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Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 45

Record Nos. 6169, 6170

In the Supreme Court of Appeals of Virginia at Richmond

ZAYRE OF VIRGINIA, INC., T/A ETC.

v.

CATHERINE GOWDY, AN INFANT, ETC.

ZAYRE OF VIRGINIA, INC., T/A ETC.

v.

LINDA HAMPTON, AN INFANT, ETC.

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

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. 6169

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.

ZAYRE OF VIRGINIA, INC., TRADING AS ZAYRE,
Plaintiff in Error,

against

CATHERINE GOWDY, AN INFANT UNDER THE AGE OF 21 YEARS, WHO SUES BY F. H. GOWDY, HER FATHER AND NEXT FRIEND, Defendant in Error.

From the Circuit Court of the City of Portsmouth
Henry W. MacKenzie, Jr., Judge

Upon the petition of Zayre of Virginia, Inc., trading as Zayre, a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of the City of Portsmouth on the 15th day of January, 1965, in a certain motion for judgment then therein depending wherein Catherine Gowdy, an infant, etc., was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of one thousand dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6170

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.

ZAYRE OF VIRGINIA, INC., TRADING AS ZAYRE,
Plaintiff in Error,

against

LINDA HAMPTON, AN INFANT UNDER THE AGE OF 21 YEARS, WHO SUES BY WYNN E. HAMPTON, HER FATHER AND NEXT FRIEND,
Defendant in Error.

From the Circuit Court of the City of Portsmouth
Henry W. MacKenzie, Jr., Judge

Upon the petition of Zayre of Virginia, Inc., trading as Zayre, a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of the City of Portsmouth on the 15th day of January, 1965, in a certain motion for judgment then therein depending wherein Linda Hampton, an infant, etc., was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of one thousand dollars, with condition as the law directs.

RECORD NO. 6169

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In the Circuit Court of the City of Portsmouth, on the 5th day of October, 1964.

Catherine Gowdy, an infant under the age of twenty-one (21) years, who sues by F. H. Gowdy, her father and next friend, Plaintiff,

v.

Zayre of Virginia, Inc., trading as Zayre, Defendant.

AT LAW.

At this day came the parties by their Attorneys and by consent of counsel for the plaintiff and defendant this case is tried with the case of Linda Hampton, an infant, etc. *v.* Zayre of Virginia, Inc., Law Docket No. 2682, and thereupon came a jury, to-wit: Linwood H. Cherry, Eric C. Holland, Lemuel C. Johnson, Arthur T. Vann, Linwood A. Davis, George M. Hill and Robert Lashley, who being duly sworn the truth to speak, upon the issue joined, and having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict and after sometime returned into Court, having found the following verdict: "We, the jury, find for the plaintiff and fix her damages at $750.00. L. C. Johnson, Foreman."; whereupon, the plaintiff, by counsel, moved the Court to set aside the verdict as to damages only and to impanel a jury to assess the damages, which motion being heard the Court doth overrule the same, to which action of the Court the plaintiff excepted; and whereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury and enter judgment for defendant or in the alternative to grant a new trial on the grounds that the said verdict is contrary to the law and evidence, which motion is continued to October 20, 1964, at 9:00 o'clock A. M.

A Copy—Teste:

KENNETH L. DIETRICK, Clerk
By LILLIAN K. ....., D. C.

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In the Circuti Court of the City of Portsmouth, on the 15th day of January, 1965.

Catherine Gowdy, an infant under the age of twenty-one (21) years, who sues by F. H. Gowdy, her father and next friend, Plaintiff,

v.

Zayre of Virginia, Inc., trading as Zayre, Defendant.

AT LAW.
Docket No. 2681.

At this day came the parties by their Attorneys and the Court having fully heard the motion of the defendant heretofore entered herein, to set aside the verdict of the jury heretofore rendered herein and enter judgment for the defendant or in the alternative to grant a new trial, on the grounds that the said verdict is contrary to the law and evidence, doth overrule the same; it is therefore considered by the Court that the plaintiff recover of the defendant the sum of Seven Hundred and Fifty Dollars ($750.00) with interest thereon to be computed at the rate of Six per cent per annum from the 5th day of October, 1964, till paid, and her costs by her about her suit in this behalf expended. And the said defendant in Mercy, &c.

A Copy—Teste:

KENNETH L. DIETRICK, Clerk
By LILLIAN K. ....., D. C.

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* * * * *

Catherine Gowdy, an infant under the age of twenty-one (21) years, who sues by F. H. Gowdy, her father and next friend, Plaintiff,

v.

Zayre of Virginia, Inc, trading as Zayre, Defendant.

* * * * *

ASSIGNMENTS OF ERROR.

Pursuant to the above mentioned rule, the defendant, Zayre of Virginia, Inc., assigns the following errors:

1. The Court erred in overruling this defendant's motion to strike plaintiff's evidence at the conclusion of the plaintiff's evidence.
2. The Court erred in overruling the defendant's motion to strike plaintiff's evidence at the conclusion of all of the evidence.

page 33 } 3. The Court erred in granting any instructions to the plaintiff.

4. The Court erred in granting Instruction No. 1.
5. The Court erred in granting Instruction No. 2.
6. The Court erred in granting Instruction No. 3.
7. The Court erred in granting Instruction No. 4.
8. The Court erred in refusing to grant Instruction No. C1.
9. The Court erred in refusing to grant Instruction No. C2.
10. The Court erred in refusing to set aside the verdict and enter final judgment for the defendant.
11. The Court erred in refusing to set aside the judgment and award the defendant a new trial.

ZAYRE OF VIRGINIA, INC.
By JOHN F. RIXEY
Of Counsel.

Filed Feb. 23, 1965, Circuit Court Portsmouth, Va.

K. L. D., Clerk
By L. K. B., D. C.

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ASSIGNMENTS OF CROSS ERROR.

Plaintiff assigns the following cross errors:

1. The Court erred in refusing to strike the defendant's evidence, and to submit to the jury the question of damages only.
2. The Court erred in refusing to grant plaintiff's Instruction No. 5.
3. The Court erred in refusing to grant plaintiff's Instruction 1A.
4. The Court erred in refusing to grant plaintiff's Instruction 2A.
5. The Court erred in refusing to grant plaintiff's Instruction 1B.
6. The Court erred in refusing to set aside the verdict as being inadequate, and to impanel a jury to assess the damages only.
7. The Court erred in holding that there was no assault and battery, and refused to submit this issue to the jury.

CATHERINE GOWDY, AN INFANT UNDER THE AGE OF TWENTY-ONE (21) YEARS, WHO SUES BY F. H. GOWDY, HER FATHER AND NEXT FRIEND
By A. A. BANGEL
Of Counsel.

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Filed Mar. 8, 1965, Circuit Court Portsmouth, Va.

K. L. D., Clerk
By L. K. B., D. C.

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RECORD NO. 6170

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* * * * *

In the Circuit Court of the City of Portsmouth, on the 5th day of October, 1964.

Linda Hampton, an infant under the age of 21 years, who sues by Wynn E. Hampton, her father and next friend,
Plaintiff,

v.

Zayre of Virginia, Inc., trading as Zayre, Defendant.

At this day came the parties by their Attorneys and by consent of counsel for the plaintiff and defendant this case is tried with the case of Catherine Gowdy, an infant, etc. *v.* Zayre of Virginia, Inc., Docket No. 2681, and thereupon came a jury, to-wit: Linwood H. Cherry, Eric C. Holland, Lemuel C. Johnson, Arthur T. Vann, Linwood A. Davis, George M. Hill and Robert Lashley, who being duly sworn the truth to speak, upon the issue joined, and having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict and after sometime returned into Court, having found the following verdict: "We, the jury, find for the plainiff and fix her damages at $750.00 L. C. Johnson, Foreman."; whereupon the plaintiff, by counsel, moved the Court to set aside the verdict as to damages only and to impanel a jury to assess the damages, which motion being heard the Court doth overrule the same, to which action of the Court the plaintiff excepted; and whereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury and enter judgment for defendant or in the alternative to grant a new trial on the grounds that the said verdict is contrary to the law and evidence, which motion is continued to October 20, 1964, at 9:00 o'clock A. M.

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In the Circuit Court of the City of Portsmouth, on the 15th day of January, 1965.

Linda Hampton, an infant under the age of 21 years, who sues by Wynn E. Hampton, her father and next friend,
Plaintiff,

v.

Zayre of Virginia, Inc., tradings as Zayre, Defendant.

At this day came the parties by their Attorneys and the Court having fully heard the motion of the defendant heretofore entered herein, to set aside the verdict of the jury heretofore rendered herein and enter judgment for the defendant or in the alternative to grant a new trial, on the grounds that the said verdict is contrary to the law and evidence, doth overrule the same; it is therefore considered by the Court that the plaintiff recover of the defendant the sum of Seven Hundred and Fifty Dollars ($750.00) with interest thereon to be computed at the rate of Six per cent per annum from the 5th day of October, 1964, till paid, and her costs by her about her suit in this behalf expended. And the said defendant in Mercy, &c.

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* * * * *

Linda Hampton, an infant under the age of 21 years, who sues by Wynn E. Hampton, her father and next friend,
Plaintiff,

v.

Zayre of Virginia, Inc., trading as Zayre, Defendant.

* * * * *

ASSIGNMENTS OF ERROR.

Pursuant to the above mentioned rule, the defendant, Zayre of Virginia, Inc., assigns the following errors:

1. The Court erred in overruling the defendant's motion to strike plaintiff's evidence at the conclusion of the plaintiff's evidence.

