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Record No. 6224

In the
Supreme Court of Appeals of Virginia
at Richmond

GORMAN WYATT PHILLIPS

v.

OVERTON COPELAND STEWART

FROM THE CIRCUIT COURT OF MONTGOMERY 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. 6224

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 6th day of October, 1965.

GORMAN WYATT PHILLIPS, Plaintiff in error,

against

OVERTON COPELAND STEWART, Defendant in error.

From the Circuit Court of Montgomery County
William S. Jordan, Judge

Upon the petition of Gorman Wyatt Phillips a writ of error is awarded him to a judgment rendered by the Circuit Court of Montgomery County on the 9th day of April, 1965, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Overton Copeland Stewart was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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FINAL ORDER

On the 6th day of April, 1965, came the parties to this action, in person and by Counsel, the said case having been matured on the Pleadings heretofore filed and said case having been called for trial.

Thereupon, came also a jury, to-wit:

Mary E. Gibson
Rufus Compton
Lester H. Surratt
Roy I. Jennelle
Charlie G. Reed
Renva Knowles
L. C. Walters

selected according to law and duly sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence. Thereupon the jury heard the opening statements of Counsel after which the Plaintiff presented his evidence, and rested.

Thereupon, the defendant by Counsel moved to strike the evidence and enter summary judgment in favor of the defendant on the ground that the evidence of plaintiff failed to establish liability on the part of the said defendant, and further, that said evidence revealed the contributory negligence of the plaintiff as a matter of law, and on other grounds assigned at bar and incorporated in the record of proceedings of this trial by the court reporter. After hearing the argument of counsel, and maturely considering said motion, the court was not advised as to the proper disposition thereof, and, therefore, took said motion under advisement; to which action, defendant, by counsel, excepted.

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Whereupon, the defendant produced his evidence, and

rested; the plaintiff advised the court that he did not desire to present evidence in rebuttal and also rested and the evidence was concluded.

Whereupon, the said defendant again renewed his motion to strike the evidence and enter summary judgment in his favor on the grounds assigned at bar and incorporated in the record of proceedings taken by the court reporter. After hearing the arguments of counsel and maturely considering said motion and the evidence presented, the court sustained said motion, and granted defendant's motion for the entry of summary jugdment; to which action of the court the plaintiff, by counsel, duly excepted on the grounds fully set forth in the court reporter's record of the proceedings and incidents of trial, to which reference is made for a further statement thereof.

Thereupon, the court discharged the jury, and it is hereby ADJUDGED and ORDERED, in accordance with the foregoing action of the court, that the defendant be, and he hereby is, granted summary judgment in this action, and that the plaintiff Gorman Wyatt Phillips, shall have and recover nothing of the said defendant, Overton Copeland Stewart, but that the said defendant, Overton Copeland Stewart, shall have and recover of the said Gorman Wyatt Phillips his costs in his behalf expended.

The plaintiff having indicated an intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error in this action, and having requested that the Court set a suspending bond, it is hereby ORDERED that the execution of this judgment be, and it hereby is, suspended for a period of four (4) months from April 7, 1965, provided said Petition for a Writ of Error be actually filed within the time provided by law, and provided further, that the plaintiff, or page 23] someone for him, shall, within Twenty-One (21) days, give bond in the Clerk's Office of this court, with surety to be approved by said Clerk, in the penalty of Five Hundred (500.00) Dollars, conditioned according to law and providing for the payment of all damages as may accrue to any person by reason of the suspension of judgment as above set forth.

ENTER: W. S. JORDAN
Judge
DATE: Apr. 9, 1965

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To the Clerk of the Circuit Court of Montgomery County, Virginia:

Counsel for Gorman Wyatt Phillips, plaintiff in the above-styled case in the Circuit Court of Montgomery County, Virginia, hereby gives notice of appeal from the final judgment rendered in favor of the defendant, Overton Copeland Stewart, against him on April 6th, 1965, the final order of which was dated April 9, 1965, and sets forth the following assignments of error.

1. That the Court erred in sustaining the defendant's motion to strike plaintiff's evidence, which motion was made at the conclusion of all the evidence, said ruling of the Court being contrary to the law and the evidence of the case in that the evidence both by way of testimony and by way of physical evidence as shown by the exhibits proved negligence on the part of the defendant, which negligence the jury could have properly concluded was the proximate cause of the accident involved and which testimony and exhibits established a *prima facie* case on behalf of the plaintiff which should have been resolved by the jury.

2. That the Court erred in refusing to permit testimony by Grover A. Teel, Chief of Police of the Town of Christiansburg, Virginia, and John Lemley, Town Manager of the Town of Christiansburg, Virginia, in explanation of why the traffic light was placed at the pedestrian crosswalk involved in this case (see Transcript, Page 28, Line 3, *et seq;* Page 29, Line 1, *et seq*; Page 32, Line 3, *et seq*; and Page 33, Line 1, *et seq*); (see also stipulation of counsel, Transcript, Page 121, Line 4, *et seq*; Page 122, Line 1, *et seq*; and Page 123, Line 1, *et seq*).

page 28] 3. That the Court erred in refusing to permit testimony by Mr. John Lemley, Town Manager of Christiansburg, Virginia, as to the frequency in which the pedestrian crosswalk in question is used by pedestrians (see Transcript, Page 35, Line 17, *et seq*; Page 36, Line 1, *et seq*).

4. That the Court erred in refusing to permit lay testimony as to the general health of the plaintiff, Gorman Wyatt Phillips, prior to the accident involved in this case (see Tran-

script, Page 109, Line 11, *et seq*; Page 110, Line 1, *et seq*; Page 111, Line 1, *et seq*; and Page 116, Line 12, *et seq*).

5. That the Court erred in refusing to permit the testimony of Drexil Phillips, son of the plaintiff, Gorman Wyatt Phillips, in regard to why the cattle herd of the plaintiff had to be sold (see Transcript, Page 118, Line 1, *et seq*).

CRAFT & McGHEE
Counsel for Plaintiff

GORMAN WYATT PHILLIPS
By WILLIAM R. L. CRAFT, JR.

I, Wm. R. L. Craft, Jr., hereby certify that I have this 3rd day of June, 1965, mailed a copy of the within Notice of Appeal and Assignments of Error to:

(1) Mr. John B. Spiers, Jr.
Spiers & Spiers
Attorneys at Law
Spiers Building
Radford, Virginia

WILLIAM R. L. CRAFT, JR.

Filed in Clerks Office Circuit Court of Montgomery County 3rd day of June 1965.

A. B. CORRELL, Clerk
By: GEORGIA ELLIOTT, D. C.

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GROVER A. TEEL,
the first witness called on behalf of the Plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. McGhee:

Q. Chief, for the record would you kindly state your name and age?

Grover A. Teel

A. Grover A. Teel. Fifty-seven years old.

Q. You are Chief of Police of the Town of Christiansburg, Virginia, are you not?

A. Yes sir.

Q. And live in Christiansburg?

A. Yes sir.

Q. Chief, do you know Mr. Gorman Wyatt Phil-
page 3] lips, the gentleman who sits to my left?

A. Yes sir.

Q. Did you investigate an accident in which he was involved on December 26, 1963?

A. Yes sir.

Q. How did you receive word of the accident?

A. I was patroling here in town and received a call through the Sheriff's Department by radio that there had been a pedestrian hit in the crosswalk on West Main Street.

Q. What time did you receive the call?

A. At approximately 11:00 o'clock. I couldn't say to the exact minute. I have on my report 11:00 o'clock.

Q. Did your investigation reveal the approximate time of the accident?

A. Yes sir.

Q. And what did you determine that to be?

A. Around 11:00 o'clock.

Q. Then you received word of the accident within moments, or minutes?

A. Two or three minutes prior to that time I would say.

Q. Where did the accident occur?
page 4] A. On West Main Street at the crosswalk in the middle of the street. Where you cross from Leggetts over to Rose's Five and Ten.

Q. Now Chief, on that day would you kindly tell the Court and the jury what the weather conditions were?

A. The weather was clear and the roads were dry, and the temperature — I don't remember. I don't think it was too cold. I don't remember what the temperature was, but I know it was clear and the roads were dry.

Q. What was the condition of Main Street at the time of the accident?

A. As I recall now, there was snow had been pushed up against the curb. And at the crosswalk it was clear. The streets were clear. All of Main Street was clear and the road was clear there at the crosswalk, as I recall, coming back and looking at the crosswalk after I went to the hospital. And I

remember that the road was clear. And, as I recall, it was snow on the side of the road, pushed up against the curb.

Q. Chief, for the record, Main Street, Christiansburg, at the point of the accident is also U. S. Route 11, it is not?

A. Yes sir.

Q. Mr. Teel, would you kindly tell us how Main Street was marked at the scene of the accident on that day?

page 5] A. Well, at the crosswalk it was marked with blocks. White painted blocks. And the blocks — I believe there was ten of those blocks. They are two by — two feet wide and six feet long. That's the marking. And then the yellow line on each side where you enter the street at the crosswalk.

Q. What is the width of Main Street from curb to curb at that point?

A. Forty-eight feet.

Q. Chief, I believe in addition to the white blocks marking the pedestrian crossing there is also now, and was at the time of the accident, a red light, or traffic light, which is suspended above the street at that point in the center of Main Street, is there not?

A. Yes sir. There is a cross light there. A walking light. And red stop light hanging over the center of the street. And also on the side is "Walk" and "Don't Walk" signs. But the day this accident happened, on the 26th of December, those lights was not working. They were not on.

Q. Chief Teel, if you are driving west on Main Street how many feet east of the crosswalk are there before the crosswalk becomes visible? In other words, are there any obstructions to your view on Main Street as you proceed West?

A. Well, I would say approximately two hundred feet.

page 6] By Mr. Spiers: If Your Honor please, he's asking were there any obstructions. The balance of it is merely his opinion.

By The Court: I think that calls for a conclusion. It's the province of the jury to reach. You can testify as to physical conditions. Not as to conclusions.

Q. All right, sir. Chief, don't answer this question until the Judge has had an opportunity to rule on it, but I wanted to pursue this just a little bit further. I think I will rephrase my question. Perhaps it would be admissible. I want to ask

you — well, first, there is no curve in Main Street within the near vicinity is there?

A. No.

Q. Now are there any buildings or signs on buildings which hang over the street which would obscure vision?

A. No sir.

Q. Chief, looking at the diagram which has been admitted in evidence as an exhibit, I am now pointing to the east line of the crosswalk and I'll ask you what the distance is from the east line of the crosswalk to the west end of the diner? Jim's Diner?

A. That's One hundred forty feet.

page 7] Q. Now, Mr. Teel, what is the distance from the east line of the crosswalk up to the west line of Franklin Street? Where Franklin Street intersects with Main Street?

A. Two hundred sixty feet.

Q. I'll ask you, Chief, did you have occasion to measure, or do you know what the width of the parking spaces as marked on Main Street are?

A. Yes sir. I measured them. They are seven and one-half feet.

Q. Now also — we all here know this, but for the benefit of the record — Chief, is there not a traffic control light, or red light as it is commonly called, at the intersection of Main Street and Franklin Street?

A. Yes sir.

Q. Was that working on the day of this accident?

A. Yes sir.

Q. I'll ask you what type of district, whether residential, business, agricultural, or whatever, for the purpose of the record, is it at the scene of this accident?

A. Business.

By Mr. Spiers: That's a conclusion. I'll stipulate it's business district.

page 8] By Mr. McGhee: You will stipulate? It's just for the record.

Q. Now, Chief Teel, you stated that your investigation revealed that Main Street was clear. I'll ask you if there was any ice or snow within the traveled portions of Main Street?

A. There was not.

Q. How do you know?

Grover A. Teel

A. Well, when I come back to the scene, where this accident was supposed to have happened, I examined the road for skid marks and I recall that the road was dry. It wasn't any ice or snow on the main portion, travel part of the highway or street.

Q. At the time of your investigation did you observe any vehicles parked either on the north side of Main Street or the south side of Main Street in the vicinity of the crosswalk?

A. I don't recall seeing any vehicles. I imagine probably was cars parked, but I couldn't say whether they were or were not.

Q. I believe you testified that there was snow along the curbs of Main Street on this day?

A. Yes sir.

Q. Could you describe to the Court how much snow was there?

page 9] A. I don't recall how much snow was there. I believe we had a snow on the 23rd of December according to the records. I don't know how much.

Q. Do you know whether or not the snow was cleared from Main Street on the day of the snow?

A. All of the main traveled part of the road was clear.

Q. Was the Stewart vehicle still at the scene of the accident when you arrived?

A. No sir. There was nothing at the scene of the accident when I arrived. Wasn't anybody, any motor vehicles of any kind. Wasn't anything there.

Q. Did you talk to Mr. Phillips after the accident?

A. Yes sir.

Q. Where?

A. At the hospital.

Q. How soon after 11:00 o;clock A. M. did you talk with him?

A. Right after I arrived at the hospital. I went in the hospital and, as I recall, he was in one of the doctor's offices. He was *setting* on a hospital bed that they have in there.

Q. Will you give us an estimate of the time which elapsed after 11:00 o'clock when you talked with Mr.

page 10] Phillips?

A. It couldn't have been over ten minutes after 11:00 o'clock.

Q. What was his outward appearance from your observation at the hospital?

A. Well, he was right nervous and he seemed to be in pain.

Grover A. Teel

Q. Did he appear dazed?

A. No. I wouldn't say he appeared dazed.

Q. But shook up?

A. Yes. He was nervous and from my observation he seemed to be suffering.

Q. Did Mr. Phillips say anything to you about seeing Mr. Stewart's car? Or do you remember?

A. As I remember asking Mr. Phillips what happened, he said he was crossing the street and he heard a motor vehicle approaching. Heard the noise of the car and when he aimed to look it struck him right then and knocked him down. And if he told me he saw any car coming I don't recall him telling me he saw any car until it hit him.

Q. You don't have any notes?

A. No sir. I don't have any notes. All I have here is just the time.

Q. You're just relying on memory?

A. Relying on my memory. Yes.

page 11] Q. Did Mr. Phillips say anything, to your memory, about looking for traffic when he crossed?

A. I don't recall him saying anything. I didn't talk to him too long there at that time.

Q. Did you talk to Mr. Stewart?

A. Yes sir.

Q. After the accident?

A. Yes sir.

Q. What, if anything, did he tell you happened?

A. As I recall, Mr. Stewart — I asked him what happened. And he said as he was going west he saw this person out in the street, about the middle of the street, and he hesitated and he didn't know for sure which way he was going. And he stepped right out in front of him and he struck him.

Q. Did he tell you he thought he was going to stop?

By Mr. Spiers: Mr. McGhee, I object.

By the Court: That's a leading question. The objection is to the leading question, Mr. McGhee. You have

page 12] been right frequently leading the witness. I ask you not to do this.

A. I must have asked what his speed was. That's a twenty-five mile zone. I have twenty miles on my report. Evidently he told me he was running around twenty miles an hour.

Grover A. Teel

By Mr. McGhee: I think that's all, Your Honor.

CROSS EXAMINATION

By Mr. Spiers:

Q. Mr. Teel, do you make a record of any type of these accidents and keep them on file in the Police Department?

A. Yes sir.

Q. Do you have that record?

A. Yes sir.

Q. May I see it please, sir? Now this is your regular accident report form which you keep for your own information in your office?

A. Yes sir.

Q. And you also make a report, I believe, and send it to Richmond?

A. Yes sir.

page 13] Q. This basically says the date, type car, license number, where the people are from, location. All right, sir, would you read for the jury please the line here which says location, speed and weather?

A. Location, crosswalk, west Main Street. And then it gives speed, twenty miles an hour.

Q. That was your estimate from what Mr. Stewart must have told you?

A. Must have told me. Yes.

Q. Did you have anything about the weather?

A. Clear.

Q. Did you have any other card about the condition of the street?

A. No sir. I do not have.

Q. It doesn't indicate whether it was dry, or wet, or anything?

A. No.

Q. Do you normally put that on your reports?

A. Yes sir. On this one here I might not, but on my report I sent to Richmond it has a space I recall in there for weather conditions, and I don't have a copy of that.

Q. You don't know whether you marked that dry or wet or snow or sleet, or what?

A. No sir.

page 14] Q. There's no indication on your own investigation form as to whether the street was dry or wet?

