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Record No. 6296

In the
Supreme Court of Appeals of Virginia
at Richmond

JOSEPH C. HAILES
v.
PATSY J. GONZALES

FROM THE CORPORATION COURT OF THE CITY OF CHESAPEAKE

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. 6296

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 24th day of November, 1965.

JOSEPH C. HAILES, Plaintiff in error,

against

PATSY J. GONZALES, Defendant in error.

From the Corporation Court of the City of Chesapeake
Jerry G. Bray, Jr., Judge

Upon the petition of Joseph C. Hailes a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Chesapeake on the 8th day of June, 1965, in a certain motion for judgment then therein depending wherein Patsy J. Gonzales was plaintiff and the petitioner was defendant.

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

RECORD

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page 1]

* * * * *

MOTION FOR JUDGMENT

Patsy J. Gonzales, plaintiff, hereby moves the Corporation Court of the City of Chesapeake, Virginia, for a judgment against Joseph C. Hailes, defendant, for the sum of FIFTEEN THOUSAND ($15,000.00) Dollars, and the costs of this proceeding, for this, to-wit:

1. That on July 18, 1964, in the City of Portsmouth, Virginia, the motor vehicle operated by the plaintiff was struck by a motor vehicle operated in a careless, negligent and reckless manner by Joseph C. Hailes, defendant, causing plaintiff to be injuried thereby.
2. That the said negligence, careless and reckless operation of the motor vehicle by the defendant was the proximate cause of the injuries sustained by the plaintiff in the aforesaid collision.
3. By means whereof, the plaintiff was permanently injured, was caused to suffer, and will in the future be caused to suffer, great physical pain and mental anguish; was forced to expend and in the future will be forced to expend large sums of money for medical attention and treatment in an endeavor to be cured of her injuries and sustained and will in the future sustain, loss of wages and compensation by means of her inability to follow her usual vocation and employment.

WHEREFORE, judgment is asked against the defendant for the sum of FIFTEEN THOUSAND ($15,000.00) Dollars and the costs of this proceeding.

PATSY J. GONZALES,
By ROBERT M. HARCOURT
Counsel

Filed in the Clerk's Office the 14th day of Jan. 1965.

JULIAN R. RAPER, Clerk
By LOIS BAGLEY Deputy Clerk

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page 4] INSTRUCTION NO. 1

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

4-1-65
JGB, JR.

page 5] INSTRUCTION NO. A

Damages are not presumed nor may they be based upon speculation, but must be proven; and the burden is upon the plaintiff to prove by a preponderance of the evidence each injury and element of damage claimed, and unless such injury or element of damage is proven by a preponderance of the evidence, then the plaintiff cannot recover therefor.

4-1-65
JGB, JR.

page 6] INSTRUCTION NO. 2

The Court instructs the jury that in finding your verdict for the plaintiff in this case, when in assessing the damages to which she is entitled, you should take into consideration the following:

1. The bodily injuries sustained and the extent and duration thereof;
2. The effect of any such injuries upon her health according to its degree and probable duration.
3. Any physical pain and mental anguish suffered by her in the past, and any which will be suffered by her in the future;
4. Any medical expenses incurred in the past and any that may reasonably be expected to occur in the future;

And from these as proven by the evidence, your verdict should be for such sum as will fully and fairly compensate

the plaintiff for the damages sustained by her as a result of the accident.

4-1-65
JGB, JR.

page 7] VIRGINIA: In the Corporation Court of the City of Chesapeake on the 1st day of April 1965.

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This day came the above named parties, in person, and by counsel, and thereupon came also a jury, to-wit: D. E. Mayo, Eugene F. Stewart, Mrs. Ethel V. Hickman, Charlie P. Brinkley, John A. Harrell, H. R. Morrison, Sr., and F. H. Dickens, who were duly sworn the truth to speak upon the issue joined, and after having fully heard the evidence and argument of counsel, and received the instructions of the Court retired to their room to consult of a verdict, and after sometime returned into Court having found the following verdict: "We the Jury find for the Plaintiff in the sum of $7,500. (Seven Thousand five hundred dollars) John A. Harrell, Foreman."

Thereupon the defendant by counsel moved the Court to set the verdict of the jury aside as being excessive and contrary to law and evidence, and to grant defendant a new trial, which motions the Court continued generally and this case stands continued.