2. The Court erred in overruling the defendant's motion to strike plaintiff's evidence at the conclusion of all of the evidence.

page 12 } 3. The Court erred in granting any instructions to the plaintiff.

4. The Court erred in granting Instruction No. 1.

5. The Court erred in granting Instruction No. 2.

6. The Court erred in granting Instruction No. 3.

7. The Court erred in granting Instruction No. 4.

8. The Court erred in refusing to grant Instruction No. C-1.

9. The Court erred in refusing to grant Instruction No. C-2.

10. The Court erred in refusing to set aside the verdict and enter final judgment for the defendant.

11. The Court erred in refusing to set aside the judgment and award the defendant a new trial.

ZAYRE OF VIRGINIA, INC.
By JOHN F. RIXEY
Of Counsel.

Filed Feb. 23, 1965, Circuit Court Portsmouth, Va.

K. L. D., Clerk
By L. K. B., D. C.

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* * * * *

Linda Hampton, an infant under the age of 21 years, who sues by Wynn E. Hampton, her father and next friend,
Plaintiff,

v.

Zayre of Virginia, Inc., trading as Zayre, Defendant.

DOCKET NO. 2682.

ASSIGNMENTS OF CROSS ERROR.

Plaintiff assigns the following cross errors:

1. The Court erred in refusing to strike the defendant's evidence, and to submit to the jury the question of damages only.
2. The Court erred in refusing to grant plaintiff's Instruction No. 5.
3. The Court erred in refusing to grant plaintiff's Instruction 1A.
4. The Court erred in refusing to grant plaintiff's Instruction 2A.
5. The Court erred in refusing to grant plaintiff's Instruction 1B.
6. The Court erred in refusing to set aside the verdict as being inadequate, and to impanel a jury to assess the damages only.
7. The Court erred in holding that there was no assault and battery, and refused to submit this issue to the jury.

LINDA HAMPTON, AN INFANT
UNDER THE AGE OF 21
YEARS, WHO SUES BY WYNN
E. HAMPTON, HER FATHER
AND NEXT FRIEND
By A. A. BANGEL
Of Counsel.

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Filed Mar. 8, 1965, Circuit Court Portsmouth, Va.

K. L. D., Clerk
By L. K. B., D. C.

RECORD NOS. 6169 AND 6170

page 8 } INSTRUCTION NO. 1.

The Court instructs the jury that the defendant, Zayre of Virginia, Inc., is liable for the action of its employee, J. T. Lacy, acting within the scope of his employment and in furtherance of Zayre of Virginia, Inc.'s business.

Granted 10/5/64.

H. W. M.

page 9 } INSTRUCTION NO. 2.

The Court instructs the jury that if they believe from the evidence that the defendant uttered or spoke to or of and concerning the plaintiffs words and sentences, to-wit: "What have you in the bag, young lady; do you have a sales slip for that bag?" Which, when construed according to their usual construction and common acceptation, are insulting and tend to violence and breach of the peace, then they must find a verdict for the plaintiffs and fix their damages at an amount not to exceed the amount claimed in the notice of motion.

Granted 10/5/64.

H. W. M.

page 10 } INSTRUCTION NO. 3.

The Court instructs the jury that the law presumes that damages result from the utterance of insulting words, and it is not necessary for the plaintiff to prove either actual or pecuniary loss in order to recover.

Granted 10/5/64.

H. W. M.

page 11 } INSTRUCTION NO. 4. C1, C2?

The Court instructs the jury that false imprisonment is the restraint of one's liberty, without any sufficient legal excuse therefor, by words or acts which she fears to disregard, and

neither malice, ill-will, nor the slightest wrongful intention is necessary to constitute the offense.

Granted 10/5/64.

H. W. M.

page 12 } INSTRUCTION NO. 6.

The Court instructs the jury that if they find the issue for the plaintiffs, then they may consider as elements of damages any shame, mortification, humiliation and injury to the feelings as proven by the evidence.

Granted 10/5/64.

H. W. M.

page 13 } INSTRUCTION NO. 1-A.

The Court instructs the jury that the slightest touching of another, or his clothes, or anything attached to his person, if done in a rude, insolent, angry or unlawful manner, constitutes a battery. Therefore, if you believe from the evidence that the defendant's agent, acting within the scope of his employment and in furtherance of his master's business, violated this law, then you must find a verdict for the plaintiff.

Refused 10/5/64.

H. W. M.

page 14 } INSTRUCTION NO. 1-B.

The Court instructs the jury that every person has a right to complete and perfect immunity from an unlawful assault and battery, and complete protection against any violence whatever, whether perceptible injury results from it or not. And if you believe from a preponderance of the evidence that the defendant committed an unjustifiable and unlawful battery upon the plaintiff, as defined in Instruction No. 1 of this Court, then you shall return your verdict in favor of the plaintiff, Linda Hampton.

Refused 10/5/64.

H. W. M.

page 15 } INSTRUCTION NO. 2-A.

The Court instructs the jury that words which, from their usual construction and common acceptation, are insulting and tend to violence and breach of the peace are actionable in themselves, and the law presumes that a party uttering them intended maliciously to injure the person concerning whom they are spoken.

Refused 10/5/64.

H. W. M.

page 16 } INSTRUCTION NO. 5.

The Court instructs the jury that damages recoverable in actions like this are of two kinds: (1) Actual or compensatory damages, and (2) exemplary or punitive damages. Actual or compensatory damages are the measures of the loss or injury sustained, and may embrace shame, mortification, humiliation, indignity to the feeling and the like, and need not be alleged in detail and require no proof. Exemplary or punitive damages are something in addition to full compensation, not given as the plaintiff's due, but given rather with a view to the enormity of the offense to punish the defendant and thus make an example of it so that others may be deterred from committing similar offenses. The law awards compensatory damages only where in the unlawful act there is no intent to do wrong, or where there is no malice, or where the offense is not oppressively or recklessly committed, while exemplary or punitive damages are given where the wrongful act is done with a bad motive, or in a manner so wanton or so reckless as to manifest a wilful disregard of the rights of others.

Refused 10/5/64.

H. W. M.

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INSTRUCTION A.

The Court instructs the Jury that the function of the jury is to determine the facts from the evidence and to reach a proper verdict by applying thereto the law as contained in the instructions of the Court. These instructions are all of the instructions of the Court given to the jury in this case and you shall consider them together in arriving at your verdict.

Granted 10/5/64.

H. W. M.

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INSTRUCTION B.

The Court instructs the Jury that your verdict must not be based upon surmise, conjecture or sympathy for either of the parties, but must be based solely upon the evidence and the instructions of the Court.

The term "preponderance of the evidence" does not necessarily mean the greater number of witnesses, but means the greater weight of the evidence or that degree of proof which the jury finds more convincing and worthy of belief. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

The jury are the sole judges of the weight of the evidence and of the credibility of the witnesses. And in ascertaining the preponderance of the evidence and the credibility of witnesses, the jury may take into consideration the demeanor of the witness on the witness stand; his apparent candor or fairness; his bias, if any; his intelligence; his interest, or lack of it, in the outcome of the case; his opportunity, or lack of it, for knowing the truth and for having observed the facts to which he testifies; and from all these and taking into consideration all the facts and circumstances of the case, the jury are to determine the credibility of the witnesses and the preponderance of the evidence.

Granted 10/5/64.

H. W. M.

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* * * * *

INSTRUCTION C-1.

The Court instructs the Jury that if you believe from a preponderance of the evidence that the defendant's employee, acting within the scope of his employment, had probable cause to believe that a willful concealment of the goods of his employer had been committed by the plaintiff and that the defendant's employee acted in a reasonable manner upon such belief, then the plaintiff cannot recover and you should find your verdict for the defendant.

Refused 10/5/64.

H. W. M.

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INSTRUCTION C-2.

The Court instructs the Jury that probable cause as set forth in Instruction C-1 has been defined as knowledge of such a state of facts and circumstances as excite the belief in a reasonable mind, acting on such facts and circumstances, that the party involved is guilty of a crime of which he is suspected.

Refused 10/5/64.

H. W. M.

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CIRCUIT COURT
of the
CITY OF PORTSMOUTH
VIRGINIA

November 19, 1964

John F. Rixey, Esquire
Attorney at Law
Maritime Tower
Norfolk, Virginia

A. A. Bangel, Esquire
Attorney at Law
Law Building
Portsmouth, Virginia

RE: HAMPTON *VS.* ZAYRE AND
GOWDY *VS.* ZAYRE.

Gentlemen:

The two grounds advanced by the defendant for setting aside the verdicts of Seven Hundred Fifty ($750.00) Dollars for each of these plaintiffs will be considered separately in the order advanced.

It is first asserted that the pleadings charge the defendant with the torts of false arrest and insulting words, but the evidence fails to support either as a matter of law. With respect to the former, the evidence shows that the plaintiffs were accosted outside the defendant's establishment by an employee in police uniform, who either suggested or required that these teenage plaintiffs accompany him back into the store to have their purchases verified by a cashier at the check out counter. "An unlawful arrest constituting false imprisonment may be effected without manual seizure or touching the subject of the arrest. Such words and conduct of a known officer as give reasonable ground for belief on the part of the subject, that the officer has the present intention to make the arrest, and submission on the part of the subject in good faith and under the belief that he has been arrested or will be arrested immediately, are sufficient." 8 Michie's

Jurisprudence, 450. The jury had ample ground to find that the facts of this case fell within the quoted rule.