A. I remember it as being dry.

Grover A. Teel

Q. There's nothing on here to indicate that?
A. No sir. Where it says weather, I just got clear.
Q. Clear weather?
A. Yes sir.
Q. You say you had snow on December 23?
A. Yes sir.
Q. You don't recall how heavy the snow was?
A. No sir.
Q. Do you remember when it was? I mean what time during the day?
A. No. I do not.
Q. Do you remember how heavy it was?
A. No.
Q. Do you remember the depth or extent of the accumulation on the side of the road on December 26, at the time of this accident?
A. No. I don't.
page 15] Q. The scrapers just push it over there, don't they?
A. Yes.
Q. If it's warm enough and it melts, it would run out in the street I suppose?
A. Yes.
Q. And you made no particular notice of the street conditions at the time of the accident as opposed to some time later?
A. I left. After I went to the hospital and talked to Mr. Stewart and Mr. Phillips I come back.
Q. Yes sir. Now that's my question. You made no notice of the condition of the pedestrian crosswalk immediately after the accident until you had gone to the hospital, investigated and then come back?
A. No sir.
Q. How long did you talk with Mr. Phillips?
A. Not but just, I'd say, two or three minutes at the longest.
Q. Was he in the same room as Mr. Stewart?
A. No sir. Mr. Stewart wasn't in the room with him.
Q. When you first got to the hospital who was the first person you talked to about this accident?
A. I believe I talked to Mr. Stewart first.
page 16] Q. As I understood you, he said, to the best of your recollection — you're relying strictly on memory? You made no notes?
A. No sir.
Q. He was going west and saw this man at the middle of

the street and he stepped out in front of him?

A. Yes sir.

Q. Did he say he came between some cars?

A. No. I don't recall him telling me that.

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

A. No.

Q. Now when you talked with Mr. Phillips of course you were investigating how this accident occurred?

A. Yes sir.

Q. And in pedestrian accidents isn't it your normal procedure to determine in your own mind whether the person you were talking to saw the car before it hit him? Isn't that part of your investigative procedure?

A. Yes sir. That would be the main point of my investigation.

Q. And that was your main point in talking to Mr. Phillips?

A. Yes sir.

page 17] Q. He never — he did not tell you he saw the car? That's for sure. Right?

A. Yes sir. What I stated a while ago is what Mr. Phillips told me.

Q. Substantially he merely said he was crossing the street, he heard a noise from an approaching car and he was struck and knocked down as he started to look?

A. Yes sir.

Q. I believe you said he seemed nervous, but not dazed or anything like that?

A. No.

Q. Did he tell you either of his legs was numb?

A. He said he had a numb feeling in, I believe, his right leg.

Q. Had no pain there? Just a numb feeling?

A. Yes.

Q. Have any other cuts that you noticed?

A. No sir.

Q. With reference to the light which is down here at this crosswalk, how long had that light been there, Mr. Teel?

A. We installed that light on the 6th day of December, 1963.

page 18] Q. It had just been up for twenty days?

A. Twenty days. Yes sir.

Q. That was getting close to Christmas?

A. Yes sir.

Q. Do you recall whether there were any street decorations for Christmas?

Grover A. Teel

A. Our decorations were up the day after Christmas.

Q. They were still up?

A. Yes sir.

Q. Now do they hang out from the sidewalk on poles and arms?

A. They come out on arms from the poles.

Q. How far do they extend out? Just roughly. I know you don't know exactly.

A. I would say three or four feet, as I recall. They hang out just over the parked cars parked in the regular places.

Q. Do they hang out as far as the bulbs on the lights that hang over the street? That is, the street lights.

A. I don't believe they hang out quite as far as the street lights.

Q. They are hooked on the street lights, aren't

page 19] they?

A. Yes.

Q. How long — can you tell us how long the area there has been painted as a pedestrian crossing?

A. Well, they usually paint the street —

Q. I mean how long had this one been used? Not whether it was painted yesterday or a month before.

A. How long had it been used as a crosswalk? Well, several years. I couldn't tell you.

Q. The light was not in use before?

A. The light was not used before that. It had been a crosswalk for several years.

Q. Was there any sign or other indication that was a crosswalk, other than lines on the street and a stop light?

A. No.

Q. Was there any such warning prior to the time you put the light up? Any sign?

A. Yes sir.

Q. As a matter of fact, you put a sign right in the middle of the street?

A. Yes sir.

page 20] Q. Where everyone could see it?

A. Yes sir.

Q. How high up did you put the stop light? Do you recall?

A. I believe thirteen, five. I believe is standard on those lights.

Q. You think this was standard?

A. Yes sir.

Grover A. Teel

Q. This crosswalk is not at any intersection of streets is it?
A. No sir.
Q. I believe that the light is not always in operation?
A. No sir.
Q. When is the light turned off?
A. The light usually is turned off at 6:00 o'clock. We set it automatically on a time clock. It's set to come on at 9:00 in the morning and goes off at 6:00 in the afternoon. Of course when the stores stay open later on Friday night we reset it to stay on up until 8:30, whatever time it goes off. On holidays, days the stores are closed, we cut the light off.
Q. And on December 26 the light was off?
A. Yes sir.
page 21] Q. Because it was a holiday?
A. Well, the stores was closed. It was the day after Christmas and all the stores was closed and we didn't cut it back on.
Q. There was no effort on the part of the Police Department or Town of Christiansburg to patrol the pedestrian and vehicular traffic at this point when that light is off. Is that right?
A. That's right. Yes.
Q. Prior to the time you had the light you say there was a sign "Crosswalk." Was it a prominent sign? Red and white?
A. It was a white sign. We just had a white sign. We set it out in the street during the day. Said "Crosswalk" on it. Had an officer when the pedestrian traffic was heavy set that sign out and work the traffic at the crosswalk.
Q. You used a man when the pedestrian crossing and the street traffic was sufficiently heavy, to allow people to cross there, to get back and forth to shop, and this light eliminated the need for having a man there?
A. Yes sir.
Q. At those times, the regular policeman patrolling that traffic was not kept there all the time?
A. No.
page 22] Q. Nor was the sign?
A. No.
Q. You rolled the sign aside?
A. Yes sir.
Q. Then there was no warning there was a crosswalk other than the lines itself?
A. Yes sir.
Q. When did that happen? Nights? Holidays? Just like the light?

Grover A. Teel

A. Yes sir.
Q. So there was no pedestrian crossing control at that time?
A. Nothing, only the markings in the street.
Q. Who established that crossing? Do you know?
A. Town Council, I suppose.
Q. Do you know who painted it?
A. The Town painted it.
Q. I guess Mr. Lemley would have those records? Would be more familiar?
A. Yes sir.
Q. The Town Manager would have more information about that than you do?
page 23]
A. Yes.
Q. Let's go back a little now. You say you went to the hospital and talked to Mr. Stewart. I think you saw him first. Did you see Mr. Miller or any other witnesses?
A. I don't recall seeing him.
Q. Did you talk with any other witnesses?
A. No sir.
Q. You didn't know of any other?
A. No sir.
Q. You discovered, did you not, that Mr. Stewart was from Tennessee?
A. Yes sir.
Q. And he was allowed to go on his way after your investigation?
A. Yes sir.
Q. Do you recall how long you were at the hospital?
A. I would say altogether I wasn't there over ten or fifteen minutes.
Q. Ten or fifteen minutes is all?
A. I believe I left the hospital, come back and checked the crosswalk and went back and talked to Mr. Stewart again. I told him he could go home, I wasn't going to place
page 24]
any charges against him, as I recall.
Q. Now, Mr. Teel, when you left the hospital this first time and had gone back to the crosswalk, according to your recollection—and this was what would you say after the accident? How much time?
A. It might have been fifteen to twenty minutes after the accident.
Q. If we assume your time of the happening of the accident is correct—you don't know exactly when it happened?
A. No.

Grover A. Teel

Q. So you cannot tell the jury the condition of the street or crosswalk at the actual time of the accident?

A. No sir. I didn't see the accident happen.

Q. It was at the hospital that you checked Mr. Stewart's automobile?

A. Yes sir.

Q. What type of a check did you run?

A. I checked the front end. Well, I looked at it all over. Checked the front end to see if there was any indication of anything being struck with the vehicle. Couldn't find any dent or any debris or anything on the front of the car or anywhere on the car that showed it had struck anyone.

Q. You were actually looking to try to find the point of impact?

page 25] A. Yes sir.

Q. You found nothing whatever to indicate to a police officer where the vehicle came in contact with the man?

A. No sir. I did not.

Q. No disturbance of dust, no dent or anything?

A. No.

By Mr. Spiers: That's all.

RE-DIRECT EXAMINATION

By Mr. McGhee:

Q. I thought perhaps this would be a good opportunity to get the pictures in. Chief, I show you a picture of downtown Christiansburg, Virginia, which has been admitted by agreement of counsel, and ask you if the crosswalk is shown in that picture? (Mr. McGhee is showing witness "Plaintiff's Exhibit No. 1")

A. Yes sir.

Q. Now the crosswalk—there are other crosswalks shown in the picture too, are there not?

A. Yes sir.

Q. Now the crosswalk that we are speaking of and which is in evidence here today, for the benefit of the record, extends from Rose's, or the north side of Main Street, and

page 26] that sign is visible in this photograph isn't it? Rose's?

A. Yes sir.

Q. And extends to the south side to Leggett's side of Main

Street, but Leggetts is not shown in this photograph. You can't see it can you?

A. No.

Q. Due to the angle. Now, Chief, I hand you another photograph marked "Plaintiff's Exhibit No. 2" and ask you if it does not purport to show a view of Main Street, Christiansburg, looking west?

A. Yes sir.

Q. The photograph shows Jim's Diner to the right portion of it, does it not?

A. Yes sir.

Q. And it also shows, I'll ask you, a portion of the intersection of Main Street and Franklin Street?

A. Yes sir.

Q. And the west line of Franklin Street, which heads in a generally north and south direction, is shown at the left of this photograph, is it not?

A. Yes sir.

page 27] Q. Now I hand you another photograph marked "Plaintiff's Exhibit No. 3" and ask you if that is not another view of Main Street looking west towards the crosswalk where this accident occurred?

A. Yes sir.

Q. And in this photograph, the lower right hand corner, I'll ask you if there isn't shown the west curb line of Franklin Street as it intersects with Main Street?

A. Yes sir.

Q. Now, Chief, when you gave the distances a few minutes ago from the intersection of Main Street and Franklin Street down to, or west to the point of the accident, this two hundred and sixty feet was measured from this curb here down west to—

A. West curb down to the crosswalk.

Q. To the crosswalk?

A. Yes sir.

Q. I wonder if you would point out the curb to the jury that we are speaking of. That's this curb here?

A. Yes sir. This curb here.

Q. Chief, I'll ask you if you have any recollection of the condition of the paint at the crosswalk at the time of your investigation?

page 28] A. I remember there being some white blocks in there. I couldn't say how much it was worn.

Q. All right, sir. Now I'll ask you one further question if I

may, Chief. Why was the traffic control light put above the crosswalk?

By Mr. Spiers: If Your Honor please, I object to that.

By the Court: Sustain the objection.

By Mr. McGhee: May I see the Court in Chambers just for a moment?

By the Court: Let's get along with the evidence.

By Mr. McGhee: This is a right crucial point in the case.

By the Court: So far the light was up and not working. The Chief is not responsible personally for putting it up. Certainly it would be conclusion and speculation on his part.

page 29] Q. Did you have anything to do with the putting up of that light at that point?

A. I recommended the light be put up to the Town Council.

By Mr. McGhee: May I pursue it, Judge?

By the Court: I sustained Mr. Spiers' objection.

By Mr. McGhee: I would like to get his statement into the record now or at a later time, if the Court please.

By the Court: Let's get on with the evidence. It's nearly 12:00 o'clock and you haven't finished with one witness yet.

By Mr. McGhee: Counsel for the plaintiff excepts to the ruling of the Court on the last question and reserves the right to place the testimony of Chief Teel in the record at a later time. That's all the questions I have.

page 30] RE-CROSS EXAMINATION

By Mr. Spiers:

Q. I might just point out none of those pictures attempt to show the scene as it existed on the 26th of December, 1963?

A. No sir.

Q. They show no traffic at all. You're not telling the jury that's the way it looked that day?

A. No sir.

By the Court: Stand aside.

Witness stands aside.

John Lemley

JOHN LEMLEY,
the next witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. McGhee:
Q. You are Mr. John Lemley?
A. That's correct.
Q. What is your occupation?
A. I'm the Town Manager for the Town of Christiansburg.
Q. What is your age?
page 31] A. Thirty-five.
Q. Your residence?
A. Third Street.
Q. Christiansburg?
A. Yes.
Q. When did you become Town Manager of Christiansburg?
A. 1956.
Q. Was there a painted white crosswalk for pedestrians on Main Street, Christiansburg, at Leggetts and at Rose's when you became Town Manager of Christiansburg?
A. Yes.
Q. Would you describe for the Court and jury that crosswalk as it was and is now?

By Mr. Spiers: I think it should be related to 1963, Your Honor.

Q. All right. Would you describe the crosswalk as it existed on December 26, 1963?
A. Yes sir. It's a series of rectangular white blocks, the long access of which runs with the Main Street and it runs from curb to curb. Each of the blocks is, I would
page 32] say, approximately two feet wide and three feet long.
Q. Now, Mr. Lemley, at the time of this accident, December 26, 1963, was there a traffic light, or red light, suspended over the street at the crosswalk? Do you know when that light was put there?
A. Yes.
Q. When?
A. It was put there on the 6th of December, 1963.

John Lemley

Q. Did you have anything to do with putting it there?
A. Yes sir. I supervised the installation.
Q. Why was it put there?

By Mr. Spiers: If Your Honor please, the light wasn't working. I don't see how it could put anybody on any notice.
By the Court: I sustain the objection.
By Mr. McGhee: We except to the ruling of the Court and would like to assign the grounds in Chambers.
By the Court: You may assign the grounds at
page 33] a later time. Let's get along with the evidence.
By Mr. McGhee: We except to the ruling of the Court and reserve the right to have Mr. Lemley make his statement as to why it was put there at a later time during the day.

Q. Mr. Lemley, I'll ask you whether or not you know when the crosswalk was painted prior, next preceding December 26, 1963?
A. I do not know the exact date.
Q. Do you know the approximate date?
A. It would have been sometime in September or October of 1963.

By Mr. McGhee: All right. No further questions.

CROSS EXAMINATION

By Mr. Spiers:
Q. Mr. Lemley, the painting was done September or October you say?
A. Yes.
Q. It could have been the first day of September or the last day of October? Nothing in your log to show?
page 34] A. Our log shows the day that we painted. It does not show specifically what we painted. Now to answer your question, I couldn't say the first of September.
Q. That's what I mean. It could have been early in September, middle or late October. Could have been any of those times?
A. I would have to look at the dates of the log to give you an honest answer.
Q. You painted during those two months?
A. That's correct.

John Lemley

Q. You painted at various intervals all during those two months?

A. Not necessarily all during those two months. We may have started later in September.

Q. You can't tell the jury then whether it was the first day or last day?

A. No.

Q. Did the Town do the painting?

A. Yes sir.

Q. Had it been in the habit of doing the painting the previous years?

A. Yes.

Q. Did the State ever do the painting?

page 35] A. Yes sir.

Q. Did the State put that crosswalk there in the first place?

A. It put the first crosswalk there.

Q. You all just kept it going?

A. We kept it going.

Q. If you supervised the installation of that light you know how high it is off the ground? It doesn't really matter.

A. It's eighteen or fifteen feet. Either one.

Q. It's at least fifteen?

A. Yes. At least fifteen.

Q. And when it is off do those things say "Walk" or "Don't Walk"? Or are they off too?

A. That's correct.

By Mr. Spiers: That's all.

RE-DIRECT EXAMINATION

By Mr. McGhee:

A. One further question. Mr. Lemley, would you tell the Court and jury the frequency in which that walk is used by pedestrians?

By Mr. Spiers: I object to that.

page 36] By the Court: Sustained. It calls for a conclusion.

By Mr. McGhee: We except to the ruling of the Court on the ground we have the right to show this is a regularly used—

By Mr. Spiers: Mr. McGhee is arguing his case. That code has to be construed by the Court.

By Mr. McGhee: Let me state my objection. I object to the ruling of the Court on the ground that we have the right to show this is a regularly used pedestrian crosswalk and it is customarily and often used for that purpose.