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page 19]

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ORDER

This day came the parties again by their attorneys and the Court having maturely considered the motion of the defendant to set aside the verdict of the jury heretofore returned herein and grant a new trial or in the alternative place the plaintiff on terms with regard to the amount of the judgment, is now of opinion that the motion should be denied; wherefore it Ordered that the plaintiff Patsy J. Gonzales, recover of the defendant, Joseph C. Hailes, the sum of $7,500.00 in accordance with the jury's verdict, with interest thereon from the 1st day of April, 1965, the date said verdict was rendered,

as well as her costs in this behalf expended, to which action of the Court, the defendant by counsel objects and excepts.

Enter
June 8, 1965
JGB, JR.

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page 20]

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ORDER

This day came Joseph C. Hailes, the defendant and indicated his intention to apply in the Supreme Court of Appeals of Virginia for a Writ of Error and *Supersedeas* to the judgment heretofore entered in this cause.

Now therefore, it is ORDERED that Execution on the said Judgment shall be suspended for a period of sixty (60) days from June 8, 1965 and thereafter until such petition is acted on by the Supreme Court of Appeals if such petition is filed within the specified time upon the condition the said defendant shall post bond in the sum of Ten Thousand ($10,000.00) Dollars

Enter
JGB, JR.
6-25-65

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page 23]

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NOTICE OF APPEAL
and
ASSIGNMENTS OF ERROR

Pursuant to the provisions of Rules of the Supreme Court of Appeals of Virginia, the defendant, Joseph C. Hailes, hereby files notice of his intention to appeal from a Judgment Order of this Court of the 8th day of June, 1965, overruling a motion of the defendant to set aside the jury verdict for

the plaintiff on the grounds the jury was improperly instructed and therefore the verdict was contrary to the law and evidence or to set aside the verdict as excessive or in the alternate order a *remittitur*.

The Errors assigned are as follows:

1. The Court erred in granting Instruction two (2) as there was no evidence upon which the jury could reasonably ascertain any future inconvenience, disability, or expenses thereby permitting the jury to speculate in arriving at its verdict.
2. The Court erred in overruling the defendant's motion to set aside the verdict as contrary to the law and the evidence.
3. The Court erred in overruling the defendant's motion to set aside the verdict as excessive or in the alternative order a *remittitur*.

page 24] 4. The Court erred in entering the Judgment Order of the 8th day of June, 1965.

JOSEPH C. HAILES
By: ROBERT G. WINTERS
Of Counsel

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VIRGINIA:

In the Clerk's Office, Corporation Court of Chesapeake
Received and filed this the 6th day of Aug., 1965

Teste: JULIAN R. RAPER, Clerk
By MARIAN LIPE
Deputy Clerk

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page 3] The Clerk: *Patsy J. Gonzales* versus *Joseph C. Hailes*. Robert M. Harcourt. Pilcher, Underwood, Pilcher, and Winters.

Mr. Harcourt: The plaintiff is ready, Your Honor.
Mr. Winters: The defendant is ready, Your Honor.

(The venire was sworn and examined on *voir dire*.)

The Court: Any questions by counsel?
Mr. Harcourt: No, Your Honor.
Mr. Winters: None.

(The reporter was sworn.)
(A jury was empaneled and sworn.)
(The plaintiff was sworn as a witness.)

Mr. Winters: Your Honor, the defendant admits he was responsible for this accident.

(Mr. Harcourt made an opening statement on behalf of the plaintiff and Mr. Winters made an opening statement on behalf of the defendant.)

Mr. Harcourt: Your Honor, if I may, I would like a short recess.

Dr. Cantin is due here at 10:15.

page 4] The Court: All right. We will just take a brief recess.

(The court recessed at 10:16 a. m., April 1, 1965, and reconvened at 10:29 a. m., April 1, 1965.)

(Dr. Cantin was sworn as a witness.)

IRA M. CANTIN,
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harcourt:
Q. Will you state your name, please, sir?
A. Ira Marshall Cantin.
Q. And your occupation?
A. I am an orthopedic surgeon.

Mr. Winters: I will stipulate to his qualifications.
The Court: All right, sir.

By Mr. Harcourt:

page 5] Q. Dr. Cantin, having stipulated as to your qualifications as an orthopedic surgeon, did you have the occasion to examine Mrs. Patsy J. Gonzales, the plaintiff in this action, and if so, what date was that?