Any words uttered by a person conveying the charge of a criminal offense involving moral turpitude are in-
page 30 } sulting and actionable. 12 Michie's Jurisprudence, 49. Here the defendant servant in police uniform accosted the plaintiffs as they left the defendant's store with: "Hey, young lady, what do you have in that bag?" or words to that effect. The jury was amply justified in concluding, under the circumstances, that he was accusing them of thievery. Thus, there is evidence from which the jury might reasonably have concluded that the defendant was guilty of either or both torts.

The defendant next argues that Instruction 1 granted at the instance of the plaintiff is erroneous and prejudicial. The instruction reads: "The Court instructs the jury that the defendant, Zayre of Virginia, Inc., is liable for the action of its employee, J. T. Lacy, acting within the scope of his employment and in furtherance of Zayre of Virginia, Inc.'s business." The defendant argues that as this instruction is phrased it might carry the implication of a statement to them by the Court that the defendant was liable. Defendant's counsel concedes, however, that he did not raise this aspect of the instruction with the Court when it was originally presented, but that it occurred to him after later consideration and was dictated by him into the record when his exceptions were later given to the court reporter. Under Rule 1:8 and *Gabbard* v. *Knight*, 202 Va. 40, this ground for setting aside the verdict will not now be considered.

The plaintiff was entitled to an instruction, and the jury were entitled to be enlightened as to the law on the responsibility of the defendant for the acts of Lacy. There being no conflict on the fact that Lacy was the agent and servant of the defendant, and acting within the scope of his authority at the time the incidents giving rise to this action took place, the question was one for the Court and was given for the purpose of enlightening the jury on this single aspect of the litigation. It properly covers this aspect.

Judgment will, therefore, be entered on the verdict in favor of the plaintiff in each case, and if the defendant desires a stay of execution for the purpose of seeking a writ of error, the Clerk should be notified within five (5) days so that such

may show in the judgment order, and bond in the amount of Fifteen Hundred ($1,500.00) Dollars will be required in each instance.

Very truly yours,

H. W. MacKenzie, Jr.

* * * * *

page 6 } LINDA HAMPTON,

called as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please?
A. Linda Hampton.
Q. And how old are you, Linda?
A. I'm fourteen.
Q. And you go to school?
A. Yes, sir.
Q. What school do you go to?
A. Churchland High.
Q. What grade are you in?
A. I'm a freshman, ninth grader.
Q. And where do you live?
A. No. 2 Plum Lane, Chesapeake, Virginia.
Q. Now, on the—

Mr. Rixey: If Your Honor please, I think the young lady will have to speak up just a little bit. I can't hear her.

The Court: Just a little louder.

page 7 } By Mr. Bangel:

Q. Now, on the 13th day of June 1964 were you at Zayre's, Incorporated?
A. Yes, sir.
Q. And where did you leave from to go to Zayre's?
A. We left from my house.
Q. And where were you-all going after you had stopped at Zayre's?

Linda Hampton.

A. We were going to Pine Lake to go swimming.

Q. Well, now, what means of transportation did you have from your home to Zayre's?

A. My mother was taking us.

Q. Was she driving an automobile?

A. Yes, sir.

Q. Who else was in the car with you?

A. There was Cathy Gowdy, Beth Williams, my mother, and my five-year-old sister.

Q. Now do you know about what time you arrived at Zayre's?

A. It was around two or 2:30.

Q. And what did you do then?

A. Well, we got out of the car and there was
page 8 } Cathy and my sister—Cathy, Beth Williams, and I.
We all three went in the door. We didn't—

Q. What did you go in there for?

A. We went in to buy a bathing suit.

Q. Who was going to buy the bathing suit?

A. Cathy was going to buy it.

Q. All right. Now, the three of you went in?

A. Yes, sir. We went in and we went over to the counter where the bathing suits were.

Q. Did you know where the bathing suit counter was?

A. Yes, sir. I had been in there earlier in the day.

Q. Had you bought one yourself?

A. Yes, sir.

Q. All right.

A. We went over to the counter where the bathing suits were and we picked one out and then Beth went back to the—well, no, then we went up to the cashier and we paid for the bathing suit and Cathy asked the lady if she could change and she said yes, but try the fitting room, that it might be better.

And so then Beth went back to the car and Cathy
page 9 } went to the fitting room and I went back out to the
car to get the little training case that had the smock in it, and I walked back by the policeman and he didn't say a word to me, and then I went back over where Cathy was and there was Cathy and I and the lady in the fitting room. She said that we couldn't change in there because we didn't have a clerk with us, and so in her presence we said that we would go to the rest room and change, and she made no objection, and so we went in the rest room and she changed, and we

Linda Hampton.

came back out and we were—we walked right back behind where the counters were where the cashier was at and we walked out the main door, and we got on the sidewalk and the policeman made a statement like, "Hi, miss" or "Hi, young lady," and we turned around and he said,"Let me see what you have got in that suitcase." and so I was trying to open it and Cathy—I couldn't get it open, and so Cathy tried to help me and while we were doing this the policeman stuck his hand in my beach jacket and—

Q. Did he find anything in your beach jacket?

A. He found a dime in my beach jacket, and when he pulled that—

Q. Let me ask you, did you have the beach
page 10 } jacket on at the time?

A. Yes, sir. I had it open. It was—and after we got the suitcase open I—well, he stuck his hand in and looked around, and so after that while he was doing that Cathy told him that we had just went in and bought the bathing suit and that the cashier said it was all right if we changed, and so he said, "Well, where's the sales ticket?" And we were so humiliated to think that they would think that we would take something and all the people just gawking at us that we didn't—we didn't know where it was, and so he said, "Well, let's go in the store and you can show me the lady."

Q. Well, did you-all follow his instructions and go with him in the store?

A. Yes, sir. I was afraid not to. He was a guard and he had a higher rank, and so we followed him into the store, and the cash—he asked the cashier and she said, "Yes, I sold the bathing suit to them not more than five or ten minutes ago," and he said some remark to her—I was confused still and I didn't know what the remark he made was—and then he—then the saleslady said, "Believe me, I just sold it to them not more than five minutes ago." And we walked on out and
page 11 } by that time Mama had came in—had come in the store.

Q. Now, do you know whether—what day of the week was this?

A. It was on Saturday.

Q. And what was the condition of the people in the area? Were they lightly—

A. No, sir, it was rather crowded. The people were flocking in, I guess you would say.

Q. Did you recognize any of them yourself?

Linda Hampton.

A. I was so embarrassed I didn't even think—well, really, I didn't look to see who was around. I was afraid of the policeman and—

Q. Well, has it bothered you any since?

A. Yes, sir. I have all—the day—when we went back to school I was afraid that somebody was going to say something to me that had saw me, and if it had gotten back to one of my teachers that would have done permanent damage.

Mr. Bangel: Witness with you.

page 12 } CROSS EXAMINATION.

By Mr. Rixey:

Q. Miss Hampton, when you went into the store who was with you?

A. You mean the first time when we were going in to buy the bathing suit?

Q. That's correct.

A. There was Catherine, Beth, and I.

Q. Did you have the train case with you?

A. No, sir.

Q. How were you dressed, please?

A. I had on a bathing suit and a beach jacket that covered it.

Q. Was the beach jacket one of these kind that buttons down the front?

A. Yes, sir, but it was unbuttoned and the pockets—they just flopped open. I mean you could—

Q. Didn't embarrass you going in that store with a bathing suit on and a beach jacket flopping open?

A. No, ma'am—no, sir, because there were several other people in there with the same thing on.

page 13 } Q. Is that what you customarily wear when you go shopping to Zayre's, Miss Hampton?

A. Not unless we intend to go to the beach later.

Q. Wouldn't it have embarrassed you if one of the teachers had seen you in Zayre's with your bathing suit on and a bathing jacket flopping open?

A. Not in the least.

Q. All right. Now, after your friend Miss Gowdy picked out the bathing suit that she wanted, did I understand it was your testimony that Beth left?

Linda Hampton.

A. Yes, sir.
Q. And where did Beth go?
A. She went back to the car.
Q. And she didn't figure in this any more after that, did she?
A. She was a witness, but I mean she didn't—
Q. She wasn't—I don't want to cut you off, excuse me.
A. Sir?
Q. We will start again. She was not present
page 14 } when you had this conversation with the guard, Mr. Lacy, was she?
A. No, sir. She was in the car about eight yards from where we were at.
Q. Now, after Miss Gowdy picked out the suit that she wanted you went back to the car, did you?
A. To get the suitcase, and I passed the guard.
Q. But you went by yourself that time?
A. Yes, sir.
Q. And you got the train case or what-have-you?
A. Yes, sir.
Q. And you brought it back to Miss Gowdy?
A. Yes, sir.
Q. And then it was that Miss Gowdy changed her clothes—
A. Yes, sir.
Q. —in the ladies' room?
A. Yes, sir.
Q. And put on this new bathing suit?
A. Yes, sir.
Q. And then what did she have on top of the new bathing suit?
A. She had a smock. It's a dress sort of like.
page 15 } Q. Well, is it a short dress or is it a long dress?
A. No, sir, it's a dress that's yoked at the top and it is full. It was cotton. It was—
Q. Well, was it flopping open?
A. It had no buttons. The buttons are on the back.
Q. Well, you couldn't see the bathing suit?
A. Yes, sir. She didn't have a slip on underneath it. It is a very light cotton; you can see through it if you don't have a slip on.
Q. By that I mean was the bathing suit visible to the general public through this smock?
A. If you got close enough you could see it.

Linda Hampton.

Q. Well, a smock is supposed to cover a bathing suit, is it not?

A. No, sir, it's a dress. You wear them just like you would any other type of dress.

Q. So there was no way for Mr. Lacy to know that she even had a bathing suit on, was there?

A. Yes, sir. He could see through it.

page 16 } Q. This is a dress you could see through?