By the Court: We are trying this case on law and not on custom. Sustain the objection.

By Mr. McGhee: No further questions.

Witness stands aside.

page 37] ELAINE JOYNER,

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

DIRECT EXAMINATION

By Mr. McGhee:

Q. Kindly state your name to the Court and jury please?

A. Betty Elaine Joyner.

Q. What is your age?

A. Eighteen.

Q. And what do you do?

A. I am a student at Christiansburg *Highschool.*

Q. What grade? Speak up so they can hear what you say. What grade are you in?

A. I'm a senior.

Q. Elaine, where were you on December 26, 1963?

A. I was in Christiansburg.

Q. Did you see an accident that happened on that day?

A. Yes sir.

Q. Where did the accident happen?

A. In the crosswalk between Leggetts and

page 38] Rose's downtown at Christiansburg.

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

A. I was in my car.

Q. Did you see Mr. Phillips? Let me ask you this. What time did this accident happen?

A. About 10:30 or 11:00.

Q. Did you see this gentleman, Mr. Gorman Wyatt Phillips, on that day?

A. Yes sir.

Q. Where was he when you first saw him?

A. He was at the edge of the crosswalk on the Leggetts side as I was coming down the street.

Elaine Joyner

Q. You were in your car?
A. Yes sir.
Q. On the Leggetts side. That would be the south side of Main Street, would it not?
A. Yes sir.
Q. Now where was Mr. Phillips when you saw him?
A. He was in the crosswalk.
Q. What did he do?
page 39] A. He stopped and looked to see if any traffic was coming.
Q. Then what did he do?
A. Then I slowed down and stopped, and he walked on out.
Q. What direction were your proceeding?
A. I was going east.
Q. Then Mr. Phillips passed in front of you?
A. Yes sir.
Q. When was it that you first saw Mr. Phillips as you proceeded east?
A. When I was about in front of Dixon's jewelry store.
Q. At that point where was Mr. Phillips?
A. Just getting ready to cross the street.
Q. On the sidewalk?
A. Yes sir.
Q. At that point what did he do?
A. He stopped to look if any cars were coming.
Q. What direction did he look?
A. He looked both ways.
Q. You saw that?
page 40] A. Yes sir.
Q. Did you see Mr. Stewart, or rather a vehicle at that time proceeding west?
A. Yes sir.
Q. Now where were you? Let's look at this diagram if you will, Miss Joyner. This purports to be Main Street. This direction west. This direction east. This is the crosswalk. This is the west end of the diner known as Jim's Diner. Now where were you in relation to the street when you first saw Mr. Stewart's car?
A. About right here. Just leaving the crosswalk.
Q. Just leaving the crosswalk?
A. Yes sir.
Q. Then at that point Mr. Phillips had passed in front of you. Is that correct?
A. Yes.

Elaine Joyner

Q. Could you give the Court and jury an estimate of the speed at which the Stewart vehicle was traveling?

A. It was going about thirty-five. Thirty or thirty-five.

Q. Did you see the actual impact?

A. Yes sir.

page 41] Q. How did you see that?

A. Through my rear view mirror.

Q. Now at what point on Main Street had you reached when you saw this impact?

A. I was about in front of Miller's Drug Store.

Q. At Miller's Drug Store?

A. Yes.

Q. I hand you here a photograph marked "Plaintiff's Exhibit 1" and ask you if Miller's Drug Store is shown in that photograph?

A. Yes sir.

Q. Your statement is that you had reached just about Miller's Drug Store?

A. Yes sir.

Q. When you saw the impact?

A. Yes sir.

Q. I'll ask you if Jim's Diner isn't directly across the street and in front of Miller's Drug Store as Miller's Drug Store faces Main Street?

A. Yes sir.

Q. Could you tell, Miss Joyner, where Mr. Phillips was in the crosswalk when he got hit?

page 42] A. He was in the west bound lane.

Q. Now after you saw this collision what did you do?

A. I pulled over and stopped at Miller's Drug Store. Right in front of it.

Q. Then what did you do?

A. I turned around and watched until some men came over to Mr. Phillips and helped him up.

Q. He did get up?

A. Yes sir.

Q. And then what?

A. Then I drove on.

Q. Was there anyone with you?

A. No sir.

Q. Where were you going?

A. I was going to Carol Duncan's house.

Q. A girlfriend that lives in town?

Elaine Joyner

A. Yes sir.

Q. Are you related to any of the parties to this suit? One way or the other?

A. No sir.

page 43] Q. Do you have any interest one way or the other in the outcome of this suit?

A. No sir.

By Mr. McGhee: That's all.

CROSS EXAMINATION

By Mr. Spiers:

Q. Miss Joyner, you were about sixteen at the time?

A. Yes sir. I was seventeen.

Q. And you were alone?

A. Yes sir.

Q. Do you live in Christiansburg?

A. Yes sir.

Q. Now when you came down the street you were in the traveled portion of the highway?

A. Yes.

Q. And before you got there you saw Mr. Phillips back here somewhere near Dixon's jewelry store?

A. No. That's where I was when I saw him.

Q. Where was he?

page 44] A. He was on the sidewalk about right here in front of the crosswalk.

Q. Was he facing across the street?

A. Yes.

Q. Was there anything to obstruct your vision at all in the way of parked cars?

A. No sir. I don't believe so.

Q. I believe you state you were approaching down here and you saw him up here?

A. Yes sir.

Q. And you tell the jury there were no cars parked there?

A. I don't believe there were.

Q. It's your evidence there were no cars. Were there any cars ahead of you?

A. No.

Q. None all the way up to the stop lights?

A. There might have been some at the stop light. None immediately ahead of me.

Elaine Joyner

Q. Were there any over here?

A. I don't remember.

page 45] Q. As you came up here you saw this man step off the street?

A. Yes sir.

Q. He was approaching your lane of travel?

A. Yes sir.

Q. And having recently taken your driving test you knew as you got there you should yield to him?

A. Yes sir.

Q. As you approached this point was he out in front of you, into the traveled portion, before you stopped?

A. No sir. As I slowed down.

Q. He walked out in front of you?

A. Yes sir.

Q. And your car was still moving?

A. Yes sir.

Q. But just barely because you were almost to this point?

A. Yes sir.

Q. You stopped there and he crossed in front of you?

A. Yes sir.

Q. Did you see him as he approached the center of the street?

page 46] A. Yes sir.

Q. Did he stop?

A. Yes sir.

Q. He did stop?

A. Yes sir.

Q. You're positive?

A. Yes sir.

Q. Because you had not started then had you?

A. No sir.

Q. I believe you told Mr. McGhee as you pulled off after he crossed in front of you that's about where you were when he stopped in the center of the street?

A. That's about where I was when I saw Mr. Stewart's car.

Q. Where was Mr. Phillips then?

A. About in the middle of the street.

Q. Right at the center. Stopped? Looking?

A. Yes sir.

Q. Which way?

page 47] A. Both ways.

Q. He stopped and looked in both directions as you pulled off?

Elaine Joyner

A. Yes sir.

Q. And then you proceeded on up the street a hundred and fifty feet or so and you looked in your rear view mirror?

A. Yes sir.

Q. Where was the Stewart car when you saw it? You say you were here. Where was Mr. Stewart's car?

A. It was just leaving the intersection up here at the courthouse.

Q. It was all the way back up here?

A. Just coming up to the rise of the hill.

Q. Was the light red?

A. I don't remember.

Q. Did it stop?

A. At the light? I don't suppose so. It was already through it when I saw it.

Q. Had it already gone through the intersection?

A. Yes sir.

Q. Had it gotten near the diner?

page 48] A. Yes sir.

Q. Was it in front of the diner?

A. No. It was further back.

Q. How close to the diner was it?

A. I'd say it was about even with this square up here.

Q. Right here?

A. Yes.

Q. You did not watch it any further. Or did you?

A. Yes sir.

Q. And it was going very fast wasn't it?

A. It was going fast to be downtown.

Q. It was going well beyond the speed limit?

A. I would say it was. That's what made me notice it.

Q. Thirty to thirty-five miles per hour, a high rate of speed, down this street. And you had seen this man at the center of the street before you ever saw that car, and he was stopped, looking in both directions. Then did you see him step out in front of that car?

A. No sir.

Q. You didn't see that at all. Where was Mr.

page 49] Stewart when you last saw him? Still at the center of the road? Still waiting?

A. The next time I saw him was when the car hit him.

Q. All right. Where did the car hit him. With reference to the lane.

Elaine Joyner

A. I believe he was about out in the lane about that much when I saw the car hit him.

Q. Would you say two feet? One foot? Three feet?

A. I'd say two, three feet.

Q. He must have just taken a step or two?

A. Yes sir.

Q. Were any cars parked over here?

A. I don't remember.

Q. You don't remember whether cars were parked there. All you remember is seeing that Stewart car?

A. Yes sir.

Q. You didn't see any other traffic? No other cars and no other important thing?

A. No sir.

Q. Except Mr. Stewart was speeding?

A. Yes sir.

page 50] Q. This man stopped in the middle of the road, looked in both directions, stepped over the road a foot or two?

A. That's where I saw him when the car hit him.

Q. The car must have been pretty close to him when he walked across the street in front of it. Or would you know?

A. I don't know.

Q. Then you stopped your car?

A. Yes sir.

Q. Did you speed going up through there?

A. No sir.

Q. You went at what speed?

A. Well, I suppose I was doing about five or ten because I just had pulled off from stopping.

Q. Do you think you achieved any great speed? I'm not trying to trap you.

A. No sir.

Q. Ten miles per hour would be the fastest possible speed you attained?

A. Yes sir.

Q. And you were looking ahead?

A. Yes sir.

page 51] Q. Nothing was obstructing you ahead?

A. No sir.

Q. You didn't come up on any car?

A. No sir.

Q. You maintained your view on the road. Is that right?

A. Yes sir.

Elaine Joyner

Q. When did you happen to look back, and why?

A. Well, I saw Mr. Stewart's car coming and I thought to myself that he was going to hit the man. I looked in my rear view mirror and I saw him hit.

Q. You thought he was going to hit him even though the man stopped in the center of the street and looked in his direction?

A. Yes sir. But the Stewart car was going fast. That's what made me think he would hit him.

Q. Very fast. How many people were in the car?

A. I think two. I'm not sure.

Q. Have you ever seen that man here? You wouldn't know him as Mr. Stewart?

A. No sir.

page 52] Q. What color was the Stewart car?

A. I don't know.

Q. Was it black?

A. I think it was dark green, but I'm not sure at all.

Q. It was a dark car at any rate, was it not?

A. I believe so. There was a dark green car that was parked there after he hit the man. That might have made me think it was dark.

Q. You saw this car going at a very rapid rate of speed. You at least have an impression whether it was light or dark. You think it was a dark car or light?

A. I'm not sure.

Q. But you know it was the car that hit the man?

A. Yes.

Q. Because you looked at it, watched it down the street, saw it hit him. You don't know whether it was dark, black, yellow, green, orange, or what color?

A. No.

Q. You want to express an opinion? You think it was dark green?

A. There was a dark green car there and that

page 53] might make me think his car was dark green. I really don't know.

Q. Did Mr. Phillips walk out right in front of you, then you pulled off right behind where he had just walked?

A. Yes.

Q. Any car behind you?

A. No sir.

Q. Nothing was behind you?

A. No sir.

Q. You're positive. Nothing was parked immediately to your right when you stopped at the crosswalk?
A. I don't believe so.
Q. You're positive nothing was behind you?
A. I'm sure nothing was immediately behind me.

By Mr. Spiers: That's all.

RE-DIRECT EXAMINATION

By Mr. McGhee:
Q. Miss Joyner, how long had you been driving an automobile prior to December 26, 1963?
A. About two and a half years.
page 54] Q. Two and a half years?
A. Yes sir.
Q. Speak up so they can hear you. Now Mr. Spiers asked you a question that to the effect that after Mr. Phillips had proceeded in front of you that you went on up the street a hundred and fifty feet. Actually, the distance shows you stopped in front of Miller's Drug Store, did you not?
A. Yes sir.
Q. According to the measurement that would be a hundred and forty feet?

By Mr. Spiers: I beg your pardon. It shows a hundred and forty feet before you get to the diner.
By Mr. McGhee: Well the drug store is right across.
By Mr. Spiers: All right. A hundred and fifty feet.

Q. Miss Joyner, Mr. Spiers asked you the question of whether or not you remember there were any cars behind you. Are you referring to when you pulled off and got up the street to the drug store, going up to the drug store, or when you slowed down to a stop?
page 55] A. When I was going up the street to the drug store.

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page 56]

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(The following deposition of Gorman Wyatt Phillips, taken

pursuant to the Order of the Circuit Court of Montgomery County, Virginia, entered March 29, 1965, which was taken on the 30th day of March, 1965, was read into evidence)

DIRECT EXAMINATION

By Mr. Spiers:

Q. Your name is Gorman Wyatt Phillips. Is that correct?

A. Yes sir.

Q. How old are you, Mr. Phillips?

A. 69 last day of September.

Q. Where do you live?

A. I live up near Snowville, mile southwest of Snowville on Lead Mine Road.

Q. Mr. Phillips, on December 26, 1963, were you in the Town of Christiansburg, at about 11:00 o'clock in the morning?

page 57] A. Yes, it was around 11:00 I imagine.

Q. Where had you been just before the time the accident occurred in which you were injured?

A. Well, I got out of a truck down there where, I reckon that Baptist Church.

Q. Where were you going at the time you got injured?

A. I was aiming to go over to the barber shop that day but it was closed, and I come up there to this street crossing, thought I would go over to the drug store and get me some medicine.

Q. Which drug store were you going to?

A. I don't know the name of the drug store—On that side over there.

Q. Is it on the same side as Leggett's, or the other side?

A. No, the other side.

Q. Is it Thompson-Hagan?

A. Yes.

Q. What was the weather like this day? Was there any snow on the ground?

A. Well, there had been snow, but the street was clear where it was pushed out on the sides some. The streets were clear.

Q. No snow on any part of the street, or any traveled portion of the street?

page 58] A. No.

Q. You said you came to this street crossing. Was that right in front of Leggett's Department Store?

A. No. I believe it is a little bit above that store.

Gorman Wyatt Phillips

Q. Is it right in the vicinity of Leggett's?
A. Yes.
Q. It was not a street intersection?
A. No.
Q. The one made in the middle of the block, and has a light over it now?
A. Yes.
Q. Had you been to Christiansburg quite often over the past years, and were you familiar with that crossing?
A. Oh, not too familiar. I come pretty often, not every day, nothing like that.
Q. You knew that was the place to cross the street though?
A. Yes.
Q. What were traffic conditions when you crossed the street?
A. Well, wasn't too much traffic, when I started across.
Q. This was on December 26. Were most of the businesses closed?
page 59] A. Yes, most of them was closed that day, that is, stores and things like that.
Q. Seemed to be a holiday, didn't it?
A. Yes, just the next day after Christmas.
Q. Do you drive a car, Mr. Phillips?
A. No, I don't.
Q. Who drove you to town?
A. My son.
Q. Your son is who?
A. Drexel Phillips.
Q. Drexel. Was he with you when you were injured?
A. No, he had got out and away, went on to the mill.
Q. Left you and went on?
A. That is right.
Q. Was anyone with you?
A. No.
Q. Your intention was to cross from the side of the street where Leggett's is, over to the side where Rose's is? Is that right?
A. Yes.
page 60] Q. When you got to the place you were going to cross were there cars parked along the road?
A. They was a few, I believe, parked there on the side.
Q. On the same side you were going to leave from?
A. Yes.

Gorman Wyatt Phillips

Q. You know that there is a traffic light hanging over the street at this point?

A. Yes.

Q. Do you recall whether it was burning that day?

A. No, it was not burning that day, turned off.

Q. Turned off completely? Was there any sign in the street that this was a pedestrian crosswalk?

A. Well—

Q. What I mean, was there anything standing in the middle of the street, sign or post, anything?

A. No, no sign or post.

Q. No sign of any description that you know of?

A. No.

Q. When you started across the street what did you do?

page 61] A. I looked to see if anything was coming, any cars. Cars going east had stopped, and I walked out in the street and I looked to see. I seen this car coming, but I thought it was going to stop for me to cross, and I started on, and next thing I knew I heard that racket and I was lying there in the street.