A. Mrs. Patsy J. Gonzales was seen and examined by me on July 20, 1964, for injuries sustained on July 18, 1964. The

patient stated that the car in which she was riding was struck from the rear, causing her to injure her neck and back. At the time of my examination the patient was complaining of some pain about her neck, mainly on motion of her head and neck. She also had some pain about the low back, which was worse on bending.

Physical examination on that date revealed that there was some tenderness to palpation of the cervical as well as the lumbar spines. This means that on feeling the cervical spine, which is the neck, and the *lumber* spine, which is the lower back in this region, that the patient complained of pain. The range of motion of the cervical spine was within normal limits. This means that the motion that the spine normally goes through, in this particular case it did go through these normal motions. The extremes of motion did cause pain, however. This just means that at the extreme of

page 6] either motion, all the way back or all the way forward caused some pain. Motion of the shoulders and arms was within normal limits and free of pain. Motion of the low back was within normal limits; however, severe flection and extension were somewhat painful. This is all the way bending and all the way back. The neurological examination was within normal limits. X-rays of the cervical spine, as well as the lumbar spine, were negative for any fracture or dislocation.

It was my impression that this patient had sprains of the cervical and lumbar spines.

Q. Doctor, X-ray revealed a sprain?

A. No, it did not.

Q. Doctor, are there various degrees of sprains of an injury of this nature?

A. Well, we try and rate them sometimes as mild, moderate, or severe.

Q. How did you classify the plaintiff?

A. I didn't in this letter; however, I would call this one a moderate type.

Q. Moderate?

A. Yes.

Q. That would be in between?

A. In between, yes.

page 7] Q. Now, then, doctor, in regards to this type of sprain in regards to healing, the difference between the healing of a break and the healing of a sprain, does one take longer than the other?

A. I don't think you can answer this quite that broad. I think that as far as a sprain, which is tearing of ligaments, these supposedly heal in six to eight weeks; however, the complete healing stage, meaning that the whole human body is back to the state it was prior to the injury, depending on the area and the severity, can take anywhere from six to eight weeks to a year or so.

Q. Doctor, how many times have you seen Mrs. Gonzales since July 20, 1964?

A. One, two, three, four, five, six.

Q. When was the last time you saw her?

A. On the 22nd of February of this year.

Q. What symptoms did she reveal to you?

A. At that time she was complaining of pain in the entire left side, and there was some tenderness to touch and she complained of some pain on palpation of her left side of her neck and back. At that time I told her to discontinue all the medication that she was on, as she said that some of it made her upset — upset her stomach.

page 8]

Q. Doctor, what treatment did you prescribe on July 20, 1964?

A. I gave her something for pain as well as for muscle spasm and relaxing the muscles, heat and rest.

Q. Now, then, she continued this treatment up until February 22, 1965, at which time you told her to discontinue the medicine. Is that correct?

A. No. In October I changed her medication.

Q. To what?

A. I gave her something to relax her.

Q. What type of drug is that?

A. It is Equanil.

Q. Equanil?

A. Is the name of it, yes.

Q. That's a muscle relaxant?

A. It's commonly known as a tranquilizer. They are closely akin to muscle relaxants.

Q. Now, this type of injury, this sprain involving the neck and the low back, as you have described it, what effect, if any, does it have on the nerves of an individual?

page 9]

Mr. Winters: Your Honor, I would object. I believe that's

too broad. He might describe what effect it had on this particular person, if he observed.

By Mr. Harcourt:

Q. What effect, if any, did it have in regards to the nerves of Mrs. Gonzales?

A. I think this injury tends to make one more nervous, and this patient was more nervous as a result of the accident.

Q. Now, then, doctor, Mrs. Gonzales being, as you described, nervous as a result of this accident and the pain from the injuries, would it interfere in your opinion as to her normal household duties as a housewife?

A. Well, by interfere I think this is a broad term. I believe the patient could do her chores. I don't think she would be as comfortable. By nervousness, I don't mean the patient is so nervous that she cannot do anything. I think that she may be a little more jumpy or little more edgy, may tend to speak a little more abruptly to people, but I think she page 10] should be able to do all of her duties, maybe not as comfortably, maybe —

Q. Doctor — thank you. Doctor, in regards to the wearing apparel of a lady, would the wearing of high heels affect the inconvenience or discomfort or pain that a woman would suffer as a result of these injuries by the wearing of high heels?