A. Well, if you are close. You wear a slip under it and it is a pink and white striped cotton, and it is—if you were as close as he was you could have seen the bathing suit, because the bathing suit was black and you could—the colors would have shown up.

Q. What was the purpose of changing there at Zayre's?

A. We were going on to the beach or the lake.

Q. Well, was she trying this bathing suit on for size?

A. That too. We weren't sure of the size and also—well, the main purpose was that we were going to the beach afterwards and it would have saved us a trip of going back home.

Q. Well, don't they have changing rooms over at the lake?

A. No, sir, not this particular one they don't.

Q. At Pine Lake they do, don't they?

A. I don't know—well, this was the first time that I had been there in about a year.

Q. Well, then, maybe they do have changing

page 17 } room?

A. It is possible. I have just never noticed it.

Q. So if you said they did not, you take that back, do you?

A. I have never seen changing rooms. They have got rest rooms, but I have never seen a place that's marked to change. But I didn't even know they had a rest room there until we had got there, because it had been a long time.

Q. All right. Now, when this guard, Mr. Lacy, came up to you did he address you as "Hey, young ladies"?

A. "Hey, young ladies," "Hey, miss," something to that effect.

Q. Was it plural, more than one?

A. I was shocked that he would have—I just didn't—it was "Hey, young ladies" or "Hey, miss."

Q. Did it shock you that a man in uniform would say "Hey, young ladies" or "Hey, misses"?

Linda Hampton.

A. Not at that time.

Q. And he asked you about the suitcase, did he?

A. No, sir—well, he said, "Let me see what you
page 18 } have got in the suitcase."

Q. Or did he say, "Let me see the suitcase"?

A. No, sir, he said, "Let me see what you have got in the suitcase."

Q. And then what did you do?

A. I tried—he said, "Let me see what you have got in the suitcase," so I immediately tried to open it.

Q. Well, did he say anything to you, Miss Hampton, about "Oh, that's not a suitcase that we sell," or anything of that kind?

A. I am positive he said nothing of that sort. He was too busy going through my pockets while we were trying to open it.

Q. You say too busy going through your pockets. What was he looking for?

A. I thought—I got the impression that he was trying to—he thought we had taken something, and my pockets I guess he thought would have been a good place. Even though they were open you could look down and see in them he stuck his hands down in them.

Q. That's what you figured he thought?

A. No, sir.

page 19 } Q. That's what it amounts to, isn't it?

A. I don't get what you mean.

Q. Do you have any factual basis for the statement—

A. Yes, sir.

Q. —that he was looking for things from the store?

A. He asked me what did I have in the suitcase?

Q. All right. And what did you say to him?

A. I started—well, he said, "Let me see what you have got in the suitcase," and I started to open it.

Q. Did you say anything to him?

A. Not a word.

Q. Who said something about the bathing suit?

A. Cathy did.

Q. All right. And when she mentioned the bathing suit he asked where the sales ticket was, didn't he?

A. Yes, sir.

Q. And then you started looking for it, didn't you?

A. Yes, sir.

page 20 } Q. And you went through the pockets on your house—

Linda Hampton.

A. No, sir.

Q. —beach coat you had on?

A. I had the suitcase in my hand. It was in my hand and it took both hands—it was about that size, about that wide, and I had it in my hand. I couldn't go through my pocket.

Q. Well, you didn't go looking through your pockets then?

A. No, sir. He did.

Q. Well, did you look through the suitcase for the sales slip?

A. He had done that. He had already done that. That's—well, he had—he had done it, and we honestly—it was embarrassing. He was out there searching me and any one of my friends could have came over there and that would have—

Q. When he searched the bag that you say he did and went in your pocket, was that after Miss Gowdy had mentioned the bathing suit to him?

A. She was mentioning it to him while he was rambling through it.

page 21 } Q. Well, he didn't go through anything or make any inspection until he was told by her that she had bought a bathing suit. Isn't that right?

A. No, sir. He had his hands in the suitcase while—she hadn't even got it out. She was—he was going through the suitcase after I had gotten it open and he had finished going through my pockets then she said about the bathing suit.

Q. That's not what you said just a moment ago, is it?

A. Yes, sir.

Q. Oh, it is. All right. Now, did he ever tell you that you were under arrest?

A. He made the implication. He said, "Let's—" He said, "Let's go back in the store," and to that—to me that's what it meant.

Q. Miss Hampton, didn't either you or Miss Gowdy say, "We just bought this bathing suit and the saleslady at the check out stand will recognize us," and he said to you, "Let's go over there to the saleslady"? Is that right?

A. No, sir.

Q. Where did he say let's go to?

A. He said, "Let's go back in the store and you can show me the lady who sold it to you."

page 22 } Q. Well, it amounts to the same thing, doesn't it?

A. Yes, sir.

Linda Hampton.

Mr. Bangel: No, it don't. One moment, please.

By Mr. Rixey:

Q. All right. He said, "Let's go back into the store and you can show me the lady that sold it to you"?

A. Yes, sir.

Q. Is that what he said?

A. (Indicated yes)

Q. And so you went over to the lady who sold it to you?

A. Cathy was going in first and we followed him, yes, sir.

Q. He didn't threaten you in any way, did he?

A. He made the implication, and I—that's the way I took it.

Q. What was the implication?

A. That I had taken something out of that store, which I hadn't done, I had no intention of doing.

Q. Did he threaten you in any way?

page 23 } A. What do you mean by threaten?

Q. Well, did he tell you that you were under arrest in any way?

A. He didn't come right out and say, "Look, you are under arrest," no.

Q. Did he ever restrict your movements and tell you you couldn't go anywhere?

A. He didn't—well, when he said, "Let's go back in the store," I didn't particularly want to, but I was frightened of him, so I did.

Q. He said that, did he not. Miss Hampton, after Miss Gowdy said, "Well, the saleslady will recognize us"?

A. No, sir. She didn't say anything about the saleslady.

Q. Did you say something about the saleslady?

A. I hadn't opened my mouth.

Q. Why would Mr. Lacy say let's go in and let this lady recognize you if you—all hadn't already said something to him about it?

A. He didn't say she would recognize us. He said, "Let's go back in the store with me and you can show me the lady."

Mr. Rixey: I think that's all. Thank you, Miss

page 24 } Hampton.

Catherine Gowdy.

RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Did I ask you whether you went to church or Sunday school?

A. No, sir.

Q. Well, do you go to church and Sunday school?

A. Yes, sir, every Sunday.

Q. What church do you go to?

A. Pinecrest Baptist.

Q. And you say you go to Sunday school too every Sunday?

A. Sunday school and church and training union.

* * * * *

page 25 } CATHERINE GOWDY,

plaintiff, called as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please?

A. Catherine Gowdy.

Q. And how old are you, Catherine?

A. Thirteen.

Q. And what school do you go to?

A. Craddock High School.

Q. What grade are you in?

A. Eighth.

Q. And where do you live?

A. 3 Cotton Place.

Q. Do you go to church and Sunday school?

A. Yes, sir.

Q. What church do you go to?

A. Craddock Presbyterian.

Q. Do you go to the same Sunday school and same church?

A. Yes, sir.

Catherine Gowdy.

Q. Now, on the 13th day of June 1964 were you
page 26 } at Zayre's Department Store?
A. Yes, sir.
Q. How did you happen to go there?
A. Well, I had stayed with Linda the night before and we were going over there to buy a bathing suit to go to the lake.
Q. Who was taking you?
A. Linda's mother, Mrs. Hampton.
Q. You say you had spent the night there?
A. Yes, sir.
Q. Well, now, about what time did you leave home—leave Linda's home?
A. Between two and 2:30.
Q. And who was in the car?
A. Linda and her mother and Beth Williams and Karen Hampton and I.
Q. And who was driving?
A. Mrs. Hampton.
Q. And after leaving home where did you stop?
A. We stopped at Zayre's.
Q. And you went there for what purpose?
A. We went there to buy a bathing suit.
Q. Who was buying the bathing suit?
A. I was.
page 27 } Q. Who went in the store with you?
A. Linda and Beth and I went in.
Q. And did you buy a bathing suit?
A. Yes, sir.
Q. After having purchased the bathing suit what did you do?
A. Well, after we bought the bathing suit we went out to the—over to the fitting room.
Q. Well, now, who did you pay for that bathing suit?
A. I paid the cashier.
Q. All right. Did the cashier give you a slip—sales slip?
A. Yes, sir.
Q. I didn't hear you?
A. Yes, sir.
Q. All right. Now, after having paid for the bathing suit what did you do?
A. Well, after we paid for the bathing suit I asked the lady if I could go to the rest room and try it on—and put it on because we were going to the lake, and she said, "Well,

go ahead and go to the fitting room.'' So we went to the fitting room and the lady said we couldn't try it unless we
page 28 } had the clerk with us, so we went back—we told her—I was standing there talking to Linda and I told Linda that we could go in the rest room. The lady didn't say anything that we couldn't, so we went to the rest room and tried it on.

Q. Well, now, did you try it on there?

A. Yes, sir.

Q. All right. Now, where was Linda at that time?

A. Well, Linda went back to the car to get my train case and Beth had gone back to the car.

Q. And why did you need your train case?

A. Well, I was going to take off the bathing suit and I had on shorts and I was going to put them in it.

Q. I see. Well, now, after having changed what did you and Linda do?

A. Well, after I changed Linda and I—first of all, I put on a smock that's pink and white and we went on back by the policeman and went on out.

