Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 701

Record No. 6380

In the
Supreme Court of Appeals of Virginia
at Richmond

OSCAR WILLIAM FOX, JR.

v.

COMMONWEALTH OF VIRGINIA, EX REL., ETC.

FROM THE STATE CORPORATION COMMISSION

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. 6380

VIRGINIA:

In the Supreme Court of Appeals, held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 7th day of March, 1966.

OSCAR WILLIAM FOX, JR. Appellant,

against

COMMONWEALTH OF VIRGINIA, AT THE THE RELATION OF STATE CORPORATION COMMISSION, Appellee.

From the State Corporation Commission

Upon the petition of Oscar William Fox, Jr., an appeal of right is awarded him from an order entered by the State Corporation Commission on the 9th day of November, 1965, in a certain proceeding then therein depending, wherein Commonwealth of Virginia, at the relation of the State Corporation Commission, was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said State Corporation Commission in the penalty of three hundred dollars, with condition as the law directs.

RECORD

★ ★ ★ ★ ★

page 1]

★ ★ ★ ★ ★

AT RICHMOND, JULY 29, 1965

★ ★ ★ ★ ★

RULE

It appearing that the defendant has obtained from the State Corporation Commission seven registration cards and seven identification markers under Section 56-304.1 of the Code of Virginia for use on motor vehicles operating in interstate commerce into and out of Virginia and said registration cards and identification markers are proper only on vehicles not required by law to display license plates issued by the Division of Motor Vehicles, and the vehicles on which the registration cards and identification markers have been issued should properly be licensed in Virginia and bear Virginia license plates issued by the Division of Motor Vehicles, and that the defendant made misrepresentations of material facts to secure such registration cards and identification markers, a rule is hereby issued requiring Oscar William Fox, Jr., to appear before the State Corporation Commission in its court room in the Blanton Building in the City of Richmond at 10 o'clock, a. m., on September 20, 1965, and show cause, if any he can, why the registration cards and identification markers issued to the defendant should not be surrendered for cancellation and why he should not be subjected to the penalties of Section 56-304.12 of the Virginia Code.

A copy of this rule shall be served on the defendant at 614 South Main Street, Chincoteague, Virginia.

★ ★ ★ ★ ★

page 2]

★ ★ ★ ★ ★

AT RICHMOND, SEPTEMBER 15, 1965

★ ★ ★ ★ ★

At the request of counsel for the applicant;

IT IS ORDERED, that this matter set for hearing on the

20th day of September, 1965, be continued and placed on the docket of the Commission for hearing on November 9, 1965, at 10 o'clock, a.m., in its court room in the Blanton Building at Richmond, Virginia.

An attested copy of this order shall be sent to N. Wescott Jacob, Onancock, Virginia, counsel for the defendant.

★ ★ ★ ★ ★

page 4] Mr. Seibert: May it please the Commission, this is one of the usual cases we have had under the new regulations which require the Commission to determine the license properly applicable in connection with operations of certain types of motor vehicles in Virginia, and this is brought under the requirement because Mr. Oscar William FOX, Jr., *inthe* opinion of the Transportation Division, should have Virginia license plates on the vehicles he operates under our jurisdiction.

Chairman Dillon: Mr. Mapp —

Mr. Mapp: If it please the Court, at the outset, on behalf of Mr. Oscar William Fox, Jr., we would like to move the Court to dismiss the rule against him, and also the motion, upon the ground that the applicable statutes under which the Commonwealth is now proceeding are unconstitutional. I take it the Commission does not care to hear any arguments on that question, but we did not want to neglect to bring that out before the Commission at the very outset.

page 5] Commissioner Catterall: How could they possibly be unconstitutional?

Mr. Mapp: Well, Sir, we think for a great number of reasons they could. It is a denial of due process of law that is embraced in certain subject matters in regard to title, just to mention two of them. We anticipate that one of the major questions before the Commission in this hearing will be the residence or domicile of Mr. Fox, which we think is purely a question of fact to be determined from the evidence to be presented to the Commission. We think that is basically a jury question and it should be passed upon by a jury.

Furthermore we feel that this Act, under which the Commonwealth is now proceeding, it embraces a criminal action which carries a fine and penalty. It is also a civil action in that the Commonwealth is asking for a judgment against this

man. These are two separate things embraced in one act which we think affects the constitutionality of the Act.

page 6] Chairman Catterall: We have been entering civil and criminal judgments in the same case for about thirty years now, so I reckon that is binding on us.

Mr. Mapp: Well, we have not been able, perhaps there is one, but we have not been able to find a case in which the Supreme Court has passed upon this question. There is a case now pending before the Supreme Court.

Chairman Dillon: Motion is over-ruled.

page 7] JAMES S. BAIRD,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Will you give your full name, Mr. Baird.

A. James Spencer Baird.

Q. What is your position?

A. Trooper, *Virgnia* State Police.

Q. And one of your duties has been to check operations by motor vehicles on highways of Virginia, and also to make investigation of the locations of the operators of those motor vehicles, is that right?