Q. When you started across you said there were cars approaching from your left, going east?

A. They had all stopped going east on that side.

Q. They had stopped before you went into the street?

A. Yes.

Q. Do you know why they stopped. Was anybody in front of you, anything made them stop until they could see you?

A. No.

Q. They just stopped in the street?

A. They stopped for me to cross.

Q. When you first saw them were any of them in motion?

A. No, I don't think so.

Q. Did it seem to you they had seen you and stopped there, or just stopped for no reason?

A. I reckon they had stopped at that crossing

page 62] for people to cross, what I figured.

Q. Was that crossing marked?

A. Yes, marked.

Q. Solid line, or what did you see there?

A. There is a white line marked there. I don't know whether it is solid or not.

Q. Not marked in big white blocks, anything like that, is it?

A. No, I don't think so.

Gorman Wyatt Phillips

Q. At any rate, you did see cars that were apparently proceeding east, and they were stopped, and you went in front of these cars. Is that right?

A. Yes.

Q. Do you recall just before you started out another car had just passed the crosswalk, going east?

A. I don't recall any.

Q. When did you first see or notice the car proceeding in a westerly direction?

A. I didn't see it until I started across the street.

Q. But you did see it when you just first started across the street?

page 63] A. Yes.

Q. Where was it?

A. Well must have been along about that diner over there, somewhere along there.

Q. Were any cars between you and it going in the same direction it was traveling?

A. No.

Q. It was the only car looked to you like back up the street?

A. Yes.

Q. And was it in motion?

A. Yes, it was in motion.

Q. Was it proceeding at a slow or fast rate of speed?

A. I would say, oh, 30 to 35 miles an hour.

Q. The speed limit is about 25, isn't it, Mr. Phillips?

A. I don't know.

Q. Do you think he was going *fater* than the speed limit?

Q. And at that time he was several hundred feet away from you, wasn't he?

page 64] A. Oh, I don't know how many feet.

Q. It was approximately at the diner, you said?

A. Yes.

Q. That would be roughly directly across the street from Miller's Drug Store. Is that right?

A. Yes.

Q. Well, it was a good distance back away from you, and you had not gotten into its line of travel when you first saw it. Is that right?

A. Yes.

Q. You were first just starting to cross the street. I am not trying to mix you up. I understood that is what you said.

A. Yes.

Gorman Wyatt Phillips

Q. What I mean, Mr. Phillips, when you first saw that car that was going west, I believe you testified that you were starting to cross the street and you saw it about up at the diner.

A. Yes, that is what I said.

Q. That is right, isn't it? Is that right, Mr. Phillips? Tell me where you were when you first saw the car.

A. I was in the crossing, going across the street.

page 65] Q. And looked to your right?

A. Yes.

Q. That was the first time you looked to your right, was it?

A. Yes.

Q. You hadn't reached the middle of the street, had you?

A. No, I wasn't hardly to the middle of the street yet.

Q. You saw this car to your right, and it was going faster than the speed limit?

A. I don't know what the speed limit is down there.

Q. You just said it was going right fast, 30 or 35 miles per hour. Is that what you saw?

A. Yes.

Q. And did you realize it was going pretty fast?

A. Well, not too fast I don't reckon.

Q. At any rate, when you saw it you thought it was going to stop to allow you to cross?

A. Yes.

Q. And "I started on," you said. Is that right. You went on?

A. Yes.

page 66] Q. If you had stopped when you first saw the car he would have passed on without striking you, wouldn't he?

A. Well, I guess maybe he might.

Q. I didn't understand your answer, Mr. Phillips.

A. What was it?

Q. If you had stopped when you first saw the car, you wouldn't have reached the center of the street, the car would have passed on by you, and there would have been no accident. Isn't that right?

A. Yes, I guess it is.

Q. When you saw the car it was still moving?

A. Yes, yes, it was still moving when I first saw it.

Q. And you thought it was going to stop. Did you see it again? Just take your time, Mr. Phillips, and tell us just what happened. Did you see the car again after the time you testi-

Gorman Wyatt Phillips

fied about? Did you ever look at it again?

A. No. I was looking down to the other side.

Q. You were looking the other way, to your left?

A. No, not to my left. I was looking to the other side of the street where I was going.

Q. You mean straight ahead?

page 67] A. Yes.

Q. You didn't look at the car any more. Is that right?

A. Yes.

Q. So you don't know whether it slowed down, or what happened to it. The next thing you heard a noise and you were lying in the street?

A. Yes.

Q. Do you know what part of the car hit you?

A. It was the bumper on the car.

Q. Did you see the car just before you were struck?

A. Well, just a little bit before, yes.

Q. But you didn't see it at the time you were struck, did you?

A. Yes, I seen it.

Q. Was this just at the time you were struck, or just before you were struck, or after you were struck?

A. It was just before.

Q. It was still in motion, wasn't it?

A. Yes, it was still in motion.

Q. Did you hear any brakes or anything? Do you recall whether you heard a car skidding or any brakes?

page 68] A. Yes, I believe I heard some brakes.

Q. Where were you then, with reference to the middle of the street, where were you?

A. I was in the street.

Q. Were you past the middle of the street?

A. I don't know whether I was plumb past the middle or not when I heard that.

Q. When you heard it, what did you do?

A. Well, the thing hit me about that time and knocked me down.

Q. As you crossed the street, Mr. Phillips, did you at any time stop and look in either direction for approaching traffic after you started across the street?

A. Yes, I looked, I looked both ways I think, before I started.

Q. After you started now, did you look any more? You

previously testified that before you started crossing the street you stopped and looked to see if there was anything coming. Now, did you look any more after you had started crossing the street?

A. No, I don't remember looking any more.

Q. You were, I believe you testified, looking across to where you were going, straight ahead of you?

page 69] A. Yes.

Q. And as you got to the center of the street you continued on straight across?

A. No. I got hit somewhere along in the center of the street.

Q. I know. But when you got close to the center of the street, you kept going and continued on across the street?

A. Yes, that was my intention.

Q. You didn't stop close to the center?

A. No.

Q. Did you see anything any distance away from it?

A. This car that hit me.

Q. When did you see it? Just before it hit you?

A. Yes.

Q. All right, you said that you looked for cars, and you saw this one up the block and thought it was going to stop, so you started on across the street, and the next thing you heard a racket, and you were lying in the street. Is that right?

A. Yes, I think that is the way it was.

Q. Do you know whether the car hit you, or

page 70] whether you walked into the side of the car?

A. The car hit me.

Q. You are sure of that, are you?

A. Yes.

Q. Now, you were in the crosswalk at all times. Is that right?

A. No, I never got out. I never got out on the sides or nothing like that. I was in it.

Q. You were in the crosswalk?

A. Yes.

Q. And did you feel you had the right of way over cars?

A. Yes.

Q. And you felt it was your legal right to cross straight across the street, and these cars would have to stop for you?

A. Yes.

Q. And you were relying on that all up to the time you were hit? Counting on cars stopping and letting you pass?

A. Yes.

Q. Did you hear any horn, anything like that?

Gorman Wyatt Phillips

A. No I never, never heard no horn.

page 71] Q. After the accident, you said the car knocked you down, did the car stop?

A. Yes.

Q. Did Mr. Stewart get out of his car and talk with you?

A. Yes. He took me to the hospital.

Q. Did he say anything to you about what had happened?

A. Well, not too much.

Q. Did he say *anything?*

A. I can't remember now just exactly what he did say.

Q. Did he say it was your fault, or his fault, or he couldn't help it?

A. He said he was sorry that it happened, and I just forget the words he did say *nowabout* it.

Q. He never said it was his fault, did he?

A. No.

Q. Just indicated to you that he was sorry it happened. Did he indicate to you that he couldn't help it?

A. Well, he said he couldn't.

Q. Do you recall what you may have told him?

A. No, I don't know what I told him.

page 72] Q. After you were hit I am sure you were dazed, weren't you?

A. Yes.

Q. Did you get up?

A. Yes, I finally got up, before he got out I had gotten up on my feet.

Q. Did you walk around?

A. No, I didn't walk anywhere then.

Q. Do you remember anyone else being around?

A. No, I don't remember anybody else being around.

Q. Did you see the Chief of Police?

A. No, not then.

Q. You saw him later?

A. I seen him sometime in the day after that happened. I don't remember what time it was.

Q. Where did you see him? At the hospital?

A. Yes.

Q. Mr. Phillips, how long were you in the hospital, just roughly. I am not going to hold you down to it?

A. I can't tell you. I forget how long I was in there.

Q. Did you spend some time in the hospital

page 73] though?

A. Yes.

Gorman Wyatt Phillips

Q. I believe your leg was broken?
A. Yes, that is what they treated me for.
Q. Did you have a cast on your leg?
A. Yes.
Q. How long was that on?
A. Must have been — I think I had that thing — They took it off I believe in March. I don't remember what date the thing was took off.
Q. That was your right leg, *wan't* it?
A. Yes, right leg.
Q. Have you had any trouble with it since?
A. Well, it hurts me some at times.
Q. Doesn't keep you from getting around, does it?
A. I have been out and around. I can go on it.
Q. What were you doing in the way of an occupation or work prior to the time you were injured?
A. I was milking cows.
Q. How many cows?
A. Oh, about fifteen, I believe, at that time.
page 74] Q. You were doing the work yourself?
A. Well, not all of it. My boy was helping me some. He was working off at that time. He helped me some, maybe little of the morning, when he come in *fromhis* work.
Q. After you were injured the record shows you were in the hospital nineteen days, and the cast was on some time after that, when did you start doing your work again?
A. Well, he done the milking on up till several months I reckon, after that happened, after I got out. I don't know exactly how long, six months maybe, or something like that.
Q. After six months did you start helping again?
A. No, I haven't milked any cows myself any since then I don't believe.
Q. Why not?
A. Because I just wasn't able to do that kind of work then.
Q. Did you milk with machines, or by hand?
A. Milked with machines.
Q. And you couldn't hook the machines up and turn them on?
A. No, I couldn't. My leg was sore and stiff. I couldn't get down under the cows to put the thing on.
Q. Can you now?
page 75] A. We don't milk any now.
Q. Are you physically able to do that if you did milk?

Gorman Wyatt Phillips

A. I don't know whether I would be or not.

Q. You never try? After the accident you say your son did some milking for about six months. What happened to your herd then?

A. We sold it after that.

Q. Why did you sell it?

A. Well, I couldn't tend to it.

Q. Is that the only reason you sold the herd? Mr. Phillips, are you telling us that you sold your herd because you were injured?

A. Yes.

Q. Weren't you planning on selling before that because of your age, going to retire?

A. No, I hadn't done that.

Q. Wasn't your son living with you?

A. He lived on the place there.

Q. Does he still live on the place?

A. Yes.

Q. After you were hurt did he still live on it?

page 76] A. Yes, he is living on it now.

Q. Before you were hurt he did the milking?

A. Yes.

Q. And he did it after you were hurt?

A. Yes, for awhile.

Q. Why did he quit?

A. Well, just wasn't, I reckon, hardly enough in it for us to make a living or go out of it.

Q. That is why you sold the herd?

A. Yes.

Q. And you had a milk base, didn't you?

A. No, just sold Grade C milk.

Q. Now, Mr. Phillips, the Chief of Police did come talk with you at the hospital after this accident, did he?

A. He come over there, talked with the doctors some the day after I got hurt. He talked with them some. I seen him in there.

Q. Did he ever talk to you?

A. He did some after I was put in there. He visited me pretty often.

Q. Did he ask you what happened?

page 77] A. Yes.

Q. Did you say he visited you pretty often?

A. About every day that I was in there he would come in.

Q. Is he a close friend of yours?

A. No, not too close. I know him.
Q. How long have you known him?
A. Oh, several years.
Q. Fifteen years?
A. Yes, yes.
Q. More than that?
A. More than that I guess.
Q. We are talking about Grover Teel?
A. Yes.
Q. Have you seen any other doctors except Dr. Caldwell?
A. Only one that waited on me, that doctored me.
Q. You mean for your broken leg?
A. Uh-huh.
Q. Have you seen any other doctors since?
page 78] A. Yes, I have since.
Q. Who was that?
A. Dr. Hartwell. I have been in Radford Hospital for awhile.
Q. What was that for?
A. I had an operation in there?
Q. What kind of operation?
A. Hemorrhoid operation.
Q. Didn't have anything to do with this accident, did it?
A. I don't know. I don't reckon it did. Far as I know.
Q. You had hemorrhoids before the accident, hadn't you, Mr. Phillips?
A. Yes I had them.
Q. Did you see any other doctors?
A. Any other doctors for that?
Q. For anything since the accident?
A. Yes. I have been seeing other doctors. Dr. Gamble, I have seen him.
Q. Is that Dr. Edward Gamble, at St. Alban's?
A. Yes.
Q. Did you see him at the hospital?
page 79] A. Yes, I was over there for awhile. Forget how many days now. I was over there, had treatment.
Q. Was that for your nerves?
A. Yes, for my nerves.
Q. Had you consulted with Dr. Gamble or any other physician before your accident?
A. No.
Q. Do you think your accident had anything to do with that?

Gorman Wyatt Phillips

A. I don't think it did.
Q. When was the last time you saw any doctor?
A. Oh, I reckon he was the last one, I reckon, I have seen.
Q. Dr. Gamble?
A. Yes.
Q. He has been gone since December 31, 1964.
A. I knew that he was going to leave. I didn't know exactly when.
Q. When did you last see him? Do you remember?
A. It must have been the first of December, or something like that.
Q. You haven't seen any doctor since?
A. No.
page 80] Q. Have you been back to Dr. Caldwell?
A. Not since he took the cast off my leg, I reckon was the last time I was back to him.
Q. Then you have seen Dr. Hartwell. Have you seen any other doctors except Dr. Hartwell, Dr. Caldwell, and Dr. Gamble between the time of your accident and now?
A. No.
Q. Who was the family doctor at the time you were injured? Or did you have one?
A. I didn't have any special doctor.
Q. Do you remember how much your bills were, Mr. Phillips?
A. No, I don't have all of them. I just don't remember all of them.
Q. I have bills from New Altamont Hospital amounting to $418.90.
A. Yes.
Q. Mr. Phillips, you had a broken right leg. Did you have any other injuries?
A. When I got the leg broke?
Q. Yes.
A. No. Had a little cut here on the elbow, just a few stitches.
page 81] Q. Didn't give you much trouble?
A. No, not too much trouble, just a small place.
Q. Other than the leg and elbow there were apparently no other injuries, that is apparently, but they were the two injuries you had?
A. Yes, just the two.
Q. Have you talked to anyone about this accident since it happened, other than maybe your son and your lawyer?

A. No, not that I know of. I reckon anyone, talked to my son, him and people come in.

Q. Did I understand you to say that you know of no witnesses to the accident, or do you know of any?

A. No, I don't know of any witnesses.

Q. You have not talked with anyone who saw it?

A. No, I have not.

Q. Mr. Phillips, was it very cold on the day of the accident?

A. It was pretty cold that day, cold day.

Q. Did you have on an overcoat?

A. No, I didn't have on an overcoat. Had on just heavy clothes, and overall jacket, brown jacket, lined.

page 82] Q. Did you have on a hat?

A. Had on a cap.

Q. Cap. Did you have the collar up on your jacket?

A. Have it up?

Q. Yes, like this, up around your neck?

A. I don't know. No, I don't think I had it turned up like that.

Q. Did you have your hands in your pockets, or not?

A. Oh, I guess. I couldn't say for sure whether, but I believe that I did.

Q. Do you remember that the sun was shining?

A. Yes. I believe the sun was shining.

Q. Had it snowed any that day?

A. No, it wasn't snowing any that day, no.

Q. Hadn't snowed any at all?

A. Not that day. It snowed before, all hadn't gone off. Had been pushed out on the sides of the street. You could see the streets good. They was plain.

Q. Piled up against the side of the street, had to be stepped up that way?

A. Stepped over, yes.

page 83] Q. When you started across the street and saw this car coming west, do you remember what color the car was?

A. No sir, I don't remember what color it was. I just don't remember what color it was.

Q. Are you sure the car you saw is the one that hit you?

A. Yes.

Q. You are sure? Are you sure, Mr. Phillips?

A. Sure the one that I seen hit me? Yes, I am sure that the one I seen hit me.

Q. You don't remember the color?

Gorman Wyatt Phillips

A. I can't remember the color of the thing. I don't remember the color.

Q. When you looked to your right, back up the street, before you started crossing the street, did the sun get in your eyes?

