

A. I was leaving the Naval Weapons Station and went to my home.

Q. Were there any passengers in your car?

A. Two.

Q. Who were there?

A. Mrs. Deufel and Mr. Watkins.

Q. Would you please explain how the accident occurred. First of all, which road were you on?

A. 171.

Q. All right—

A. And as I approach this intersection of the lane going to the building, as I approached,—I am sure you are going to ask distances, but I strided that—

Charles L. Seawell.

Mr. Carneal: He what?

Court: "I strided that"—he went back and
page 83 } measured it.

A. And as I approached, I saw this car move forward towards the highway, and I—when I decided it was not going to stop, I was too close to do any good. I tried to call out to those that was in the car, but I did not have a chance. My sons told me I applied brakes—

Mr. Carneal: Objection.

Court: Just state what you saw and not what someone told you.

A. I saw that. I was there. But anyway, I was just too close to stop, and that is about all I can say to that.

Q. Did you apply your brakes?

A. Yes, I did, but too late to do any good.

Q. Do you know how fast you were travelling along Route 171 prior to the accident?

A. I would say 40 miles an hour.

Q. Was there any vehicles ahead of you?

A. There was some type of a truck ahead of me. It had something on it that appeared to be some kind of drain pipe, or something in that category. I could not be sure what was on it.

Q. Were there any vehicles behind you?

A. Two.

Q. Approaching the Hobson driveway, do you
page 84 } know approximately how far you were from the
driveway when you saw Mr. Carmines' truck?

A. I would say a hundred feet.

Q. Where did the impact occur?

A. The impact occurred as he drove out of the driveway.

Q. Did it occur on the hard surface road?

A. That is right.

Q. Did Mr. Carmines' vehicle ever stop?

A. No, sir.

Mr. Carneal: The question is leading.

Court: The question is somewhat leading, but I don't think any harm was done.

Charles L. Seawell.

Q. Did you have to pass these two cars, or did you pass these two cars travelling behind you?

A. Yes, I did.

Q. As you were approaching these cars before you had passed them, would you describe as you approached the cars and the passing?

A. And the passing?

Q. Yes?

A. Well the curve west of where the accident was, as I got around that curve to get the right of way, the clear road, everything was clear, and that is where I pulled around them and pulled back into my proper position, and the page 85 } truck that was ahead, I pulled down behind him about three car lengths.

Q. As you approached these two vehicles, could you estimate their speed?

A. No, I wouldn't because they are moving very slowly, and I didn't have to hit—

Q. Did you have to hit your brake

A. No, sir.

Q. Before you passed these vehicles?

A. No, sir.

Mr. Lambiotte: Answer Mr. Carneal.

CROSS EXAMINATION.

By Mr. Carneal:

Q. As you came along the road, you passed these two vehicles. Would you describe these vehicles to us, sir?

A. All I can say, two cars. I didn't pay too much attention to them and there is not much I can say about them.

Q. Did you recognize the drivers of those vehicles?

A. No, not at that time.

Q. Did you recognize them any time later?

A. No.

Q. Did you recognize the driver of those vehicles page 86 } as the two gentlemen that testified today?

A. No, not to be in the car.

Q. Did you recognize Mr. Williams as being at the scene of the accident after it had occurred?

A. After the accident, he could have been there.

Q. Now, Mr. Seawell, how far back up the road from—I am again referring to Defendant's Exhibit 1—how far back

Charles L. Seawell.

up the road from the Irma Hobson house did you pass these two vehicles?

A. I pulled in right through here.

Q. Would you kindly mark on here right where you put it?

* * * * *

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* * * * *

Q. Will you mark on it, in relation to the Hobson house—you are familiar with that area?

A. I think so. I have lived there 34 years.

(Witness complied with request of counsel).

Q. Would you kindly put a little star, I think it would be a little better? Also would you kindly put your initials on it.

(Witness complied with request of counsel).

Q. Perhaps you would like to fill the line in too?

(Witness complied with request of counsel).

Q. This is the relation to the Hobson house and is where you passed the two vehicles you are talking about?

A. Yes.

Q. And you have indicated crossing the line at that point?

A. Yes.

Q. And you have initialed it?

A. Yes.

Court: That is the point that you were turn-
page 88 } ing back in after you had passed them?

A. The point where I pulled in and there was no yellow mark at all. There was no yellow mark, the point I pulled in. The yellow mark was to my left. The yellow mark came back in to the right, that is what I meant to mark.

Q. In any event that is where you pulled back in?

Charles L. Seawell.

A. Out where there was no yellow line behind it.
Q. Where you marked on the picture, so it will be clear, is where you pulled back in?

Mr. Wilkinson: I think he said it didn't illustrate where he pulled back in.
Court: I think the question is proper.