Q. And how far did you get before something was said?

A. We got outside and practically into the
page 29 } street.

Q. Well, now, after leaving the front of the store do you reach sidewalk?

A. Yes, sir.

Q. Had you gone beyond that sidewalk?

A. No, sir.

Q. To what point had you reached?

A. Well, we had just gotten a little ways from the curb.

Q. And then what happened?

A. And then the policeman said either ''Hey, lady'' or ''Hey, miss,'' and I turned around and then Linda turned around.

Q. And what did he say to you, if anything?

A. Well, he asked us what was in the bag.

Q. All right. And what did you say when he asked you what was in the bag?

A. I didn't say anything. Linda tried to open it and she couldn't get it open, so I opened it for her.

Q. You say she couldn't get it open. Do you know why she couldn't get it open?

Catherine Gowdy.

A. It wasn't hers and she didn't know how to open it.

Q. All right. Did you assist her in opening it?

page 30 } A. Yes, sir.

Q. Well, now, while you were getting that train bag open what did the officer do to Linda while you were getting it open?

A. I don't know. I was too confused and too embarrassed. I was watching the people, because they were watching us, and I don't know—

Q. And was the officer in uniform?

A. Yes, sir.

Q. All right. Did you see very many people stop and look at you?

A. Yes, sir, there was quite a few of them.

Q. This was on a Saturday, was it—

A. Yes, sir.

Q. —in the afternoon? Well, now, after you succeeded in opening the bag for the guard what did he do with the bag?

A. Well, he went through it.

Q. Now, was that done on the sidewalk too?

A. Yes, sir.

Q. People looking on?

A. Yes, sir.

Q. And after he had gone through it what hap-

page 31 } pened to the bag then?

A. While he was going through it I told him I had just bought a bathing suit.

Q. And what did he say to you then?

A. He asked for the sales slip.

Q. Well, did you have the sales slip?

A. Well, I was so confused and everything I didn't remember where I had put it.

Q. All right. And when you found yourself so confused and didn't know where you had put it what did the officer tell you to do then?

A. He told us to go back into the store and show him the lady that had sold us the bathing suit.

Q. Did you go back?

A. Yes, sir.

Q. Why did you go back?

A. Because he told us to and he was an officer.

Q. I see. And following his orders did you go back?

A. Yes, sir.

Q. Did you go to the lady that sold it to you?

Catherine Gowdy.

A. Yes, sir.

page 32 } Q. What took place then?

A. Well, he asked her if she had sold us the bathing suit, and she said yes, and he just didn't want to believe her and she said, "Well, believe me, I sold it to them not more than five or ten minutes ago."

Q. Well, now, after he had satisfied himself that the bathing suit had been bought and paid for what did you and Linda do then?

A. Well, then he said okay, so we went on out.

Q. And where did you go from there?

A. We went to the car.

Q. And did—what was your condition by the time you reached the car after this experience?

A. Well, I was all upset and I was practically crying anyway.

Q. Did you recognize any of your friends on the street there?

A. I wasn't really looking.

Q. Huh?

A. I wasn't really looking.

Q. Why not?

A. Well, I was just too upset.

Q. I see. Now, when you got back to the car was

page 33 } Mrs. Hampton there?

A. No. We had met her on the sidewalk and she went on in Zayre's.

Q. She what?

A. We had met her on the sidewalk and she went on in Zayre's.

Q. She went in Zayre's. You didn't go back in Zayre's though, did you?

A. No, sir.

Q. Linda didn't go back neither, did she?

A. No, sir, not until later on in the afternoon.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Rixey:

Q. Miss Gowdy, had you ever changed clothes before in Zayre's?

Bonnie Hampton.

A. No, sir.

Q. Had you ever changed clothes in a rest room of a department store before?

A. No, sir.

Q. Didn't you see the big sign up there that says "No, Changing Permitted in the Rest Room"?

page 34 } A. There was not one in there.

Q. As I understand your testimony, Mr. Lacy, the guard, said the following things to you, and I'm going to give you the sequence: either "Hey, lady" or "Hey, miss." That's the first thing he said?

A. (Indicated yes)

Q. Second thing he asked—your testimony was he asked you what was in the bag?

A. (Indicated yes)

Q. Third thing he said to you was, after you told him about the bathing suit, he asked for the sales slip. Is that correct?

A. Yes, sir.

Q. And then, fourthly, he said, Let's go back in the store and show me the lady who sold you the bathing suit"?

A. Yes, sir.

Q. And the fifth thing he said was "Okay." Is that right?

A. What do you mean?

Q. Well, the end of your testimony was "He said, 'Okay,' so we left"?

A. Oh, yes, sir.

Q. They are just about the things that Mr. Lacy, page 35 } the guard, said to you?

A. Yes, sir.

* * * * *

BONNIE HAMPTON,

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

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, ma'am?

A. Bonnie Hampton.

Q. And, Mrs. Hampton, where do you live?

A. 2 Plum Lane, Chesapeake.

Bonnie Hampton.

Q. Now, on the 13th day of June 1964 did you have occasion to drive to Zayre's of Virginia?

A. Yes, sir, I did.

Q. Who was in the car with you?

A. My daughter, Cathy Dowdy, and Beth Williams and my baby—two of my children.

page 36 } Q. Now, you spoke of your daughter. What's her name?

A. Linda.

Q. Now, what was the reason for going to Zayre's?

A. To buy a bathing suit for Cathy.

Q. Well, now, did they leave the car? Did they go into Zayre's?

A. Yes, sir.

Q. And where were you parked at that time?

A. I was parked out in the lot when they left the car to go in the store, and little Beth Williams came back to the car and she said, "Mrs. Hampton, we are about ready to go." In the meantime my daughter had come to the car and got a little overnight case to take in the store to Cathy, and so Beth had come back to the car and said, "Mrs. Hampton, they will be ready in just a few minutes," so then I pulled over in front of—just below the main door and double-parked.

Q. What door? of Zayre's?

A. Of Zayre's, yes, sir.

Q. And you say how were you parked?

A. I was kind of double-parked there, you know, just to wait a few minutes.

page 37 } Q. And what did you observe then?

A. Well, Cathy came out of the store and said, "They will be here in just a few minutes." She had run back in the store for some reason, and she called my attention to something going on, and she said, "Mrs.—"

Q. Cathy?

A. No, I mean Beth. I am sorry, I mean Beth Williams. She said, "Mrs. Hampton, look at that policeman shaking down Linda and Cathy," and I turned around just in time to see him put his hand in her pocket, and then she reached down to the street, evidently, to pick something up that had come out of her pocket and put it back in her pocket and then she began to fumble with the lock on this little case that she got. She didn't know how to open it because it was Cathy's, so

Bonnie Hampton.

then Cathy opened the case and the detective went through the case.

Q. Did you see him go through it?

A. Yes, sir.

Q. Now, did they leave him then and go to the car—

A. No, sir.

Q. —or where did they go?

page 38 } A. No, sir. Then I waited just a minute and when I saw them all start back in the store, then I told little Beth, I says, "Let me park and go in the store and find out what's going on." So I parked the car over in the lot, and by the time I got the car parked and was on my way out of the car these two kids came back and got in the car, so then I went on in the store.

Q. What was their condition when you saw them then?

A. Well, they were real nervous and seemed to be very upset, and Cathy was almost crying. Her face was real red. She's very easily disturbed, and that was I think something to disturb her anyway, and she was just about in tears and they were nervous. So I asked them if they wanted to go on to the lake, you know, which we were heading.

Q. Before we leave that point, when this search took place where was it in reference to the store itself? Was it in the store, on the sidewalk or—

A. This happened—the search happened on the sidewalk in front of the store, right outside the door.

Q. And what was the—what day of the week

page 39 } was it?

A. It was on Saturday the 13th of June.

Q. And were there many people around?

A. Yes, sir. The parking lot was crowded. That's why it took me so long to give them time to come back to the car by the time I got it parked, because I had to go up and down about twice to find a place to park the car.

Q. Well, now, while the search was going on did you notice any people around there?

A. Yes, very many people in and out the store, up and down the sidewalk, people leaving their cars and going in the store.

Q. Were any of them observing the conduct of the officer with these girls?

A. Yes, sir.

Q. Were you able to recognize any of them yourself?

A. Any of the people?

Bonnie Hampton.

Q. Yeah, that witnessed the thing?
A. No, sir, I did not recognize anyone.
Q. You don't know whether they knew Linda or Cathy or not, do you?
A. No, sir.
Q. Well. now, after having gone back to the car
page 40 } did you go in the store yourself?
A. I went in the store, yes, sir.
Q. What did you go in there for?
A. After the children came back to the car they found the sales slip for the bathing suit.
Q. Where was it?

Mr. Rixey: Let her tell us only what she knows, if Your Honor please, and not what other people have told her.

By Mr. Bangel:
Q. In any event, the sales slip—did you receive the sales slip?
A. Linda handed me the sales slip and she said, "Here is the sales slip, Mama."
Q. And what did you do?
A. So I took the sales slip back in the store and went up to the detective and said, "Is this what you wanted to see? Here is the sales slip and I would like to know what caused this and did you find anything?" He said, "No."
Q. Well, now, did you ask him his name?
A. I asked him his name, yes, sir.
Q. Did he give you his name?
A. He did not give me his name.
Q. Did you talk to the general manager of the
page 41 } store?
A. Yes, sir, I did.
Q. And did the general manager give you the name of the man?
A. The general manager said he could not give me his name.
Q. Did the general manager say anything to you about what this man did—what he was doing?
A. He said the man was doing his job and he could not give me his name. I asked him three times for his name.
Q. The day—was it a pretty day or— was it raining or was it a pretty day?