A. Oh, not bad.

Q. Did get in your eyes some though, didn't it?

A. Oh, little, I guess, not too bad.

Q. Do you wear glasses?

A. No. Use them when I read maybe, something like that only time.

Q. Did the doctor prescribe the glasses for you?

A. No.

page 84] Q. You just bought them?

A. I bought them.

Q. Without a doctor seeing you?

A. Uh-huh.

Q. You didn't have an eye examination by a doctor?

A. No, I didn't.

Q. Just bought the glasses?

A. Yes.

Q. Where did you buy them?

A. Dr. Smith.

Q. Over in Radford?

A. Over in Radford.

By Mr. Spiers: All right, Mr. Phillips, that is all.

CROSS EXAMINATION

By Mr. McGhee:

Q. Mr. Phillips, at the very beginning of Mr. Spiers' questioning he asked you about a light being over the crosswalk. Now, I will ask you was that light over the crosswalk at the time of the accident?

page 85] A. The light? No.

Q. I am not asking you if it was on. I am just asking you was the light there?

A. Yes, the light was there.

Q. Now, you say that you thought that the car going west was going to stop to allow you to cross. Did the car do anything to indicate that to you?

A. Well, it slowed down a little bit, like it was going to stop, but it never stopped.

Q. Now, were you in the crosswalk when the car did that?

A. Yes, I was about, oh, about middle ways of the street.

Q. Now, you stated that you don't milk any cows now, and that your son was on the place at the time of the accident, and is still there?

A. Yes.

Q. Did your son have a job at the time of the accident?

A. Yes, he was working.

Q. Where did he work?

A. Working at Dublin, at the Klopman's, I believe, or something like that, used to be owned by Burlington Mills and that company.

page 86] Q. Are you able to take care of the farm now?

A. No, I cannot take care of the farm.

Q. Who did most of the work before the accident?

A. Well, I did most of it back before this thing happened.

Q. When you were at St. Alban's Hospital, I believe you stated Dr. Gamble treated you. Is that correct?

A. Yes.

Q. Did Dr. Scott ever treat you any?

A. I don't remember him. He might have been the one that, I believe, the one that discharged me from the hospital.

Q. Why did you go to St. Alban's Hospital?

A. Went there for treatment, nerve treatment, I reckon.

Q. Had you had any nerve difficulty prior to the accident?

A. No, I hadn't.

Q. Has this accident worried you in any way, or not?

A. Yes, it has worried me in ways.

Q. What ways?

A. Well, I don't know whether I can say exactly in what ways. It just worried me and got me nervous and

page 87] all that. Things like that naturally worry you. It did me.

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LOWELL ALTIZER,

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

DIRECT EXAMINATION

By Mr. McGhee:

Q. Kindly state your name to the Court and jury?

Lowell Altizer

A. Lowell Altizer. Christiansburg, Virginia.

Q. Your age?

A. Forty-eight.

page 109] Q. What is your profession?

A. I'm the minister of the Christiansburg Church of Christ.

Q. Do you know Mr. Gorman W. Phillips, the gentleman to my left?

A. Yes sir.

Q. How long have you known him?

A. About nineteen years.

Q. In what capacity have you known him?

A. Largely as his minister.

Q. Did you see him regularly on or about December 26, 1963?

A. Yes sir.

Q. Would you kindly describe to the Court and jury from outward appearances what was Mr. Phillips' health?

By Mr. Spiers: I object to this. As I understood the question, he is asking him to diagnose Mr. Phillips' condition.

By Mr. McGhee: I just want him to tell the Court and jury what this man's activities were, what he looked like.

By the Court: That isn't what you asked.

page 110] By Mr. McGhee: I asked what was his outward appearance.

By the Court: Well ask what his activities were.

Q. Mr. Altizer, prior to the date given, from your observation what were the activities of Mr. Gorman Wyatt Phillips?

A. I would say they were normal activities of a man of his age and in the work that he did as a farmer.

Q. Now since that time what has happened from your observation to this man in his day to day life and activity?

A. Since that time he has not been able to carry on the work as a farmer that he did.

By Mr. Spiers: If Your Honor please, he is expressing an opinion and conclusion that is medical in nature. I object to the evidence.

By the Court: Sustained.

page 111] By Mr. McGhee: I am not offering it as expert testimony, but as lay testimony.

By the Court: He is offering opinions which are inadmissible, Mr. McGhee.

By Mr. McGhee: We except to the ruling of the Court on the ground we are not offering testimony as medical evidence, but just as lay evidence as to this man's general condition.

By the Court: If he so desires he can testify as to Mr. Phillips' activities, but as to giving any conclusions based on his observations he is not *qualififed.*

Q. All right. Mr. Altizer, what are the present activities of Mr. Phillips from your observation?

A. He is not doing any of the work that he did previous to the accident.

Q. Does he now attend church?

A. No sir.

Q. Did he previous to the accident?

A. Yes sir.

page 112] Q. Did he participate in church activities prior to the accident?

A. Yes sir. He was one of the Elders of the Church of Christ in Christiansburg.

Q. Now, Mr. Altizer, did you notice from your own observation any change in his attitude towards you or other people after the accident?

A. I don't believe I understood the question. If you will repeat it please?

Q. Did you notice any change in his attitude and demeanor towards people and things after the accident?

A. Yes sir. He seemed to lose interest in work and normal life that he had engaged in previous to the accident.

By Mr. McGhee: All right sir.

CROSS EXAMINATION

By Mr. Spiers:

Q. Mr. Altizer, you are his minister and have been for nineteen years?

A. Yes sir.

Q. He was on the Board of Elders?

A. Yes sir.

Q. Is that the governing body of the church?

A. Yes sir.

page 113] Q. Is he still on the Board?

A. As an inactive member.

Lowell Altizer

Q. Is he still on the Board?

A. Yes sir, as —

Q. What is the difference between active and inactive? Do they all come to the meetings?

A. Yes sir.

Q. One hundred percent attendance?

A. Not necessarily. He requested to be placed on the inactive list because he said he was unable to serve in that capacity.

Q. You have seen him quite often since the accident?

A. Yes sir.

Q. Been with him since the trial and tribulations in connection with the illness of his wife?

A. Yes sir.

Q. Did they seem to depress Mr. Phillips any?

A. Pardon?

Q. Did those situations seem to depress Mr. Phillips any?

A. Naturally he was concerned.

page 114] Q. How about when he went to the hospital in Radford for hemorrhoid operation. Did that seem to affect his personal relationship?

A. Not anything out of the ordinarily.

Q. Now Dr. Gamble testified while he was there he became deeply depressed. Did you go to see him?

A. Yes sir.

Q. Did he seem normal to you?

A. Under the circumstances that he was suffering, I believe he was normal.

Q. So your observation would vary with that of Dr. Gamble, the man's physician. His situation in the hospital did not seem to affect him as far as you could see, to any material degree? His hemorrhoidectomy? His operation?

A. Nothing out of the ordinary.

Q. You have been ministering to this man during the last year, have you not?

A. Yes sir.

Q. And been present with him in Court, the taking of the depositions, etc.?

A. Yes sir.

page 115] Q. And you accompanied his son to his attorney's office to tell him he could not be present for the depositions. Is that correct? In other words, you have taken quite an interest in this thing?

A. Yes sir. Yes sir.

Q. Mr. McGhee is your attorney in another suit?
A. Yes.

By Mr. Spiers: Thank you.

The witness stands aside.

DREXEL PHILLIPS,
the next witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. McGhee:
Q. What is your name?
A. Drexel Hollis Phillips.
Q. You're the son of Mr. Phillips sitting here, aren't you?
A. That's right.
Q. What is your age?
A. I'm 47 years old.
Q. Do you have any brothers or sisters?
A. No sir. I am the only child.
page 116] Q. Where do you live?
A. I live a mile approximately and a half southwest of Snowville. I got a house built on his farm.
Q. You got a house built on your dad's farm?
A. That's right.
Q. What do you do, sir?
A. I am employed at Klopman's mill.
Q. Where is that?
A. Dublin.
Q. Were you so employed at the time of the accident?
A. Yes sir.
Q. Mr. Phillips, don't answer this question until the Judge has a chance to rule on it, but I want to ask you what was the general condition of your father's health prior to this accident?

By Mr. Spiers: I object, if Your Honor please. He cannot testify from a medical standpoint or give conclusions. He can testify as to his activities.

Q. Was your dad able to go about the business
page 117] of farming before the accident?
A. Yes sir.

Q. What did he do on that farm?

A. Well he was the manager of it. He done the work. Tractor work, operated the dairy, milked the cows, and done all the clean up work. Anything there is to do on a farm.

Q. How many cows did you have?

A. Well, we had twenty I believe at that time. Milking around fifteen I believe when the accident happened.

Q. You were working away. Did you perform any of the duties about the farm?

A. I helped him when I was off. Yes sir.

Q. Had your father ever been hospitalized prior to this accident?

A. One time when he had his tonsils removed.

Q. When was that?

A. It's been years ago. I couldn't tell you the exact date.

Q. Now what has happened to your farming operation? Your father's farming operation?

A. Well, it's just at a standstill now.

page 118] Q. What happened to the herd, if anything?

A. He sold them.

Q. Do you know why he sold them?

By Mr. Spiers: Your Honor please, I object to that.

By the Court: Sustain the objection.

By Mr. McGhee: We except to the ruling of the Court on the grounds the son being in such close relationship is bound to know the reason for his father doing such.

Q. Mr. Phillips, kindly tell the Court and jury what your father's present activities are and his activities since the time of the accident?

A. Well, he's not doing anything now.

Q. Did your father lose any weight after the accident?

A. Yes sir.

Q. Did you detect any change in his day to day attitudes and demeanor towards people after the accident?

A. Yes sir.

page 119] Q. What were those changes?

A. Well, he was just depressed. Just had an altogether different outlook on life.

Q. Does he perform any work now?

A. No sir.

By Mr. McGhee: All right sir.

Drexel Phillips

CROSS EXAMINATION

By Mr. Spiers:
Q. Mr. Phillips, is your father retired now?
A. What you say?
Q. Your father, is he retired? Draws a pension?
A. Yes sir.
Q. Did he make any hay last summer? Work in the hay field?
A. No sir.
Q. He did not?
A. No sir.
Q. According to Dr. Gamble's record he did. You didn't tell Dr. Gamble that?
A. He might have rode the tractor and mowed
page 120] some. As far as getting up the hay he didn't do no work like that. He did drive the tractor a few days, mowing some.

By Mr. Spiers: That's all.

The witness stands aside.

By Mr. McGhee: If Your Honor please, with the exception of getting Mr. Lemley's statement and those of Chief Teel into the record, the plaintiff rests.
By Mr. Spiers: I'd like to make a motion if the Court please.

(At this time the Court, counsel for plaintiff and counsel for defendant retired to Chambers)

By Mr. McGhee: Counsel for the plaintiff excepts to the ruling of the Court in refusing to admit in evidence the bills incurred.
By the Court: I'll let him show the St. Albans total bill was $459.85. He can argue it.
page 121] By Mr. Spiers: We except to the ruling of the Court on the grounds it is speculative.
By Mr. McGhee: It is stipulated by counsel for both plaintiff and defendant that if Chief of Police, Grover Teel, and Town Manager, John Lemley, were permitted to testify they would testify that the traffic light or red light, suspended above the street, over the painted crosswalk between Leggetts and Rose's, that they would testify number one, that Chief Teel recommended that the light be placed there and was concurred

in by the Town Manager, and that the purpose for placing the light there was so that when pedestrian traffic was heavy that they would be accumulated in groups and cross the street in groups and that in such fashion would facilitate the flow of automotive traffic through the crosswalk, and fur-
page 122] ther, that the only time the light is operated is when pedestrian traffic is heavy and such that it would impede the flow of automotive traffic if they were permitted to go across the crosswalk at will.

By the Court: The Court excluded that evidence for the following reasons. First, the evidence is that the stoplight overhead and the two signs on either side of the road designating when pedestrians could walk or could not walk were not operating as of that day and therefore the fact that they were there had no bearing on this case. Secondly, the conclusion is reached by Chief of Police and the Town Manager as to the desirability of a light being erected at that point may or may not be correct. In any event it's in conflict with sections 46.1-230 and 231 of the Code which regulates the crossing of any street by pedestrians, and thirdly, the defendant
page 123] in this case, being a non-resident of the State of Virginia, could not conceivably be charged with customs of the local public contrary to existing law. For that reason, the reasons for the location of the light in that particular point in the middle of the block was excluded, there being conclusive evidence that at the time of the happening of this collision that the pedestrian crossing was not within any clearly marked crosswalk, but rather was simply a series of painted six feet by two feet, ten in number, portions of the paved road leading from the south to the north side of the street.

By Mr. McGhee: To which ruling of the Court counsel for the plaintiff respectfully excepts for the reasons assigned previously.

By Mr. Spiers: I'd like to make a motion at this time to strike the plaintiff's evidence and enter summary
page 124] judgment for the defendant on numerous grounds. In the first place, the plaintiff has not carried the first burden of proof which requires that the defendant be shown negligent, and secondly, that that negligence is the proximate cause of the accident. And the testimony in this case, as far as I can see it, rests entirely on two people at this point, and one is the Joyner girl and the other is Mr. Phillips himself whose evidence is by way of deposition. The Joyner girl's testimony was substantially to the effect that at ten miles per hour she saw a car traveling thirty-five miles per

hour. She traveled the distance of 140 to 150 feet which under the Virginia Statute would have taken her ten seconds, at which time the vehicle going in the opposite direction thirty-five miles per hour covered a distance which would have taken it five *secondsto* travel under the Virginia Statute.

page 125] On the basis of that alone, this girl's evidence is inherently incredible. More importantly, the evidence of the girl contradicts that of the plaintiff himself. He can rise no higher than his own evidence. The latest case in point — I can't recall the citation off-hand — it involved a passenger who is suing a driver. The car went down the road, the driver *waived* at somebody off to the side of the road, went off the road, hit a chuck hole, turned over several times and injured the passenger who was a guest, and she sued. The passenger's evidence did not prove any gross negligence. However, she had a witness whose evidence was extremely strong and showed conclusively that gross negligence was involved, if that witness's evidence was accepted. The jury verdict for the plaintiff was reversed, final judgment entered

page 126] by the Court of Appeals on one of the principal grounds that this plaintiff can rise no higher than her own evidence, regardless of what other people come in to say, so long as the plaintiff herself seeks to testify about material facts of the accident. Now the deposition of Mr. Phillips shows negligence as a matter of law regardless of what Mr. Stewart may have done. His testimony is that he walked out in the street, that he looked neither right or left after he started into the street, that he thought he had the right of way and that cars must stop for him, and he never again glanced in Mr. Stewart's direction. Judge, you can consider this case three different ways. First, you can say that Mr. Phillips had the right of way, which I do not think is the law, but even let's assume that, which is the strongest he could possibly rise. The cars come along here. Mr. Phil-

page 127] lips is crossing the road where he thinks he has a right to be. For the sake of argument, let's assume he had that right and Mr. Stewart should have yielded to him and Mr. Stewart was negligent by not doing so, the law of Virginia, re-affirmed very recently, in the case of *Wong* vs. *Terminal Cars* is this, that when you are crossing the street at an intersection in a crosswalk with the right of way you get to the center of the road, the law requires that you look to your right and if any cars are coming that you shall not abandon all care and walk into its path and if you don't see it and it is there you are still negligent whether you looked or whether you didn't. That first came up in the con-

struction of Section 46-244 of the Code which is the predecessor of this one, in the case of *Reese* v. *Snelson*. It was reaffirmed in *Marshall* v. *Shaw* and reaffirmed in
page 128] *Wong* v. *Terminal* and the *Wong* case in the year 1961. Now Mr. Phillips did not stop at the center of the road. He said so himself. And what Miss Joyner says is not even material because he didn't stop. He said he didn't stop and he never looked and he never saw, and he stepped into the path of the car that was right there. Obviously it was right there. I move to strike on that ground. If you go further and say that the rights were reciprocal and equal, Mr. Phillips' duty was the same. He had to look, and looking, had to heed, and he has no right to step in front of a car which is dangerously near and this is not even a case where reasonable men can differ because the car was right there and did hit him in just one or two steps.

By the Court: What about that, Mr. McGhee?