A. Well, high heels cause women to have more lordosis or swayback in their low back, because they are walking on their toes and rather than lean over they have to straighten up and therefore they have more swayback. This is true of all women. With a sprain or injury to the low back in many instances the increase swayback will cause more pain in the low back.

Q. All right. Doctor, based on your examination and your treatment of Mrs. Gonzales since July 20, 1964, the symptoms she has exhibited, are they compatible with the injuries she has received?

A. Yes, they are.

Q. What do you anticipate, if any, the degree of permanent injury she may have sustained?

page 11] A. I do not think she will have any permanent disability.

Q. What will be her period of convalescence?

A. This is hard to say exactly; however, in cases such as these we find that symptoms may last up to a year.

Ira M. Cantin

Q. And this is a — a year has not elapsed yet from the date of her accident?

A. No, it has not.

Q. And she was experiencing these symptoms in February of this year. Is that correct?

A. That is correct.

Q. On February 22, 1965, when you took her off of medication that you had previously prescribed, I believe you prescribed something else. Is that not correct?

A. I told her to take Bufferin if necessary.

Q. And in the medical terminology did you tell her to try to tough it out?

A. I —

Q. In other words, this is the type of thing that a person has to live with, is it not?

A. Well, I think that at the stage of her injury
page 12] that she is now I think time will help her, and I really don't think that the medication — unless she has enough pain and needs medication for pain, this is the only advantage. In other words, symptomatic treatment. I think nature and time will heal her problems at this time.

Q. In time?

A. Yes.

Q. Doctor, what are the charges for the services that you have rendered to Mrs. Gonzales?

A. The examination, X-rays and all were $105.00.

Mr. Harcourt: Answer Mr. Winters.

CROSS-EXAMINATION

By Mr. Winters:

Q. Doctor, is there a distinction between objective findings and subjective findings?

A. Yes, there is.

Q. And what is the distinction?

A. An objective finding is something that we as the examining physician can see or feel, and the subjective finding is what the patient tells us.

page 13] Q. The full range of motion or the normal motion that you found in the cervical spine, that was an objective finding. Is that correct?

A. That is correct.

Q. And that would indicate that the injury, if any, re-

ceived by this lady was less than that where there would be a limitation of motion. Is that correct?

A. That is correct.

Q. In that regard, did the X-rays which you obtained indicate any loss of curve in the cervical area or the so-called cervical lordosis? Did the X-rays indicate that?

A. The X-rays did not; however, if I may be allowed to explain my opinion as to this: it is my opinion and the opinion of most people, however, that loss of cervical lordosis is of no significance.

Q. You mean that the action of the muscles in straightening the spine is of no significance?

A. Well, if I may digress one minute: The loss of lordosis indicating muscle spasm in the cervical region is of no value, because people without muscle spasm can hold page 14] their neck so that it will appear straight on the X-ray. However, in this case she did not have the straightening, so it is of no — what we are talking about really has no bearing on this particular case.

Q. The motion of her shoulders and arms were within normal limits. Is that correct?

A. That is correct.

Q. And if they were not, if this motion of her shoulders and arms were not within normal limits, what would that have indicated?

A. Well, it could indicate many things. However, usually, when there is painful motion or loss of motion it indicates some injury, where it is severe enough to cause pain or muscle spasm or swelling which would limit motion.

Q. And there was full range of motion in the low back at this time, or it was within normal limits. Is that correct?

A. That is correct.

Q. Now, did you at any time indicate to Mrs. Gonzales she was not to do her regular housework?

A. I probably told her in the beginning that she — when I instructed her as to rest I probably told her to page 15] limit her activities to what was absolutely necessary and no heavy housework, as is my usual instructions to people with this type of injury.

Q. Did you at any time subsequent to that indicate when she could return to her regular household chores?

A. When I saw her on the 28th of July, which was eight days following my initial visit, she told me that she was still having pain and had to take care of her child and do her own

housework, and I suggested to her that she would have to try and make some arrangements to get some help if she was having too much pain and was unable to do this.

Q. Did she make any further complaint in this regard at the time of the next visit?

A. At the time of the next visit, which was on the 3rd of August, she stated that she was better when she rested.

Q. What about the next visit?

A. When I saw her on August 15th she was improved, although she was still having symptoms. These symptoms were intermittent in nature and it was my impression that these were compatible with her injury and I re-
page 16] assured her and told her that she could expect symptoms of an intermittent nature as she was experiencing.