Forrest H. Gowdy.

A. No, it was a pretty day. We were on our way to the lake.
Q. Broad open daylight, wasn't it?
A. Yes, sir.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Rixey:
Q. Mrs. Hampton, you were pretty upset about this, weren't you?
A. Yes, sir.
page 42 } Q. How many days afterwards was it that you retained Mr. Bangel as your lawyer?
A. On Monday.

Mr. Rixey: Thank you. That's all. No further questions.

RE-DIRECT EXAMINATION.

By Mr. Bangel:
Q. You were quite upset, weren't you?
A. Yes, I was.
Q. You went back and talked to the manager, didn't you?
A. Yes, sir.
Q. Or the general manager?
A. I certainly did go back.

Mr. Rixey: If Your Honor please, he's covered it.
Mr. Bangel: All right. That's all.

* * * * *

page 43 } FORREST H. GOWDY,
called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:
Q. State your name, please, sir?
A. Forrest H. Gowdy.

Forrest H. Gowdy.

Q. And, Mr. Gowdy, where do you live?
A. Craddock, sir.
Q. And are you the father of Catherine Gowdy?
A. Yes, sir.
Q. How old is Catherine?
A. She is fourteen, sir.
Q. And does she go to school?
A. Yes, sir.
Q. What school does she go to?
A. She goes to Craddock High now.
Q. Does she belong to any church?
A. Yes, sir.
Q. To what church does she belong?
A. Craddock Presbyterian.
Q. How about Sunday school?
page 44 } A. Yeah, same church.
Q. Does she go to Sunday school, church school —Sunday school and church all the time?
A. Yes, sir.
Q. She is a regular attendant there, is she?
A. Yes, she is.
Q. Now, you were not with your daughter on the 13th day of June 1964 when this occurrence took place?
A. No, sir, I was not.
Q. When did you learn of it for the first time?
A. At approximately four minutes to four that date.
Q. And what did you do upon learning what happened to your daughter?
A. I immediately left where I was employed and went to Zayre's Department Store.
Q. And who did you talk to?
A. I went to Mr. Smith in his office.
Q. And who is Mr. Smith?
A. At the time he was the manager.
Q. All right, sir. Now, did you talk to him about what had occurred to your daughter?
page 45 } A. I requested from Mr. Smith the name of the police officer that had stopped my daughter.
Q. And what did he say to you?
A. He refused to give me the name, sir.
Q. Did he tell you what the officer was doing at the time?
A. No, sir, not at that time he didn't.

Beth O'Neal Williams.

Q. Did he say he was employed by them or not?

Mr. Rixey: If Your Honor please, I object to Mr. Bangel leading the witness.

By Mr. Bangel:

Q. State whether or not he said anything about his being employed at Zayre's?

A. Well, when I requested the officer's name Mr. Smith asked me to see if we couldn't talk this out; he did not want to cause the store any embarrassment. And I told Mr. Smith that all I came out there—the only purpose was securing that police officer's name.

Q. All right, sir.

A. And I had to threaten to walk out of the office in order to even get his last name.

Q. And what was the last name?

A. The last name was Lacy.

page 46 } Q. Mr. Gowdy, what effect did it have on your daughter?

A. Sir, I saw her approximately two and a half hours after the occurrence, or approximately, and my daughter was still emotionally upset. Her face was real flushed, her eyes were still watery and bloodshot. She was very nervous and she acted like she was scared to death.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Rixey:

Q. How old did you sav your daughter was?

A. I said fourteen. She was thirteen I believe.

Q. What's your occupation, Mr. Gowdy?

A. I'm a police officer.

* * * * *

page 47 } BETH O'NEAL WILLIAMS,

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

Beth O'Neal Williams.

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please?

A. Beth O'Neal Williams.

Q. And how old are you, Beth?

A. Twelve.

Q. And what school do you go to?

A. Churchland Junior High School.

Q. And on the 13th day of June 1964 were you at Zayre's?

A. Yes, sir.

Q. How did you get to Zayre's?

A. Mrs. Hampton took us.

Q. And who were in the car?

A. Well, there was Linda and Cathy and Karen and I and Mrs. Hampton.

Q. And when you say Linda, you mean Linda Hampton?

A. Yes, sir.

Q. And Cathy, you mean Catherine Gowdy?

page 48 } A. Yes, sir.

Q. And who was the other little girl?

A. Karen Hampton. That's Linda's little sister.

Q. How old is she?

A. Six I believe, almost six.

Q. Now, when you—where were you-all going?

A. We were going to Zayre's to buy a bathing suit and then—for Cathy and then we were going to Pine Lake to go swimming.

Q. I see. Now, this was a Saturday, was it?

A. Yes, sir.

Q. Now, when you reached Zayre's what did you or Linda or Cathy do, if anything?

A. Well, we all went in—Mrs. Hampton parked first and then we all went in the store except—

Q. Now, you say we all, who are you talking about?

A. Linda, Cathy, and I went in the store together, and after Cathy had selected the bathing suit she wanted and they went to the cashier's desk then I went out in the car and I told them that I'd wait for them, and so I went to the

page 49 } car and when I got there Linda came out a little while after and she got the training case and she went back inside and Mrs. Hampton pulled front of Zayre's,

Beth O'Neal Williams.

you know, and then she told me to go inside and look for Linda because they were taking too long and I went inside and took Karen with me and we looked in the fitting room for them and we looked all over the store and they weren't there, so when I and Karen were coming out the door this policeman had stopped Linda and Cathy and were searching them and I went right to the car and told Mrs. Hampton and she looked around and we saw him put her hand —his hand in her left pocket and after he had stuck his hand in her pocket she reached down and looked like she was picking something up, so evidently something must have fell out of her pocket and so—

Q. Did you see what happened to them then?

A. Um-hum.

Q. What happened to the two girls then?

A. (No reply)

Q. What happened to the training case, if anything?

A. Well, the policeman opened it and looked in

page 50 } it. He searched in it and then he stuck his hand in her pocket, and then they got out—I mean they went in the store and I followed them and they went to the cash register and the lady that the—the check out lady told the policeman, she said, "I sold this bathing suit to them."

Mr. Rixey: Wait just a minute. Do you know this yourself, young lady?

Mr. Bangel: She said she went with them.

By Mr. Bangel:

Q. You said you went in there with them, didn't you?

A. Yes, sir.

Mr. Bangel: That's what she said.

By Mr. Bangel:

Q. All right.

A. And the cash register lady said that she sold—she had sold the bathing suit to them not more than five or ten minutes ago, and the policeman he didn't seem to want to believe her.

Mr. Bangel: All right. Answer this gentleman's questions.

Wynn E. Hampton.

page 51 } CROSS EXAMINATION.

By Mr. Rixey:
Q. Have you ever been to Pine Lake?
A. Yes, sir.
Q. Is that where you were going?
A. Yes, sir.
Q. Had you been there before this incident happened?
A. No, sir.
Q. This was going to be your first time?
A. Yes, sir.
Q. When was it that Linda put her own hands in her pockets looking through the pockets? Do you remember that?
A. I don't remember that, if she did it at all.
Q. You don't remember seeing Linda go through her own pockets?
A. No, sir.
Q. Beth, did these girls—did the Gowdy girl pay for the bathing suit before she tried it on?
A. Yes, sir.

* * * * *

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WYNN E. HAMPTON,
called as a witness on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:
Q. State your name, please, sir?
A. Wynn Elmer Hampton.
Q. Mr. Hampton, where do you live?
A. No. 2 Plum Lane in Chesapeake.
Q. What is your employment?
A. I work in the Navy Yard as a machinst, shop 31.
Q. Now, on the 13th day of June 1964 did your daughter —kill that question, please, ma'am.

Wynn E. Hampton.

Were you at home when your wife left home to go to the lake or Zayre's?

page 53 } A. Yes, sir.

Q. Who left the house?

A. My wife and Cathy, my daugther Linda, and Karen was with them, and Beth.

Q. Cathy who?

A. Karen.

Q. Cathy who?

A. Oh, Cathy Gowdy.

Q. Karen who?

A. Karen Hampton. She's my youngest daughter. And Beth Williams was with them.

Q. I see. Now, who was driving?

A. My wife.

Q. All right. Now, you were not present when this occurrence took place in front of Zyre's store?

A. No, sir.

Q. You know nothing at all about that—

A. No, sir.

Q. —of your own knowledge?

A. I was at home.

Q. When did you first learn of it?

A. My wife called me on the telephone.

Q. About what time did you receive the call?

page 54 } A. That was approximately—I would say approximately three, maybe ten minutes after three, somewhere in that neighborhood, in the afternoon.

Q. And upon being informed of what happened what did you do, if anything?

A. I went down to Zayre's store to see if I could find out what had happened.

Q. Well, now, did you go in Zayre's store?

A. I did.

Q. Who did you talk to?

A. I first went to the appliance department and asked for the manager, asked if they knew where I could find the manager.

Q. And did you find the manager?

A. Not at that moment. The man that I talked to said that the manager, who was Mr. Smith, had an appointment to go to Washington at 3:30, and they said I probably wouldn't

Wynn E. Hampton.

find him, that he was probably gone, and that I would find his assistant manager in the front of the store.

Q. Well, did you find the assistant manager or the manager?

A. I found the manager. When I went to the front of the store I found the manager, Mr. Smith.

page 55 } Q. All right. Tell us what conversation you had with him, if anything?