By Mr. McGhee: Let him finish.

page 129] By Mr. Spiers: The third thing, you could construe this accident as being between intersections, the light being out, it being improperly marked crosswalk and Mr. Stewart actually having a superior right of way, in which event Mr. Phillips' duty was even higher. Mr. Stewart then assumed nobody would be in his path and he had a right to rely in that assumption. The evidence is the man just took one or two steps. The depositions which is in this case is his testimony and bars him absolutely, regardless of theory, from recovery. I have lots of cases here incidentally, Your Honor, on rights of way at intersections, with crosswalks, the courts have held as a matter of law is enough to take it from a jury. There are dozens and dozens of them. The only one where the courts submit it to a jury is where a man looks and
page 130] thinks he should be able to get across and reasonable men would think that it is for the jury to say. He didn't think he could get across because he didn't even see the car.

By the Court: He said he saw the car when he was on the sidewalk and that's the last time he looked.

By Mr. Spiers: But his duty is to look again. To continue to look, according to the cases.

By Mr. McGhee: If Your Honor please, let's get on the question first of Mr. Stewart's negligence and the evidence as to that negligence. Testimony is that the speed limit is 25 miles per hour. It is in evidence at this point by two witnesses — Elaine Joyner and Mr. Gorman Wyatt Phillips — that the

defendant was exceeding that speed limit. Exceed-
page 131] ing the speed limit is violation of law and the statute and is negligence *per se*. Negligence as a matter of law. And if the jury believe that that speed was the sole proximate cause of this accident they have a right to find in favor of Mr. Phillips.

By Mr. Spiers: May I interject? The cases hold this speed puts a greater duty on Mr. Phillips than he otherwise had.

By Mr. McGhee: It is for the jury to determine whether it was reasonable to cross under the circumstances. You remember Mr. Phillips said that he thought he slowed down and was going to stop. Now Mr. Spiers' assertion that Mr. Phillips was under the duty to maintain a constant lookout is false in law. The law on that point —

By Mr. Spiers: I said he had to continue to maintain a lookout.

page 132] By Mr. McGhee: I didn't interrupt you a single time.

By Mr. Spiers: Don't misquote me then.

By Mr. McGhee: Let the Judge determine whether I misquote you or not.

By the Court: Well you did at that point.

By Mr. McGhee: The law at that point is contained in 194 Va. 142 and 200 Va. 179 to the effect that the plaintiff in crossing the street is not required to keep a constant watch of oncoming cars if from the circumstances he could reasonably believe that he could cross in safety and that there was no car sufficiently near him to put him on notice of approaching danger.

By the Court: I don't agree with that law. *Thornton* v. *Downes,* 177 Va. says that when a pedestrian in a
page 133] city or town — this is going even further, a properly marked intersection — when a pedestrian, in a city or town, steps from the sidewalk into the street at an intersection, the law imposes upon him the legal duty of ascertaining if any vehicular traffic is approaching from the left. If the way be clear, he has the right to proceed to the comparative zone of safety at the center of the street. Upon his arrival at the center of the street, he is under the legal duty to look to his right for approaching vehicles. That is the law as to plainly marked intersections where they have a right to cross.

By Mr. Spiers: That was reaffirmed in 1960.

By the Court: Your case is not as strong as that. You're crossing in the middle of the block where it is not plainly

marked as a crosswalk and imposes upon the
page 134] pedestrian a greater duty to look after his own safety.

By Mr. McGhee: Now to continue, Judge, Mr. Phillips said he looked when he started out, that the cars proceeding east stopped, that he saw the Stewart vehicle at a point approximately at the diner which is in the record how many feet — that's 146 to the west of the diner. Now the jury have a right to believe, and Mr. Phillips testified, that he thought that he could negotiate the crosswalk and went on forward. Now the jury have a right to believe that and it is a jury question to determine whether he was reasonable in that belief. Now further —

By Mr. Spiers: He said he had that right because he had the right of way, not because he looked.

By Mr. McGhee: He also said he thought he
page 135] could get across. Now the jury are entitled to believe the evidence of Elaine Joyner. That testimony was that Mr. Phillips had proceeded in front of her across the street when she started forward on east and as she was crossing the crosswalk Mr. Phillips was at a point almost to the diner. I mean Mr. Stewart. Or right there at the grass area. At the grass plot. That would be behind Miller's. East.

By the Court: One hundred sixty feet.

By Mr. McGhee: If the jury believe that, it could say Mr. Phillips was reasonable in his assumption that he could cross in saftey.

By Mr. Spiers: That contradicts Mr. Phillips himself.

By Mr. McGhee: Let me finish. I see Your Honor is going to sustain the motion.

page 136] By the Court: In fact, I had it in mind to take it under advisement until the conclusion of defendant's evidence.

By Mr. McGhee: If Your Honor please, the motion to strike also ignores completely the doctrine of last clear chance. Now if the jury believe the evidence of Mr. Phillips and Miss Joyner, the location of the Stewart vehicle when Mr. Phillips proceeded across, then it follows with no instructions that Stewart could have seen Phillips and seen him in time to avoid this accident.

By Mr. Spiers: Last clear chance isn't even remotely connected with this case. This is not a plaintiff incapable of removing himself from danger. This is an unconscious plaintiff, or plaintiff unconscious of peril, capable of removing himself from peril, and the burden is on the plaintiff to prove not Mr.

Stewart could have seen him, but did see him.

page 137] By Mr. McGhee: The entire doctrine of last clear chance has been restated and postulated in 197 Va. 233.

By Mr. Spiers: *Greear* v. *Noland.*

By the Court: I'll take the motion under advisement until the conclusion of defendant's evidence.

By Mr. Spiers: We except to the Court's ruling.

(The Court, counsel for plaintiff and counsel for defendant returned to the courtroom.)

MRS. O. C. STEWART,

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

DIRECT EXAMINATION

By Mr. Spiers:

Q. State your name please?

A. Mrs. O. C. Stewart.

Q. You will have to talk so these folks can hear you. That's why I'm standing up here. Where do you live?

page 138] A. Crossville, Tennessee.

Q. Where are you originally from?

A. Originally from Pittsylvania County, Virginia. I was born in Pittsylvania County, Virginia.

Q. In December of 1963 had you all been in this area some place to visit your people?

A. Yes.

Q. Where had you been?

A. Bedford County.

Q. Do you recall what day of the week you went to Bedford?

A. We went on sunday.

Q. Did you come through Christiansburg?

A. Yes, we did.

Q. Was there any stoplight or anything in the middle of the street to indicate a crosswalk?

A. There wasn't one that I noticed.

Q. Now as you were going back home, I believe you left Bedford early in the morning. What time did you leave? Do you remember, just roughly?

page 139] A. Roughly, approximately, I guess, between 8:00 and 8:30 or 9:00.

Mrs. O. C. Stewart

Q. What were the road conditions as you approached Christiansburg? Snow on the road, or anything?

A. Snow and slush on the road between Roanoke and Christiansburg.

Q. Did you all go at fast speeds or slow speeds because of the slush or do you recall?

A. Well I think we drove a little bit slower because of the slush.

Q. As you entered Christiansburg do you recall whether or not you stopped at the stoplight which is at the intersection of Franklin and Main Streets, at the courthouse here?

A. Yes, we did.

Q. Where were you seated in the car?

A. Back seat.

Q. Who was operating the car?

A. My husband.

Q. Was your little girl in the car too?

A. Yes, she was.

Q. Now as you started up can you tell the jury what happened, what you saw as you approached the point where this accident occurred?

page 140] A. As we started from the stoplight?

Q. As you started up. Did the light turn green?

A. Yes, it did.

Q. How about traffic? What kind of traffic conditions?

A. We were the first in line at the green light. I mean where we had stopped. And there was traffic on the other side of the street which was in a line which had stopped.

Q. They were waiting to go east, the way you all were coming from?

A. That's right.

Q. And they were lined up back of this stoplight?

A. Yes, they were.

Q. Now tell the jury, if you can, what happened?

A. We were coming along. I wasn't watching the road. I did not exactly see what happened. I did not see Mr. Phillips until afterwards because I turned around and saw him. I wasn't paying any attention to the road.

Q. What were you doing? Looking to your right? Looking at the stores?

A. Yes, I was.

Q. Window shopping?

Mrs. O. C. Stewart

A. Yes sir.

page 141] Q. Did you see the articles and all in the various windows?

A. I was looking in Rose's Ten Cent Store window. Since my name is Rose I always check their window.

Q. What was your impression of speed?

A. I had no sensation of starting off from the stoplight faster than normal.

Q. How about when you were proceeding down, looking in the window. Did you have any sensation of speed?

A. No sir. Seemed normal.

Q. Tell us the first time you knew something wrong was going on?

A. When I felt when he put the brakes on.

Q. Did your husband skid a long ways, or how was the stop?

A. Well, from the way I remember, and the feeling I had, we didn't skid a very long ways. Stopped pretty quick.

Q. Stopped pretty quick?

A. Very quickly.

Q. When you got out of the car did you see Mr. Phillips?

A. He had gotten up by the time I got out of the car.

Q. Do you recall you stepped in anything as you got out of the car?

A. I stepped in some water. Some slush, actually, on the side.

page 142] Q. After your car came to rest and you looked, can you tell the jury the condition of traffic on the opposite side of the street going east?

A. When I looked around there were cars still stopped in that other lane going east.

Q. Stopped in the lane going east. You will have to speak a little louder. There appeared to you to be a line of cars?

A. Yes sir. There did.

Q. Where was Mr. Phillips? You say he had gotten up. Where was he with reference to this apparent crosswalk?

A. I don't — he was between our car and the other car, but as to the crosswalk, I don't know about that.

Q. Was the line of traffic going east and the line your car was taking going west, were the lines pretty close together? Was there much space between?

A. Just a normal amount I think.

Q. Any snow or anything against the curb?

A. Yes. There was snow up against the curb.

Mrs. O. C. Stewart

Q. Were there cars parked?
A. Yes sir.
Q. Cars parked on your side of the street? That is, your right?
page 143] A. Yes sir.
Q. How about your left?
A. I'm not sure about that.
Q. When you got to Mr. Phillips did you talk with him, or what was going on?
A. When I ran around the car he was already up and my husband was talking to him and I didn't say anything. I was just standing there to see what was going on.
Q. Did he say anything? That is, Mr. Phillips.
A. All I remember is he said he wasn't hurt.
Q. He wasn't hurt. Did you see any other people. Did anyone else come to help?
A. Yes, they did.
Q. Was Mr. Miller there?
A. Yes he was.
Q. Did he introduce himself, so to speak?
A. No sir.
Q. He was just there. Anyone else you can recall?
A. Well, after we had been there Mr. Jones
page 144] came.
Q. This was after the accident?
A. Yes.
Q. Now what did you all do with Mr. Phillips?
A. We put him in the car and took him to the hospital.
Q. Did anyone lead you to the hospital?
A. I believe Mr. Miller went in a car ahead of us. I was not aware. I don't really know that he did, but I think he was ahead of us.
Q. Was he at the hospital while you were there?
A. Yes, he was.
Q. Did you talk to Mr. Phillips about what happened on the way to the hospital?
A. No.
Q. Did you at any time hear him say anything about the cause of the accident or what he had done?
A. I don't believe I heard him say anything in the car. Well, I wasn't around him close enough to know.
Q. After he got to the hospital did you see him?
A. He was in the emergency room I believe. I was outside

in the hall. I could not hear him talking.

page 145] Q. You never heard him say anything at all about whether he looked or what caused the accident?

A. No sir, I didn't.

Q. Mrs. Stewart, there has been testimony your husband was going well above the speed limit, which is 25 miles an hour, do you drive a car?

A. Yes, I do.

Q. From what you observed and your past experience, can you tell us what your opinion is about this speed?

A. Well I don't believe he was going any faster than that because he took off from the light when the light changed, it was a normal rate of speed, the way people usually take off from the stoplight. And I had no sensation of the car going at a terrific rate of speed.

By Mr. Spiers: That's all.

CROSS EXAMINATION

By Mr. McGhee:

Q. Mrs. Stewart, where were you sitting in your husband's car?

A. I was on the right hand side of the back seat.

Q. Back seat?

A. Yes sir.

Q. Then when you got out you got out on that same right side?

page 146] A. Yes, I did.

Q. How close to the curb did your husband come to a stop?

A. Do you mean the curb on the sidewalk? There was a car parked beside.

Q. How close to the car did he stop?

A. Well there was enough room — I just had enough room to get out of the car.

Q. You say you had never seen Mr. Phillips yourself at any time until after the impact?

A. No. I didn't see him until after.

Q. But you did see cars stop at the crosswalk which were headed east?

A. When I got out of the car to go around there were cars still standing on that side of the road.

Q. Now from the time you left the redlight here at the courthouse on to the time you got to the place of the accident were there any other vehicles in front of you?

A. No sir. We were the first ones in line.

Q. The first ones. Mrs. Stewart, how is it that you remember stopping at the stoplight here in front of the courthouse?

page 147] By Mr. Spiers: I think that's problematical.

By the Court: That's an argumentative question.

By Mr. McGhee: All right sir.

Q. Do you recall your husband skidding any applying brakes?

A. I remember the brakes being applied because I turned around at that time. I don't believe we skidded for very long ways. We stopped pretty quick.

Q. Now during the time you traveled from the light here in front of the courthouse down to the scene of the accident, do you recall any moving vehicles coming east?

A. No sir, I don't. Because I was looking towards the store windows. I was looking towards the store windows at that time. I don't recall any vehicles moving the other way.

By Mr. McGhee: All right.

By the Court: Thank you ma'am. You many stand aside.

The witness stands aside.

page 148] HUBERT SHELOR,

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

DIRECT EXAMINATION

By Mr. Spiers:

Q. State your name please, loud enough for these people to hear?

A. Hubert Shelor.

Q. Where do you live?

A. Live Route 4, Christiansburg, on Power Plant Road.

Q. On Power Plant Road?

A. That's right.

Hubert Shelor

Q. I believe you were subpoenaed by both sides in this case?

A. Yes sir.

Q. You talked to Mr. McGhee and also to me?

A. Yes sir.

Q. And my associate?

A. Yes sir.

Q. And I assume you told both of us exactly what your testimony is going to be here today?

A. That's right.

page 149] Q. Now on the 26th of December, 1963, were you in the Town of Christiansburg at the time Mr. Phillips got struck down here on the street?

A. Yes, I was.

Q. If you would come around here. These cars are magnetic. This is the crosswalk. This is Leggetts side of the street. In which direction were you going?

A. I was headed this way. East.

Q. All right. Let's assume that is your car. As you proceeded towards that stoplight were any—not the stoplight, but this place. Were any cars in front of you?

A. Yes sir. There was one. One stopped here at the crosswalk. This car was stopped here at the crosswalk. I came in behind him and stopped at about seven, eight feet behind.

Q. Were any cars parked beside where you stopped? Do you recall?

A. I don't know. I don't remember.

Q. How about on the other side of the street?

A. I believe a couple of cars were parked over in here.

Q. Would you put them there? Was there snow up on, pushed over towards the side of the road?

A. Yes sir. Melting. Quite a bit of water. That's

page 150] on the side of the walk. Edge of the gutter.

Q. You stopped behind this car?

A. That's right.

Q. Do you recall seeing Mr. Gorman Wyatt Phillips while you were stopped?

A. I saw Mr. Phillips when he came in front of this car here. He got over next to the center of the road.

Q. He come in front of the car in front of you?

A. Right.

Q. You watched him when he crossed?

A. Yes.

Q. Tell the jury how he crossed?

Hubert Shelor

A. He came out in front of this car, got almost to the middle, wasn't looking either way. I saw this car coming down here and I knew the car was going to hit him. I knew he didn't stop. The car was going to hit him because the car didn't have time to stop. He walked directly into the side of the car. Left front fender.

Q. Did he ever look?

A. He never looked.

Q. When he got to the middle of the road did he ever look?

page 151] A. No sir. He just kept on going.

Q. Didn't slow down or anything?

A. No.

Q. You say your first view of this man was after he got in front of this car?

A. Yes.

Q. Approaching the center of the street?

A. Yes.

A. At that time the Stewart car you saw coming, where was it?

A. It was maybe forty feet from the crosswalk when I first saw it. Mr. Phillips kept walking. I knew if Mr. Phillips didn't stop the car didn't have time to stop and it was going to hit him.