Q. And meaning by intermittent that they come and go, doctor, complaints come and go?

A. That is correct.

Q. When did you next see her after August 15th?

A. October 12th.

Q. And you finally saw her on February 22nd. Is that correct?

A. That is correct, yes.

Q. At that time did you instruct her to return for any specific treatment?

A. I told her to return if necessary.

Mr. Winters: No further questions.

The Court: Do you need the doctor any further?

Mr. Harcourt: No, sir. He may be excused.

page 17] PATSY J. GONZALES,

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

DIRECT EXAMINATION

By Mr. Harcourt:

Q. Your name is Patsy J. Gonzales?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

Patsy J. Gonzales

A. One.
Q. How old is the child?
A. Two and a half.
Q. How old are you?
A. Twenty-three.
Q. Twenty-three. Mrs. Gonzales, on Saturday, July 18, 1964, were you injured in an automobile accident?
A. Yes, sir.
Q. Did you see a doctor?
A. Yes, sir.
Q. When did you see the doctor?
A. July 20th.
page 18] Q. Was that on the following Monday?
A. Yes, sir.
Q. What happened to you after the accident, if anything?
A. Well, I was nervous and upset and then I went home after the accident I laid down, then Sunday my trouble started.
Q. All right. What trouble did you have that started on Monday?
A. My neck and my back right in here. (Indicating)
Q. And you then went to see the doctor?
A. Yes, sir.
Q. The doctor prescribed the treatment which he has testified to, did he not?
A. Yes, he did.
Q. Did you follow his prescriptions as far as treatment?
A. What I could.
Q. Did you take the medicine?
A. Yes, I took the medicine.
Q. Did you take — have the bed rest that he prescribed?
A. When I could.
page 19] Q. When you could. Was there anything that interfered with your bed rest?
A. Well I have a child to take care of.
Q. Now, Dr. Cantin stated for you to get outside help if you needed it as far as your housework, did he not?
A. No, I did not.
Q. Why didn't you?
A. I can't afford it.
Q. You couldn't afford it. Just relax. Now, then, Mrs. Gonzales, have you been able to —
A. Excuse me. (Witness crying)

Patsy J. Gonzales

The Court: Would you like to take a brief recess?
Mr. Harcourt: All right, sir.
The Court: Take a five-minute recess. Court will recess.

(The court recessed at 10:46 a. m., April 1, 1965, and reconvened at 10:52 a. m., April 1, 1965.)

(The jury returned to the courtroom.)

By Mr. Harcourt:
Q. Mrs. Gonzales, prior to the accident how was your general physical condition?
A. After the accident?
Q. Before the accident.
page 20] A. Before. I had more energy than I do now. I took care of my child better than I do now.
Q. How were your nerves?
A. It was better than what it is now.
Q. Have you been more nervous since the accident?
A. Yes, sir, I have. Over little things I get upset.
Q. Now, you — has it affected your wearing apparel?
A. Yes, sir, it has.
Q. In what respect?
A. I worry about every little thing more than I should.
Q. How about the clothes that you wear?
A. I can't wear the clothes that I like, heels.
Q. When you wear high heels how do you feel?
A. I can't wear them.
Q. You can't wear them?
A. (Indicated no)
Q. Have you followed explicitly to the best of
page 21] your ability the advice Dr. Cantin gave you as far as your treatment?
A. Yes, sir. As much as I could.
Q. Now, then, he has told you when you saw him in February to take Bufferin. Is that correct?
A. Yes, he did.
Q. Why did he take you off the other medicine?

Mr. Winters: I would object, Your Honor. I believe that would be within the doctor's —
The Court: Sustained.
Mr. Harcourt: Your Honor, if I may, the doctor did testify

that he removed her from the prior medication because of nausea.

The Court: The question — you might ask some question regarding the effect of the medicine on her but not why the doctor took her off, because only the doctor would know that.

By Mr. Harcourt:

Q. All right, what effect did the medicine the doctor had prescribed for you have on you?

page 22] A. It made me weak and nauseous at my stomach.