A. I introduced myself to Mr. Smith in the store—that was out on the floor—and told him who I was, and he asked me to go in his private office and talk to him in the private office, and so that's where we ended up was in his office.

Q. All right, sir. Now, what, if anything, was said about Mr. Lacy?

A. I asked Mr. Smith what had happened, that my wife had called me and she was very upset and that the guards had taken the children out—the guard had—

Mr. Rixey: Wait a minute. Just a minute, I object to it.

Mr. Bangel: If Your Honor please, this is perfectly permissible speaking to the general manager in the store. This is a conversation between him and the general manager. The corporation can only act by and through its general manager. That's the only way they can act.

The Court: I think he can give the substance of his conversation and why he asked the question, but the

page 56 } jury is not to consider that information that he got from his wife as being proof of that fact or as evidence of the fact.

Mr. Rixey: Yes, sir.

The Court: But I think he has the right to explain on what information his conversation with the manager took place and what the course of it was.

Mr. Rixey: Well, it was my understanding that he was proceeding to tell us what he had learned from his wife, so that he could be in a position to talk with Mr. Smith, and what his wife might have said to him is certainly not admissible in this case. Now, as to what Mr. Smith might have said, obviously he's an employe of the company and that is admissible, but not what either Mr. Hampton or Mrs. Hampton have said.

Wynn E. Hampton.

The Court: I overrule your objection. I think that the reason for his type of—his particular line of inquiry he has the right to explain to the jury, but that doesn't necessarily mean that the information that he had was correct or that the conversation is proof of that.

page 57 } Mr. Rixey: All right, sir.

By Mr. Bangel:

Q. State your conversation with the general manager, Mr. Smith?

A. When I went in the office with Mr. Smith and set there I explained to him that the wife had called me and she was very upset, that the guard at the store had taken the children or had searched them out in front of the store and she wanted to know what I thought could be done about it, and I told her on the telephone that I would go down to the store myself and see what I could find out, see what the story was. In the meantime in conversation with her on the telephone she told me she couldn't get any information—

Q. Well, go ahead.

A. Yeah, couldn't get any information about who the manager was or the guard, so I told her that I would go down and see what I could find out. And so when we got in his office and I was talking to Mr. Smith I asked him what had happened and he told me that the children had been observed going out of the store with a yellow bag and they did not have a sales slip and that the guard had proceeded to question them as to the sales slip and he said in so doing that that

page 58 } probably did create a humiliating circumstance for the children, and he said, "I hope that you and the people involved will not cause the store any embarrassment and will accept our apology." And I told him at that time, I said, "Well, now, I can only talk for myself and my wife." I said, "The other little girl, Mr. Gowdy's daughter," I said, "I can't talk for them."

Q. Well, now, did you ascertain who that guard was?

A. I didn't ask Mr. Smith who it was. I asked the fellow, and I don't know his name, that I talked to in the appliance department.

Q. And who was the guard?

A. He told me his name was Mr. Macy.

Q. Mr. Lacy?

Mr. Rixey: What did he say?

John T. Lacy.

A. Mr. Macy or Lacy or something of that sort. Actually, I wasn't interested in the guard; I was interested in finding out the information.

Q. Well, now, what was the condition of your daughter when you saw her?

A. Well, they were very much upset. She looked like she had been run through a wringer, actually, is the page 59 } way it appeared to me.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Rixey:

Q. You ever seen your daughter upset before, Mr. Hampton?

A. Yes, sir.

* * * * *

JOHN T. LACY,
called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (ADVERSE).

By Mr. Bangel:

Q. State your name, please, sir?

A. John T. Lacy.

Q. And, Mr. Lacy, where do you live?

A. 314 Leonard Road, Portsmouth.

Q. Now, on the 13th day of June 1964 were you employed at Zayre's of Virginia, Incorporated?

A. By—

Q. In what capacity?

A. As a security guard.

Q. And you were so employed and acting as such at the time you stopped Linda Hampton and Cathy Gowdy, the parties to the suit?

page 61 } A. I was.

Q. Were you acting in the scope of your employment in the furtherance of your master's business in doing what you did? Is that your job?

John T. Lacy.

A. As far as I know, yes, sir.
Q. That actually is what you were employed for and so instructed to do, wasn't it?
A. Yes, sir.

* * * * *

page 73 } JOHN T. LACY,

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

DIRECT EXAMINATION.

By Mr. Rixey:
Q. You are Mr. J. T. Lacy?
A. That's right.
Q. Where do you live, Mr. Lacy?
A. At the present time 314 Leonard Road.
Q. Where is that?
A. Mayflower Park.
Q. In what city?
A. Portsmouth.
Q. Where are you employed, sir?
A. Full time?
Q. Yes, sir.
A. Elizabeth River Tunnel Commission.
Q. And in what capacity do you work for the Elizabeth River Tunnel Commission?
A. Sergeant of the patrol, police.
Q. How long have you been working for Elizabeth River Tunnel Commission as a police officer?
A. Seven years in November.
page 74 } Q. What is your age, please, sir?
A. Fifty.
Q. Mr. Lacy, back in June, 13th of June of this year, were you employed by Zayre's Department Store?
A. I was.
Q. In what capacity were you employed by Zayre's?
A. As a security guard for Advance Security Agency.
Q. Was that a full-time employment—
A. No, sir.
Q. —or part-time employment?

John T. Lacy.

A. Part time.

Q. Were you employed on June 13, 1964, when these young ladies were there in the store?

A. I was.

Q. Do you recall the incident with these young ladies?

A. I do.

Q. How were you dressed, Mr. Lacy?

A. In the Advance Security uniform.

Q. Indicative of being some sort of officer with authority?

A. That's right.

page 75 } Q. Do you recall these girls coming into the store?

A. I recall the three—two. I don't know how many girls is involved here. I see three here. I recall two of them coming into the store.

Q. All right. And when you saw them coming into the store where were you?

A. I was standing at the information desk or layaway desk at the front of the store.

Q. When they came in did they—were they carrying anything, Mr. Lacy?

A. To my knowledge, no, sir.

Q. When did you next see these young girls, Mr. Lacy?

A. Leaving the store roughly fifteen, maybe twenty, minutes later.

Q. And how many of them did you see leaving the store?

A. Two.

Q. Were they carrying anything at the time?

A. One of the young ladies was carrying a small sort of handbag—not a handbag, but sort of like a makeup kit.

Q. All right, sir. When you saw—can you tell me page 76 } how they were dressed, please, sir?

A. One of them had a white terry cloth coat on over a bathing suit and the other had a straight dress or a shift dress type dress.

Q. The girl who had the straight dress or the shift type dress, could you tell that she had a bathing suit on underneath that shift?

A. No, sir.

Q. When you saw these girls leaving the store what did you do, Mr. Lacy?

A. I tried to stop them at the door, because I noticed they

John T. Lacy.

had this little kit and I tried to stop them before they got out the door, but they got a crowd there and I couldn't get to them and they got outside the door.

Q. All right, sir. So what did you say to them?

A. I asked the young lady, I said, "Do you have a sales slip for that kit?"

Q. How did you attract their attention? Do you recall?

A. Nothing other than just asking "Hey, young lady."

Q. And then what did you ask them, Mr. Lacy?

page 77 } A. If they had a sales slip for the kit, and at the same time I noticed it had a little tag on it and I just reached down, picked up the tag and turned it over and it had a name on it, and I said, "I am sorry, this is not ours."

Q. All right. Now, what happened after that?

A. And immediately one of the young ladies spoke up and said, "Well, I changed my bathing suit in the rest room." Says, "You have the sales slip," to the other girl.

Q. Did you know at that time that they had purchased a bathing suit?

A. No, sir, I did not.

Q. Well, when this girl spoke up and said that she had purchased a bathing suit what did you say then?

A. She said—the other girl started digging for the sales slip and—

Q. Started digging where?

A. In her pocket. She reached in the pocket of the terry cloth coat and she pulled out several bills and looked at it and says, "It is not there." Then she set the kit down on the street, opened it up, and dug through it and says,

page 78 } "Well, I don't know where it is."

Q. Did you go through the kit also?

A. No, sir.

Q. Did you run your hands through this little cosmetic kit?

A. No, sir, I never touched the kit, other than touching it when it was in her hand on that sales slip.

Q. Did you put your hand in this young girl's pocket?

A. No, sir.

Q. What were your instructions, Mr. Lacy, as far as what you would say to these people when you stopped them?

A. To try to find out if they had sales slips for merchandise

that wasn't wrapped or have a red slip on it, direct them back to the cash registers.

Q. All right, sir. Well, could they find the sales slip while you were talking to them?

A. At that time, no, sir. One of the young ladies spoke up and said, "Well, the cashier can identify us." Said, "She knows I bought and paid for the bathing suit."

Q. All right, sir.

page 79 } A. I asked her, I said, "Would you mind stepping back inside and let the girl identify you?"

Q. All right.

A. At that time we entered back in the store, the cashier identified her and told her that she had told her not to go to the rest room to change her bathing suit and to keep the sales slip.

Q. Well, did the girls have the sales slip?

A. To my knowledge, no, sir.

Q. Did the girls show the sales slip to you at that time?

A. No, sir. She identified—the cashier identified her and said she remembered her and remembered her paying for it and I thanked her and I said—I told the young lady, I said, "I am sorry I bothered you," and she left the store.

Q. Is that all?

A. As far as I knew that was all.

Q. Well, did you later talk with a lady who was the mother of one of the children?

A. Later a lady come up and she was very angry and upset and she had a sales slip. She throwed it in front

page 80 } of my face and said, "Here is the sales slip. See it? See it? See it?" I thanked her and that was it.