Q. Did the car seem to be going at an excessive speed?

A. No, not excessive speed. He did slide his wheels. All four wheels sliding.

Q. Slide very far?

A. No. Three or four feet.

Q. Where did his car come to rest? Do you remember with reference to that?

page 152] A. He kind of headed into the curb. Maybe eight feet from the crosswalk.

Q. Now did you get out of your car?

A. Yes sir. Went over to give assistance. There was a couple of men got ahead of me. Mr. Phillips got up, said he wasn't hurt. Said he didn't want to go to the doctor. I got back in my car.

Q. Did you hear Mr. Phillips say anything about whether he seen the car?

A. No.

Q. You tell the jury he did not look at the car?

A. No.

Hubert Shelor

By Mr. Spiers: All right.

CROSS EXAMINATION

By Mr. McGhee:

Q. I believe you told me this morning that you don't know what Mr. Phillips did when he was on the sidewalk?

A. That's right.

Q. You don't know what Mr. Phillips did when he was in front of this vehicle here?

A. That's right.

Q. When he got out there, to here, his back
page 153] would be somewhat to your vision?

A. No. I'm over here on this side of my car. His left side.

Q. His general position would have been to the side and back, would it not?

A. More or less to the side. Not the back.

Q. Now where were you? Put your car at a position on the diagram when you first became aware of the Stewart vehicle?

A. Right here. Where it is.

Q. You had come to a stop?

A. That's right. I was stopped.

Q. Where was the Stewart vehicle when you first saw it?

A. Up the street here about thirty, forty feet.

Q. Thirty or forty feet?

A. That's right.

Q. Could you tell the jury how far out in the street, or in the crosswalk, Mr. Phillips had gotten when Mr. Stewart was forty feet away?

A. He was just about the middle of the street.

Q. All right. Now I believe you told me this morning that Mr. Stewart was probably making as much as thirty miles an hour?

page 154] A. I said roughly twenty-five or thirty. I'd be afraid to say exactly.

Q. Twenty-five to thirty?

A. That's right.

Q. Do you think it would be any faster than that?

A. Be hard for me to say exactly what speed. I just roughly estimate it.

Q. That's because you saw him such a short distance? Forty feet?

A. That's right.

Hubert Shelor

Q. And you don't know what speed he was making on back further?

A. No, I don't. Didn't even see him back that far.

Q. Was there anyone with you?

A. Yes sir. My uncle.

Q. Your uncle was with you?

A. Yes sir.

Q. Do you know whether or not he noticed anything about the accident?

A. I remember telling him "Look out. That *carhit* that man."

Q. Do you know whether or not your uncle knows anything about this accident?

A. I don't think he actually saw it. He told me he didn't exactly see it happen. Because he was setting over on

page 155] this side of the car. I saw the man before he did.

Q. Now what did the car do that was in front of you?

A. It was stopped to let the man cross the street.

Q. Then what did it do after he passed in front of her. The evidence will show it was driven by a young lady.

A. I don't know who was driving. I don't know whether it was a man or woman. I got out of my car. Jumped out of my car. Cut the motor off, ran to the man.

Q. What did she do after Mr. Phillips passed in front of her?

A. Well, I really don't know where she went. After I saw the man was hit I jumped out. I got back to my car, the car was gone.

Q. Where did you bring your vehicle to a stop?

A. I come on up here, turned at the stoplight to go to Blacksburg. I was just stopped in the middle of the road here. I got out, went up to the man. When he said he wasn't hurt, didn't want to go to the doctor, I went back, got in my car. This car was gone. Went up here to the traffic light at the corner of Main and this other street, turned, went towards Blacksburg.

By Mr. McGhee: All right, sir.

page 156] RE-DIRECT EXAMINATION

By Mr. Spiers:

Q. The car ahead of you, was it still sitting there when Mr. Phillips got hit?

Hubert Shelor

A. That's right.
Q. You don't know who was driving?
A. I don't know whether it was a man or woman or what.

By Mr. Spiers: It was sitting there when he got hit. All right.

RE-CROSS EXAMINATION

By Mr. McGhee:
Q. Mr. Shelor, this accident occurred several years ago—December 26, 1963?

By the Court: A year and four months.

A. A year and four months.
Q. You say all during the excitement you don't know exactly where the car went?

By Mr. Spiers: This isn't responsive to my re-
page 157] direct.
By Mr. McGhee: I think it is if the car in front stayed stationary.
By the Court: Go ahead and question him.

Q. Now you first stated, Mr. Shelor, on cross-examination that Mr. Phillips went in front of the car in front of you and then proceeded on?
A. That's right.
Q. You don't know where it went?
A. What went?
Q. That car driven by the young lady in front?

By the Court: He hasn't identified such a car. He said "a car."

Q. The car right in front of you, headed east. Now you stated on cross that after Mr. Phillips passed in front of that car it went on and you don't know where it went?
A. No. It was after Mr. Phillips was hit. I got out of my car, went to Mr. Phillips to try to give assistance. When I went back to my car that car was gone.
Q. You don't know when it pulled out?
page 158] A. I don't know. I didn't see it pull out.

By Mr. McGhee: All right sir. That's all.

The witness stands aside.

BURGESS SHELOR,

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

DIRECT EXAMINATION

By Mr. Spiers:

Q. Your name is Burgess Shelor?

A. Yes.

Q. Were you with your nephew at the time this accident occurred in Christiansburg in 1963?

A. Yes sir. I were.

Q. You were in the car with him. You all were stopped at this crosswalk?

A. Yes sir. That's right.

Q. You were behind another vehicle were you?

A. There was a car stopped in front of us and we had to stop behind that stopped car.

Q. You were seated in the front seat?

page 159] A. Sir?

Q. Were you in the front seat?

A. Yes sir. We were both sitting in the front seat. Just the two of us in the car. Me and Hubert.

Q. Did you see the accident?

A. I didn't know—I didn't see the car hit the gentleman. Only thing, Hubert said—

By Mr. McGhee: I object, Your Honor.

By the Court: Don't say what Hubert said.

Q. You found out somebody had been struck. That's the first knowledge you had there had been an accident?

A. That's right.

Q. Was there still a car sitting in front of you at that time?

A. Yes sir.

Q. What did you all do? Get out? Did you get out?

A. Hubert got out and walked over toward the struck man and two more fellows—I don't know who they were—went over and got over there before Hubert did and Hubert came on back to the car and the other two gentlemen

page 160] picked him up and helped him over into another car.

Burgess Shelor

Q. The car ahead of you at the time Mr. Phillips was struck, do you know what kind of car it was and who was in it?

A. Well, no, I can't recall. I believe it was a Chevrolet, Ford.

Q. Do you recall more than one person in the car? The one that was just ahead of you and the other Mr. Shelor?

A. No, I don't recall.

Q. It was still there when Mr. Phillips got hit?

A. Yes.

Q. The car Mr. Phillips was struck by, did it stop in its lane of travel after the accident?

A Yes sir. It stopped. Yes, the car stopped.

Q. As far as you know was it ever out of its lane of travel as it approached this place? Or was it always in its lane?

A. Yes sir.

Q. Did you see Mr. Phillips before he walked out in front of the car?

A. No. No, I did not. No sir.

By Mr. Spiers: That's all.

page 161] CROSS EXAMINATION

By Mr. McGhee:

Q. I didn't catch your full name?

A. Burgess Shelor.

Q. Mr. Shelor, do you know how many cars there were in front of you at the crosswalk?

A. No, I don't recall how many cars were in front. I knew there was one car in front because it had stopped in front of us and that's the reason. The light was out of order and that car had stopped and we had to stop behind the car.

Q. Do you know whether there was a car that moved eastward of you all, crossed the crosswalk and proceeded east immediately before you came to a stop?

A. No, I couldn't say.

Q. One could have and you just wouldn't recall?

A. Well, one could have I guess.

By Mr. McGhee: All right sir.

The witness stands aside.

MARVIN GIBSON JONES,
the next witness called on behalf of the defendant, having been first duly sworn, testified as follows:

page 162] DIRECT EXAMINATION

By Mr. Spiers:

Q. State your name please sir?

A. Marvin Gibson Jones.

Q. Where do you work?

A. Here in Christiansburg. Life Insurance Company of Georgia.

Q. On December 26, 1963, were you working in your office when an accident happened involving Mr. Phillips?

A. Yes sir.

Q. Did you see the accident, or know anything about how it happened?

A. No sir.

Q. Did you go out to the point where he was struck?

A. I did.

Q. Where was Mr. Phillips when you got there? Do you remember?

A. If I remember correctly he was up and they was trying to get him in the car to take him to the hospital I guess. He seemed like he didn't want to go.

Q. Where was the Stewart car at the time? That is the car that struck Mr. Phillips?

page 163] A. It was sitting in the street.

Q. In the traveled portion?

A. Right.

Q. Was it in its own right hand lane?

A. Yes sir.

Q. I don't guess you could tell what portion of the street Mr. Phillips was struck in?

A. No sir. I could not.

Q. What first attracted your attention? Do you remember?

A. One of the men in the office said there was a commotion down on the street.

Q. So you went down. I believe you are a member of the life saving crew?

A. Yes.

Q. What did you do? Offer your help?

A. Just offered any assistance that might be needed, but they didn't seem to need any at that time.

Q. Did you do anything for Mr. Phillips? Help him to the hospital or anything?

A. Yes sir. I did ride with him to the hospital. page 164] Due to the fact Mr. Stewart didn't know where the hospital was I went out with them.

Q. Mr. Stewart took him to the hospital and you went with him to show him where to go?

A. Right.

Q. You know anything more about how the accident happened, or a version either party had?

A. No sir. I don't.

By Mr. Spiers: That's all.

By Mr. McGhee: No questions.

The witness stands aside.

MAURICE MILLER,

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

DIRECT EXAMINATION

By Mr. Spiers:

Q. Would you tell us your name please?

A. Maurice Miller.

Q. Where do you live?

A. Greensboro, North Carolina.

Q. I believe you are formerly of Roanoke?

page 165] A. That is correct.

Q. On December 26, 1963 were you in the Town of Christiansburg somewhere around 11:00 o'clock in the morning?

A. Yes sir.

Q. Where had you come from?

A. Roanoke, Virginia.

Q. On this day Mr. Gorman Wyatt Phillips was struck by a car were you in the vicinity at the time? Or did you see the accident?

A. Yes sir.

Q. Mr. Miller, I would like for you to come around and use this board if you think you could. This is going west and this is east. Will you tell us where you were at the time the accident happened?

Maurice Miller

A. With one of these? Yes sir. I had pulled in approximately at that position, over the crosswalk. I later found out that. I didn't know at that time because it was snow pushed on the bank, on the curb, on that side of the street. And my boys had gone into a drug store which is, I suppose, on this side of the road, back down this way, to get some coca colas, and my wife and I were sitting in the car at about, I suppose I was back over the crosswalk three or four feet at that time.

Q. You say you didn't know you were on the
page 166] crosswalk?

A. No sir.

Q. Now can you tell us how close you were to the curb? Was there anything to keep you from being right up against the curb?

A. Yes. Snow was pushed up against the curb. I couldn't get within three, three and a half feet to the curb.

Q. Your car would be out a little further you think?

A. Yes sir. It would.

Q. Tell us anything you can about the condition of traffic going east. That's the opposite direction from you.

A. It was a row of cars parked over here against the south curb. It is, isn't it? And it was also a line of cars out here in the street, extending probably up to the light.

Q. Were those—that line of cars both sides of that crosswalk?

A. Yes sir.

By Mr. McGhee: Let him place them.

By the Court: You place the cars as you recall that were along the curb and also in the street. We've got a whole bunch of cars and trucks up there to use.

page 167] Witness, placing cars on the diagram, remarks: I might run out of cars here.

Q. There were at least that many at this point. Did you see Mr. Stewart?

A. Yes sir.

Q. That red one—take the red one, I guess, and let's use it for him. Put him on here. Now did you see the Stewart car before this collision occurred? This accident?

A. No sir, I didn't.

Q. You did see Mr. Phillips?

A. Yes sir, I did.

Maurice Miller

Q. Tell the jury how you were seated in the car and whether you had a good view of it?

A. I was seated in my car looking to the south side of the street and I saw Mr. Phillips as he left, come through the two cars, two rows of cars here. Of course I couldn't see Mr. Stewart at the time. I wasn't looking in the rear view mirror. Neither did I have occasion to look at this end of Town. Mr. Phillips proceeded to walk on through this area here, which is the crosswalk I later found out. I didn't see Mr. Phillips ever look to the east, to the right, or did I see him look up at all at that time. Of course, I had no idea that it was
page 168] a car approaching this way until I heard a slight noise. I looked and just as I did Mr. Phillips was being struck by the left front of Mr. Stewart's car at that time.

Q. Now did you watch Mr. Phillips all the way across that walk?

A. Yes, I did.

Q. Which direction was he looking?

A. He was looking down or to the other end of the street. As the car hit him—shall I go ahead and tell what happened then? As the car hit him, made the commotion, I looked real quick, sort of back, and saw what was happening and immediately it did I opened my car door and Mr. Phillips, the older gentleman, had landed over against the cars parked in the row of traffic I assume. I was about the first one to him to help him up at that time. I was later joined by Mr. Stewart.

Q. Did you watch Mr. Phillips as he approached the center of the road?

A. Yes sir.

Q. Did he stop or pause at the middle of the road and look in either direction?

A. He was walking at a normal rate of speed. He neither paused or looked down the road.

Q. Did he cross the center lane and go into the west bound lane?

page 169] A. Yes sir. He did.

Q. How far into that lane had he gotten when he was struck?

A. Approximately a foot and a half to two feet.

Q. Now after the accident you say he fell back against another car there. Did he get up?

A. As I got to him he was scrambling to get up. I asked if he were hurt. He was getting up under his own power. I assisted what I could as soon as I could get ahold of him.

Maurice Miller

Q. Did he say he was hurt? Did he say anything about that?

A. At that time he said his elbow was hurt. I felt of it. Mr. Phillips had on two or three shirts and some long underwear, or possibly three and long underwear. I felt of it at the time to see if I could feel any bones might be broken. As I talked to him he said "I have a tingle in my right leg" He was facing east at that time. "My leg is numb." "I have a tingle in it. I don't have any feeling," he says.

Q. Was Mr. Stewart there?

A. Yes. He had gotten out of the car at that time, come over to help assist.

Q. You say you got to Mr. Phillips before Mr. Stewart did?

A. Yes sir.

page 170] Q. Did you look at Mr. Stewart before he got out of his car? Did he get out immediately?

A. Well, as soon as he could. I think it sort of unnerved him at the time. As it would me. When I saw what happened I tried to get to him to assist as soon as I could.

Q. Can you recall with reference to that crosswalk where Mr. Stewart stopped his car?

A. The front of his car was probably about even with the rear of my car at the time that he got stopped.

Q. All right, now after you all talked with Mr. Phillips did you ever hear him say anything about what happened, or why that accident occurred?

A. He said he just didn't see him at that time.

Q. Did you help him to the hospital? Did you go to the hospital?

A. Yes sir. I talked to Mr. Stewart who was driving the car. I said "Let's take him to the hospital." He was sort of unnerved. He said "Let's take him to the hospital." Mr. Phillips said, "No. I'm not hurt." I felt of his arm and leg to try to see if any bones were broken. He said, no, he didn't want to go. I asked him to go on. Thought it would be best to go and get checked over. I said so to Mr. Stewart at the time. Mr. Stewart agreed with me. A fellow named Marvin Jones and I helped Mr. Phillips into Mr. Stewart's car

page 171] and I says "Well, I can take you." Mr. Stewart didn't know where the hospital was. I said "I can take you to the hospital. I'll show you the way if you want to go." I had traveled this some before as my wife is from Wytheville and I was from Roanoke. I had been up and down the road and knew where the hospital was. I helped put Mr. Phillips up to the table for the doctor to examine him. He

had on bib overalls. I helped him get the bib overalls loose best I remember, helped unbuckle. Helped unbutton his shirt. Assisted all the way I could without trying to assume the practice of medicine.

Q. Did you all discuss, did he discuss any time in your presence whether he saw the car?

A. He said again he just didn't see the car.

Q. Now did you have enough of a glance at Mr. Stewart's car to estimate his speed? Did you have any way of judging?

A. The way I would judge Mr. Stewart's speed is he stopped within six feet from the time it happened. Of course I didn't see him before. I couldn't hazard a guess as far as how fast he might have been going. He stopped within six feet. I wouldn't say too fast.