A. The yellow line I am referring to is the one to the left of the broken line.
Q. That picture shows a line, does it not? Mr. Seawell, that picture shows a line that you drove across?
A. Yes, but if it is a solid line—when I come across there was no solid line.
Q. How far from the Hobson home did you move back in after passing the two vehicles?
A. How far from the Hobson home?
page 89 } Q. Yes, sir?
A. I would say a quarter of a mile if you was to measure it.
Q. Quarter of a mile?
A. Yes, because the broken lines—I know where that is.
Q. I want to be sure you understand my question.

Mr. Wilkinson: I submit he answered the question half a dozen times. I know he has certain latitude on cross examination, but you can't go on indefinitely on one thing.
Court: I overrule the objection.

Q. No, sir, when you passed the two vehicles, you are talking about, and you cut back in, how far were you from the Hobson home at that time?
A. I said a quarter of a mile.
Q. And is that what you have indicated on that picture as being this—when you crossed back in front after passing the vehicles?
A. Well it is half a mile, turn to turn.
Q. One half mile?

Court: What do you mean, from one curve to the other is half a mile?

page 90 } A. And in between that is the broken lines there, there is no yellow line, and in that is the place where I pulled in back to my—right back where I belonged.

Charles L. Seawell.

Q. You are saying that you were a good quarter of mile to half mile down the road when you pulled back in after making that turn?

A. Right, if you want to go measure it—

Q. Now, Mr. Seawell, when you came on up the road, and you saw the Carmines vehicle, I believe you said you were about a hundred feet when you first saw it?

A. When I first saw it.

Q. He came out in the road, did he strike you or you strike him?

A. I had to strike him.

Q. You struck him?

A. Yes, sir.

Q. And in which direction did he come in the road, did he come out flush in the road, or turn his wheels to the right or left?

A. Flush out.

Q. Flush right straight out and you hit him dead set on his front?

A. On the front wheel. Left front wheel is about as good as you can get it.

Q. At that time you were doing about what
page 91 } speed?

A. I said the left front wheel about where I hit him.

Q. I want to know how fast you were going at the time?

A. About 40 miles an hour.

Q. You left the Weapons Station up where you work. What time do you get off work?

A. 4:00 o'clock.

Q. Do you mean you get off at 4:00 o'clock or leave the station at four?

A. Leave the station at four.

Q. You get off work a few minutes ahead of four?

A. Yes, cleanup time.

Q. You left the Station at 4:00 o'clock—

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

RE-DIRECT EXAMINATION.

By Mr. Lambiotte:

Q. Mr. Seawell, would you again describe the line of the highway at the time you passed?

Charles L. Seawell.

A. Huh?

Q. Would you describe the markings on the highway at the time you passed the two vehicles?

page 92 } A. The markings on the highway leading west is a yellow line, the broken line is to the right. The white lines are heading east and yellow line is to the left of the white open line, and as I had my way around there—

Q. I again show you Defendant's Exhibit 1, on which you have placed your mark, does that show the highway markings as you described them? Do you know which way you were travelling?

A. No, I am on the wrong end, because this is the yellow line there, the broken one is to the left on this one, but I am going in this direction. Well back this way a little further this line comes to a dead end, and then starts the white line headed back.

Q. Can you see this? Come over here and explain this on the picture with the lines.

A. You see you only got one way here. This would be west.

Q. Which lane are you travelling in?

A. I am travelling this lane here, but I was having in mind, this is my yellow line where I am on this side of it, and further back on this highway, there is no yellow line. It is a short place, white line marks it, but that wasn't—the yellow line is this way.

Q. So you passed further up the highway?

A. Yes.

page 93 } Q. And that is not shown on this picture, is that correct?

A. That is correct. You don't have anything back of this line. This line goes a certain distance back this way, and then you have broken lines, and then it changes again.

Q. Then you did not mean—

A. No, that is correct, I was thinking westbound.

Q. Is this marked correctly?

A. No, sir, it would have to be on the line west of this line.

Q. Would you like to change or erase your mark?

Court: I am not going to permit him to erase the mark. He might state it is incorrect. He has done so. He has stated it is incorrect. He cannot erase it.

Charles L. Seawell.

RE-CROSS EXAMINATION.

By Mr. Carneal:

Q. Mr. Seawell, why is it now that you are incorrect, when I thought you understood my question when I asked you to put the mark on it?

A. I really didn't understand it. I saw the building here, but you see you don't have all the highway, you page 94 } only have a portion of it, in fact you are pretty close to the curve here.

Q. You say you were incorrect. Are you incorrect also about how the accident occurred?

Mr. Wilkinson: I object.

Court: The question is argumentative.

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Mr. Wilkinson: If the Court please, at this time we move to set aside the verdict of the Jury on the ground page 112 } that they came in clearly without evidence to support it, and it is contrary to the law and the evidence. I think the evidence clearly shows that the plaintiff was guilty of contributory negligence as a matter of law. For that reason, I think this verdict ought not to be allowed to stand.

Court: I don't think there was any other verdict. I thought what the defendant and two witneses said had occurred completely incredible. I don't think there could have been any other proper verdict. I overrule the motion and enter judgment for the Plaintiff in the sum of Eight Thousand Dollars ($8,000.00).

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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