Q. Did you later also have occasion to talk to one or two gentlemen who purported to be the father or fathers of these children?

A. Later that night I talked to Mr. Gowdy.

Q. In the store?

A. In the store in the presence of the security officer and the assistant manager.

Mr. Rixey: All right. Thank you, Mr. Lacy. You may inquire.

John T. Lacy.

CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Lacy, it's been stated by counsel that you no longer are employed by Zayre's. That's correct, is it?

A. That's right; I don't work there now.

Q. And you had worked there—this was not the first day that you worked there, was it?

A. No, sir.

Q. And when you went to work there you were told that you were a security guard and as such you were to
page 81 } stop thievery, if any took place. That's correct? That's what your purpose was there, isn't it?

A. To watch and keep things from going out of the store as much as possible.

Q. And, of course, if a person committed a theft it was your duty to make an arrest?

A. No, sir.

Q. Well, who would make the arrest if a person committed a theft?

A. The security officer.

Q. I thought you were a security officer?

A. No, sir.

Q. Who is the security officer?

A. I can't tell you her name now, sir. I don't know it. We referred to her as Mrs. Black.

Q. Mrs. Black is your security officer. Well, she wouldn't be there when the person was stopped?

A. No. We call her, sir.

Q. You call her and report—

A. If we had reason to believe that anything was taking place we got in touch with her as soon as possible.

Q. And you hold the person there until she arrived on the scene; otherwise they'd go. That's correct?
page 82 } A. We notified her just as soon as we knew there was anything, and then it was up to her.

Q. But, I say, you would hold the person there until she arrived. You wouldn't let them walk away, would you?

A. I had no orders to hold them, no, sir.

Q. Well, now, as security officer or as guard, if a person came there and took something and walked away you wouldn't stop them at all?

A. I'd try to stop them and get in touch with her.

Q. But you'd stop them first, wouldn't you?

John T. Lacy.

A. Sir?

Q. You'd stop them first?

A. I would talk to them and find out if they had the sales slip or if it was a legal transaction.

Q. All right, sir. Then your duties was when a person came on out to ascertain whether or not they had a sales slip and whether it was a *bona fide* transaction?

page 83 } A. Yes, sir.

Q. That was orders that were given to you at the time of your employment? You understood that when you went to work there, didn't you?

A. Yes, sir.

Q. And on this particular day you saw these two young ladies leaving the place there and you were carrying out your duties as an officer or a guard and called them and stopped them for the purpose of discussing it with them?

A. To ascertain if they had a sales slip for it, yes, sir.

Q. Well, if—that, of course, carried with it the implication that "you have taken something wrongfully and I want you to prove to me that you have paid for it," isn't it? Isn't that what it amounts to?

A. The orders were, sir, that anything to go out the door they had a red tape on it. If it come from back in the store to be wrapped or to else have a red tape on it.

Q. All right, sir. But, I say, you stopped them for the purpose of ascertaining whether or not they had bought and paid for that article?

page 84 } A. I asked—I asked for a sales slip, yes, sir.

Q. Isn't that why you stopped them? To see whether they had a sales slip for it?

A. Yes, sir.

Q. And then, of course, they were unable to produce a sales slip?

A. That's right.

Q. But you were—that was about a bathing suit, though, wasn't it?

A. That's what the young lady said, yes, sir.

Q. You didn't stop her for a bathing suit, did you?

A. No, sir.

Q. But she voluntarily told you that "I have bought a bathing suit in there and I put it on," and you said, "You did? Where is the sales slip?"

A. No, I didn't, sir.

John T. Lacy.

Q. Well, did you ask for the sales slip when she said she bought it?

A. No, sir. The young lady said, "You have the sales slip," to the other girl.

Q. Wasn't it your duty as that officer—guard
page 85 } under instructions of your employer to make certain that if anything went out there unwrapped to make certain that they had a sales slip for it?

A. I did at that time, sir, after she mentioned it.

Q. So when she mentioned the fact that she had bought a bathing suit that's when you wanted to see the sales slip?

A. After the young lady said, "I have it and I have already put it on," I then asked her, I said, "Well, where is your sales slip?"

Q. I see. Well, she had already told you she had bought and paid for it, so you questioned her veracity in that regard then, didn't you?

A. The store policy is, sir, that no bathing suits would be—or any other apparel would be changed in the dressing room—in the rest rooms.

Q. Well, you didn't—you weren't arresting her for any—

A. I wasn't arresting her, period, sir.

Q. You weren't stopping her for any violation of any policy of the store. She told you voluntarily she had
page 86 } bought and paid for a bathing suit and you then said, "Show me the receipt."

A. After the girl had volunteered the information that she had changed a bathing suit, I asked to see the sales slips.

Q. Well, when a person tells you that voluntarily doesn't that carry with it the fact that they are telling you the truth? Doesn't that indicate to you they are telling the truth? You knew nothing about it.

A. I knew nothing about it, no, sir.

Q. Well, when she told you about it, though, that's when you questioned her veracity, her truthfulness in the thing, didn't you?

A. Under the circumstances the way it happened I did. The girl immediately started fumbling for the sales slip in her pocket, opened the little bag looking for it, and it kind of had me in a spot. She said the girl can identify her.

Q. Then you—

John T. Lacy.

Mr. Rixey: Let him finish, please.

By Mr. Bangel:
Q. Are you through?
A. She said the cashier can identify her.
Q. You said, "Come on back let the cashier
page 87 } identify you. If she does, it is all right"?
A. I asked her if she would mind stepping back in the store to be identified. She turned freely and went back in the store; the girl identified her; I thanked her and told her I was sorry I caused her any trouble.
Q. You were in uniform, though, weren't you?
A. Yes, sir.
Q. Well, if you said, "Would you mind coming back in the store?" you know—she knew if she didn't come back it was trouble, didn't she?

Mr. Rixey: Objection.
The Court: I sustain the objection.

By Mr. Bangel:
Q. You knew you were in authority at the time, did you not?
A. I knew I was trying to carry out my job as outlined.
Q. And what you were doing was carrying out the orders given to you by your employer, Zayre's of Virginia, Incorporated. That's what you—
A. My orders come from Lt. Berry, who told me the store orders.
page 88 } Q. And you were doing—what you did on this day or this Saturday afternoon was in compliance with your instructions from your employer?
A. Exactly.
Q. Now, you said you stopped them on the outside? Stopped them on the outside?
A. Just outside the door, yes, sir.
Q. And you wanted proof that the bag that they had, the overnight bag, was bought and paid for? That's what you wanted, wasn't it?
A. That was what I noticed the reason I asked them for the sales slip.

John T. Lacy.

Q. Didn't they tell you that it was their bag and they hadn't bought it in Zayre's?

A. As soon as I asked for the sales slip, as I mentioned to you before, I saw the little tag on it, I touched that tag and turned it over and saw a name and address on it. I said, "I am sorry, this is not ours." The other young lady spoke up and said, "Well, you have my sales slip for the bathing suit. I changed it in the rest room."

Q. And then, of course, you wanted proof of that?

A. Yes, sir.

page 89 } Q. And that's in compliance with the court—with the instructions of your employer?

A. After the young lady mentioned she had a bathing suit and didn't have the sales slip, couldn't produce it right there, naturally I wanted to know something about it.

Q. And that's what your employer wanted you to do, wasn't it?

A. That's exactly.

Q. And that's the order given you by your employer, wasn't it?

A. Exactly.

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Mr. Rixey: The defendant excepts to the court's refusal to strike the evidence of the plaintiffs in regard to the counts of insulting words and false imprisonment on the grounds previously stated.

Defendant excepts and objects to the court's granting of instruction 1 on the grounds previously stated, and further on the ground that the instruction is totally unnecessary in the case since the agency of Lacy and the defendant was not in question. Furthermore, this instruction clearly tells the jury that they must find a verdict for the plaintiff and it takes away from the jury the questions which are otherwise submitted and it has the net effect of striking the evidence of the defendant. In this instruction the court tells the jury that

there is libel, and this was a grievous and prejudicial error to the defendant.

page 116 } Defendant objects and excepts to the court's granting of instruction 2 on the grounds previously stated.

Defendant objects and excepts to the court's granting instruction 3 on the grounds previously stated, and for the further reason that the court should not have told the jury that it was not necessary for the plaintiff to prove certain losses in order to recover. This negative approach to the instructions was prejudicial to the defendant.

Defendant excepts and objects to the court's granting of instruction 4 on the grounds previously stated and again particularly excepts to the last three lines of the instruction where the negative approach is employed and the jury again was told what was not needed to constitute an offense. This was particularly prejudicial to the defendant.

Defendant excepts and objects to the granting of instruction 6 on the grounds previously stated.

page 117 } The defendant excepts and objects to the action of the court in refusing to grant instructions C-1 and C-2, which dealt with the probable cause aspect of the case and the defendant's right to assert as a defense to the actions that Mr. Lacy, the employe, had reason to believe from the facts and circumstances that the actions which he took were justifiable. Instruction C-1 was the only finding instruction submitted by the defendant. It was the very heart of the defendant's case. It was the only instruction which was offered by the defendant which went to the facts of the case. The other instructions were mere statements of law dealing with prejudice and preponderance of the evidence and function of the jury, *et cetera*. Instruction C-2 was offered for the purpose of clarifying instruction C-1. It gave the definition to probable cause which is as set forth from the Virginia case found at 202 Virginia page 1001. These instructions were a necessary part of and were vital to the defense of these actions, and refusal of the court to grant these instructions was clearly prejudicial to the defendant.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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