Q. At this area there is a light overhead. Was that light off at the time?

A. The light wasn't burning at the time as I went to the hospital. Mr. Teel came to the hospital and said things were a little slow and he just didn't have the light turned

page 172] on at that time. If the light had been on I would have known better than to park in the crosswalk. There was some snow on the ground. I couldn't clearly see any stripes on the road to visualize it or not as being a crosswalk at the time.

Q. Now, Mr. Miller, did you ever know Mr. Stewart before the time of this accident?

A. No sir. I sure didn't.

Q. Have you known or seen him since?

A. I saw him today, but Mr. Stewart was a man out of State. I thought if I could ever help anybody now would be a good time to try to do it. I did at that time try to assist him in any way.

Q. You have no interest in the outcome of this case?

A. No sir. None at all.

CROSS EXAMINATION

By Mr. McGhee:

Q. Mr. Miller, what is your occupation?

A. I own a chain of fifteen hamburger houses in North Carolina and a supermarket business in Roanoke, Virginia.

Q. I believe you used to be in Radford and knew Mr. Spiers?

page 173] A. No, I never was in Radford to know Mr.

Maurice Miller

Spiers, Mr. Counsellor. He had occasion to run for the Congress of the Sixth District. I met him in Roanoke at that time.

Q. Now you don't know what the speed of the Stewart vehicle was from the time he left the intersection here of Main Street down to the point of impact do you?

A. That's right. I have no idea what the speed was.

Q. You don't know at what time or at what point on the road he began to apply his brakes?

A. No sir. I do not.

Q. Now you say you were in the car. Who else was in the car with you?

A. My wife was in the car with me sir.

Q. You say the children had gotten out to go to the drugstore?

A. Well, one of them was 16 and one was 13 at that time. I don't know what you refer to as children. They were older boys.

Q. Your children?

A. Yes sir.

Q. They had gotten out?

A. Yes sir.

page 174] Q. You and your wife were sitting, talking?

A. No. I wasn't talking to her at the time.

Q. You were not talking to your wife?

A. Not at that time.

Q. What was the first time you saw Mr. Phillips?

A. When he left from the sidewalk on the south side of the street, to walk across.

Q. You tell this Court and jury you watched that man at every stage of his movements from the time he left the sidewalk to the time he got struck?

A. I did, sir.

Q. Could you see his eyes?

A. I didn't distinguish as to look at the man's eyes for sure. I saw his direct posture. I know his head wasn't turned facing the east.

Q. Do you know what he did before he left the sidewalk?

A. No sir, I don't.

Q. If some one who was right in front of him told you that he did look to see where traffic was going would you believe that?

A. No sir.

page 175] By Mr. Spiers: He's arguing with the witness.

By Mr. McGhee: I have a right to lead. He is on cross-examination.

By the Court: You have a right to lead. You do not have a right to contradict another witness by this witness. You don't have a right to argue.

Q. Your back would have been—your face would have been looking west generally. Is that correct?

A. If I were looking straight ahead it would.

Q. Of course Mr. Stewart was proceeding from the east. Is that correct?

A. You're correct. No. Mr. Stewart was proceeding from the south. I beg your pardon. I thought you were talking about Mr. Phillips.

By Mr. McGhee: All right. Thank you sir.

Witness stands aside.

OVERTON COPELAND STEWART,

the Defendant, having been first duly sworn, testified as follows:

page 176] DIRECT EXAMINATION

By Mr. Spiers:

Q. You are Mr. O. C. Stewart?

A. Yes sir.

Q. Where do you live, Mr. Stewart?

A. Crossville, Tennessee.

Q. You are presently going to college?

A. Going to school University of Tennessee. Graduate school.

Q. What is your occupation?

A. School teacher. Former superintendent. Working on advanced degree at the present time.

Q. On the 26th of December, 1963, were you the operator of a car that struck Mr. Gorman Phillips?

A. Yes sir.

Q. I believe you had come through Christiansburg two days prior to this time?

A. On Sunday before Thursday, yes sir.

Q. As you came through Christiansburg did you see any

light or anything to indicate a pedestrian crosswalk at the place of this accident?

page 177] A. No, I didn't. We came through probably after dark, and real late in the afternoon. I didn't see anything of that sort.

Q. Now on the 26th of December and as you entered Christiansburg and got up here to Franklin Street, what did you do at the courthouse?

A. I stopped for a redlight.

Q. The light was red for your direction of traffic?

A. That's right.

Q. I believe this was sometime in the morning, or close to noon?

A. Around 11:00 o'clock I should think.

Q. Was the day clear?

A. I believe it was a sun shiny day.

Q. How long had it taken you to get from Bedford to here?

A. Came through Huddleston to here. I'd say two and a half hours maybe. The road was pretty bad. In pretty bad condition in places. Had to drive more slowly than usual.

Q. When you stopped at the stoplight did you notice any cars in the opposite lane—be proceeding in an easterly direction—also stopped for the light to change?

A. I noticed cars backed up a long ways in the east bound lane.

page 178] Q. Any cars in front of you at the stoplight?

A. No sir. I was the first car in line.

Q. Mr. Stewart, would you just tell the jury from the time the light turned green what happened and what you did leading up to this accident?

A. Well, I proceeded, I think, in an orderly manner when the traffic light turned green and probably, I don't know how many feet, but just a second or so before I got to where Mr. Phillips was he just made a step right out into my path. I did have time to hit my brakes before he actually stepped out, or as he was stepping out into that lane of traffic.

Q. Tell the jury your estimate as to your speed prior to the time Mr. Phillips stepped out in front of your car?

A. I would estimate around twenty miles per hour. The front of the left part of my bumper hit Mr. Phillips. If he hadn't made the last step he made I believe I wouldn't have hit him at all.

Q. You had just hit your brakes, and did you stop very suddenly?

Overton Copeland Stewart

A. I stopped just as rapidly as I could. In fact, I don't think I ever stopped a car that fast before.

Q. Now with reference to your left hand side of the street, or east bound lane, at the time Mr. Phillips appeared were there any cars in that east bound lane?

A. Yes sir. There seemed to be a solid line of

page 179] cars, even back of the so-called crosswalk there.

Q. Step around here please sir. Mr. Miller has placed some cars there. Would you have any reason to change the location of any. Assuming this is the east bound lane.

A. This is the traffic light for the courthouse? No, I would say cars were up all through here probably to this light. But certainly cars were back of the crosswalk and in front of the crosswalk going east.

Q. Were they stationary at the time you came to the crosswalk?

A. I'm sure they were. I'm positive they were stationary.

Q. Mr. Phillips appeared out from between two of these cars in the traveled lane?

A. He seemed to appear about here before I noticed. I hit my brakes back here and he had stepped out in the line of traffic, and even though I came to a dead stop in the crosswalk I probably applied my brakes back here somewhere, and he had made another step out in front and caught my left bumper.

Q. Could you tell the jury whether when he fell you were in motion or stopped at the time of impact with his leg?

A. Well I was in the process of stopping. I'm sure that I was in motion, but I wasn't going at the full rate of speed that I had been going seconds earlier than impact. In fact, I

don't think I moved over a couple of feet after

page 180] the impact hit his right leg.

Q. Did Mr. Phillips stop at the center line of that highway?

A. I don't believe I saw him until he was on the center line, or maybe a little bit over here. He seemed to be moving on across. I think he was in motion when I first saw him which was only a slight second before I got the car stopped.

Q. Could you tell which direction he was looking at the time?

A. I really don't know which direction he was looking. I just know he was proceeding along here. I don't know which way he was looking. It all happened so fast that I couldn't—

Q. Now what did you do after the accident?

A. Well I stopped my car. I was dumbfounded I guess I sat there a few seconds before I could do anything.

Q. What did Mr. Phillips do?

A. Mr. Phillips got up. He seemed to have been knocked in this direction.

Q. Was he in the westbound lane at the time you struck him?

A. Oh yes. I would say a yard or two, step or two over here. My left bumper caught his right leg I believe. I couldn't see clearly. I believe it knocked him in this direction since the left bumper caught him. I think it knocked him to the left.

page 181] Q. You were dumbfounded. Finally you did get out.

A. I didn't get out until he got up. I just couldn't react that quickly. And I was very glad to see him get up, to say the least.

Q. Did you go to him?

A. Yes, I did.

Q. What did he say? What were his first words?

A. Well, I believe he said he was looking in another direction and he just didn't see me and then over at the hospital I know that he made that statement, that he just didn't see me, he was looking in the other direction. I was so shook up at this time I'm not real sure what he did say. I do know he said he wasn't hurt and didn't want to go to the hospital. Mr. Miller was there and Mr. Miller and I insisted that he go.

Q. I believe you took him to the hospital?

A. Yes, I did. He rode in the back seat of my car to the hospital.

Q. Now the light which is down there that you saw yesterday, was that light burning?

A. No sir. It wasn't. And there was Christmas decorations hanging over here and on this side too. In fact, all over the place. I just didn't see any light, any crosswalk. I didn't see anything.

page 182] Q. Any signs or anything indicating a crosswalk?

A. No sign indicating a crosswalk.

Q. What color is your car?

A. White.

Q. What kind of car is it?

A. Sixty-three Chevrolet.

Q. Your wife was in the back? And little girl?

A. Right.

By Mr. Spiers: That's all.

Overton Copeland Stewart

CROSS EXAMINATION

By Mr. McGhee:

Q. Mr. Stewart, you say you didn't see the light suspended above the crosswalk?

A. No sir, I didn't.

Q. Did you see the crosswalk?

A. No sir, I didn't.

Q. Why didn't you?

By Mr. Spiers: Your Honor please, that's argu-
page 183] mentative.

By the Court: Sustain the objection.

A. I really don't know.

By Mr. McGhee: We except Your Honor. The witness could possibly answer that he wasn't looking.

By the Court: Just disregard that last remark, gentlemen of the jury.

By Mr. McGhee: We respectfully except to the Court's ruling.

Q. Mr. Stewart, how far away from Mr. Phillips were you when you first saw him?

A. I'm not sure. I just don't recall.

Q. Where was he in the crossover when you first saw him?

A. He must have been somewhere about the center of the road. I'm not absolutely sure.

Q. Now did you think that he was going to stop when you saw him?

A. No sir. I knew he wasn't going to stop, and I applied my brakes immediately. I couldn't stop fast enough to avoid hit-
ting him. If he had stopped probably I wouldn't
page 184] have hit him because I only hit him with my left
bumper.

Q. Did you tell Chief Teel of the town police that you thought he was going to stop?

A. I don't believe so. I might have told Chief Teel if he had stopped when I first saw him the accident could have been avoided.

Q. You don't think you told him you thought he was going to stop?

A. I don't remember making such a statement.

Q. You don't remember any?

Overton Copeland Stewart

By Mr. Spiers: He's answered the question.

By the Court: Just don't misquote the witness's answer, Mr. McGhee. He just got through making such a statement.

By Mr. McGhee: I asked whether he denied making such a statement and he has never unequivocally stated.

Q. You state that you do not know how far away you were from the crosswalk when you first saw him?

A. No sir. I don't.

page 185] Q. Now what was your speed as you were approaching the crosswalk?

A. I'm not sure. I would say around eighteen, twenty miles an hour.

Q. Are you sure of that?

A. I'm not sure. I wasn't looking at the speedometer, but I think I was making eighteen or twenty miles per hour.

Q. Mr. Stewart, what happened to the cars parked, or rather stopped, at the crosswalk? That is the cars that were headed east. After the impact.

A. It seems to me like some of the cars at least sat there a while before they moved on. I'm not really sure how long or anything.

Q. Did you see a car leave the crosswalk while Mr. Phillips was in the same?

A. No, I don't believe I did.

Q. You didn't see that either. Now, Mr. Stewart, you said you saw Mr. Phillips only after he was out in the road. Is that correct?

A. That's true.

Q. Approximately the center of the road?

A. I would say approximately. I couldn't be exact on that.

Q. And you don't know what Mr. Phillips did prior to that point do you?

A. No sir. I wouldn't know.

page 186] By Mr. McGhee: That's all.

The witness stands aside.

By Mr. Spiers: The defense rests.

By the Court: Any rebuttal evidence.

By Mr. McGhee: If Your Honor please, I questioned Chief Teel on the point I wanted to make and he said it's been so long he just didn't remember.

(The Court, counsel for plaintiff and counsel for defendant at this time retired to Chambers)

By Mr. Spiers: I would like to renew my motion on the grounds previously assigned, even more strongly at this stage of the proceedings, again reverting to the testimony of Mr. Phillips himself which conclusively convicts him of contributory negligence irrespective of other evidence of the plaintiff. There is no basis on which recovery could be held.

page 187] He obviously stepped directly in the path of the vehicle. Even Miss Joyner's statement, that statement contradicts Mr. Phillips, who said he stepped in the path of the vehicle. He has the duty to look continuously from one side of the street to the other. As far as reasonable lookout is concerned the only qualification the court put on that would be "constantly." But he still has to maintain a reasonable and proper lookout and if he still has the same opportunity that the motorist does to avoid being struck, even at an intersection, it is his duty to take advantage of that. I have cases here right on it. *Whichard* v. *Nee* is the most closely related. He has the duty to look at the center of the road like the Court said, as set forth in *Thornton* v. *Downes* and reaffirmed in *Wong* v. *Terminal Cars* in 1960. I respectively submit this case is one in which reasonable men cannot differ.

page 188] By Mr. McGhee: In response to Mr. Spiers' argument that the Court should strike the evidence as based upon witnesses which have testified on behalf of the defendant I could call the Court's attention to the fact the plaintiff himself produced independent witnesses and a conflict in the evidence has arisen and therefore all the more reason to submit that conflict to the jury to be resolved. And of course for the same reasons assigned at the previous motion to strike.

By the Court: Gentlemen, now that all of the evidence is in it presents the case briefly to the Court as follows: We have an area marked off for a pedestrian crosswalk and it becomes, and was, a pedestrian crosswalk, with all the rights of the pedestrian set forth for the pedestrian crossing at *at* an intersection where it is clearly marked when the lights

page 189] were operating. Whether or not the Council of the Town of Christiansburg or the State Highway Commissioner was responsible for the erection of those lights, I do not know, but in any event they created a dangerous situation for when the lights are cut off there is nothing

to indicate to the motorist that there is a pedestrian crosswalk other than some white paint on the street in the form of blocks six feet long and two feet wide. Those blocks were at least partially obscured by the snow as shown by the evidence of one who had parked on the walk itself, not knowing that it was there. When those lights were not operating it eliminated the pedestrian crosswalk and required the pedestrian to go to the nearest intersection, which was some 140, 150 feet east of where the accident took place. That page 190] being the case, the pedestrian did not have the favored right of way going across the street that he would have had had he been at an intersection or any plainly marked crosswalk. But even assume that he would have had that favored position, still as the case of *Thompson* v. *Goldman* 167 Fed. 2d, at 315 said, the pedestrian who has the right of way is not relieved of the duty of exercising proper care for his own safety. Now Mr. Phillips himself has testified as to his leaving the sidewalk and shortly after leaving the south curb has testified that he saw the car coming, he then proceeded across and on page 9 of his evidence he testified that he did not again see the car although he knew it was moving in a westerly direction across the path that he was traveling. He says he was looking towards the other side, that is the north side of the street. Other witnesses have cor- page 191] roborated him. In other words, it presents a picture of a pedestrian blindly walking across the road in front of oncoming vehicular traffic. That of itself is the grossest kind of contributory negligence when you consider he had knowledge that the car was within a short distance. Considering the whole evidence the Court is forced to the conclusion that were the jury to return a verdict in favor of plaintiff the Court could not sustain it. The Court is forced to the further conclusion that reasonable men could not differ upon the whole evidence in this case. For that reason I would strike the evidence and grant summary judgment in favor of the defendant.

By Mr. McGhee: To which ruling of the court counsel for plaintiff respectfully excepts on the ground that the ruling is both contrary to the law and the evidence and page 192] without evidence to support same and counsel further renews its exceptions made during the course of the trial for the reasons assigned during the course of the trial and now makes known his intention to appeal to the Supreme Court of Appeals of Virginia.

This concluded the trial of this case and Court was then adjourned.

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A Copy—Teste:

H. G. TURNER, Clerk.

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