Q. And after that you are now taking Bufferin. Is that correct?

A. I take it, but it doesn't help.

Q. Do you still experience the symptoms that you have described to the doctor as to your headaches?

A. Yes, sir, I do.

Q. The doctor testified that when you saw him on February 22nd that you were feeling better, but that these symptoms you were experiencing were coming and going. Will you describe for us what you mean by coming and going?

A. Well, one day my back and neck, everything bothers me, and then I lay down and then the next day I went to the doctor when I laid down and he asked me how did I feel, I says a little better, and then he says, well, take the same treatment, but I told him I couldn't lay down all the time to just rest my body just to lay down all the time, I can't do that, to feel better.

Q. Mrs. Gonzales, are there days on which you have no pain whatsoever?

A. Not — no, sir.

Q. How old is your child?

page 23] A. He's two and a half. He will be three in July.

Q. Does he require constant attention?

A. Yes, sir, he does.

Mr. Harcourt: Answer Mr. Winters.

CROSS-EXAMINATION

By Mr. Winters:

Q. Between October and February you did not see the doctor, did you, ma'am?

Patsy J. Gonzales

A. No, sir.
Q. And you haven't seen him since February, have you?
A. No, sir.
Q. Do you have a regular family doctor?
A. No, sir. I go to the Navy.
Q. Have you received any care or treatment at any of the Navy facilities for this accident?
A. No, sir, because I know what they are.
Q. Do you still drive your car?
A. Yes, when I have to.

Mr. Winters: I have no further questions.
page 24] Mr. Harcourt: Thank you, Mrs. Gonzales.
The Court: Step down.
Mr. Harcourt: The plaintiff rests, Your Honor.
Mr. Winters: The defendant rests, Your Honor.
The Court: We will take a brief recess. I will see counsel in chambers.

(At 11:02 a. m., April 1, 1965, the court and counsel for both sides retired to chambers to consider instructions, after which the court instructed the jury as to the law applicable to the case, counsel for both sides made closing arguments, and at 11:12 a. m., April 1, 1965, the jury retired to consider its verdict.)

page 25] OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS

Mr. Winters: The defendant excepts to that portion of instruction 2 which relates to any future inconvenience, disability, expenses, as there is no evidence upon which they could be reasonably ascertained and it otherwise permits the jury to speculate.

Mr. Harcourt: The plaintiff excepts to the instruction of the defendant in regards to damages not being presumed, in that the evidence before the jury is uncontroverted as to both damages and injury — uncontradicted; that this instruction is an erroneous statement tending to confuse the jury as to the burden of proof; that where the plaintiff's evidence is uncontroverted and uncontradicted, the defendant having presented no evidence in rebuttal as to place in issue the injuries and damages, the plaintiff has sustained the burden

of proof and that the word "preponderance"
page 26] places an undue emphasis on the element of burden of proof to be sustained by the plaintiff.

page 27] JUDGE'S CERTIFICATE

I, Jerry G. Bray, Jr., judge of the Corporation Court of the City of Chesapeake, State of Virginia, who presided over the trial of the case of *Patsy J. Ganzales,* plaintiff versus *Joseph C. Hailes,* defendant, on April 1, 1965, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all the evidence adduced, all the exhibits offered in evidence, as well as all of the objections to the evidence or any part thereof offered, admitted, rejected, or stricken out, together with all motions and objections of the parties, all rulings of the court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of said cause.

I further certify that this certificate has been tendered to and signed by me within the time prescribed by section 8-330 of the Code of Virginia for tendering and signing bills of exception and certificates of record, and that reasonable notice in writing has been given to the attorneys for the defendant of the time and place at which said certificate has been tendered.

page 28] This record was tendered to me on the 14th day of June 1965.

Given under my hand this 14th day of June 1965.

JERRY G. BRAY, JR.
Judge

page 29] CLERK'S CERTIFICATE

I, Julian R. Raper, clerk of the Corporation Court of the City of Chesapeake, State of Virginia, do hereby certify that the foregoing is a true and correct copy of all the testimony, exhibits, and other incidents of the trial of the case of *Patsy J. Gonzales,* plaintiff, versus *Joseph C. Hailes,* defendant, together with the original exhibits therein referred to, duly initiated and authenticated by the judge who presided over the trial of said cause, and that the same were lodged and filed with me as clerk of said court on the 14th day of June 1965.

JULIAN R. RAPER, Clerk

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A Copy—Teste:

H. G. TURNER, Clerk.

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