A. That is correct.

Q. And you have been employed by the State Police for how many years?

A. Since August 1st, 1955.

Q. And you are familiar with the minimum requirements and all the requirements of the State Police Department?

A. Most of them, I think.

Q. All those things as a trooper you are supposed to know?

page 8] Q. Now, Mr. Baird, I believe you made an investigation of the operation of Mr. Oscar William Fox, Jr., of Chincoteague, Virginia, did you not?

A. Yes, Sir.

James S. Baird

Q. Mr. Baird, did you stop Mr. Fox with respect to this matter?

A. Yes, Sir, I stopped Mr. Fox on May 25th, 1965 at approximately three ten P. M. on North Main Street in Chincoteague, Virginia. When I stopped the above truck I asked the operator, Oscar William Fox, Jr., who I knew, for his operator's license and his registration card. He asked me what he had done, and I told him he had done nothing — that I just wanted to see the registration card and his operator's license. He then asked me if he had to show them to me, and I told him the law required him to show them to me, and he replied by saying: "That is a Hell of a law."

Commissioner *Cqtterall*: He did not say it was unconstitutional?

A. No, Sir, he said it was "A Hell of a law," and he said "This world would be a lot better off if there were no such laws."

page 9] Mr. Seibert:

Q. What kind of truck was it?

A. It was a 1962 International, ten wheel truck.

Mr. Seibert: I might say that a ten wheel truck is under the regulations and within the requirements of the Section I referred to before.

Q. He was not very courteous to you, was he?

A. No, Sir, he was not.

Q. Did you, in furtherance of your duty, make further checks of the operation of Mr. Fox, and I believe you started with checking the telephones, is that right?

A. The day I stopped Mr. Fox's truck he finally presented me with the cards I requested and he presented me with a Delaware operator's license No. 449136, which gave his address as 206 North Second Street, Delmar, Delaware.

Q. Did he give you the box number too?

A. No, Sir. The truck was displaying 1965 Delaware registration number C-41323, issued for this truck to the above subject, at 206 North Second Street, and the registration

card did have the box number 138, Delmar, Dela-
page 10] ware.

1964 State Corporation Commission identification marker being displayed on this truck No. 72816, which was issued for this particular truck to Oscar William Fox, Jr., 206 North Second Street, Post Office Box 138, Delmar, Delaware.

Q. Did you check the telephone service for Mr. Fox?

A. Yes, Sir. On May 26, 1965, I checked the local telephone directory and found a listing for Oscar Fox, Maddox Boulevard, Chincoteague. I knew this to be the residence of Oscar William, Fox, Jr.'s father.

Q. What further check did you make?

A. On May 26, 1965, I checked with the Onancock Information Operator for a listing for Oscar William Fox, Jr., 614 S. Main Street, Chincoteague. Information operator advised me —

Mr. Mapp: If Your Honor please, we object to that as being purely hearsay. We don't think it is proper.

Chairman Dillon: It is an investigation. Objection *over ruled.*

A. (Continued) The information operator ad-
page 11] vised me that they did not have a listing for Oscar William Fox, Jr., but they did have an unpublished number for Billy Fox, at Chincoteague, and a request that this number not be given out.

Q. I believe the Business Manager said he would have to have a court order to give that number out, is that correct?

A. Yes. On May 27th, 1965, I contacted Mr. T. B. Scarburgh, Jr., Business Manager for the C. & P. Telephone Company at Onancock, for the purpose of trying to obtain information on the unpublished number for Billy Fox. Mr. Scarburgh said as much as he would like to, he could not give me this information, but would contact his supervisor and see if he could get authority to furnish me with this information, and on the following day, May 28th, Mr. Scarburgh called me and said he could not get permission to furnish me with the unpublished number for Billy Fox.

James S. Baird

Commissioner Catterall: Is Mr. Billy Fox Mr. Oscar William Fox, Jr.?

A. Yes, *S*ir.

Q. He was not the driver that you stopped?

A. Yes.

page 12] Q. Oh, he is the driver that you stopped?

A. Yes.

Mr. Seibert:

Q. Mr. Baird, do you know Mr. Fox?

A. Yes, *S*ir, I do.

Q. How long have you been in this area in which Mr. Fox lives?

A. I have been there since March 1956.

Q. And to your recollection, is Mr. Fox located and *live* in Chincoteague, Virginia?

A. I have known him for approximately seven or eight years, and as far as I am concerned, that is where he lives. That is where I would go to contact him if I want to find him.

Commissioner Catterall:

Q. Just where do you contact him?

A. I have not made any contact personally with him except the day I stopped him, but he is seen regularly at Chincoteague.

Mr. Seibert:

Q. Where does he live?

A. As far as I can determine, 614 South Main

page 13] Street, Chincoteague.

Q. Did you check in the Clerk's Office of Accomack County with respect to Mr. Fox?

A. Yes, *S*ir. On June 1, 1965 I examined the 1964 Land Book in the Accomack County Clerk's Office at Accomac, *Virtinia* and I could find no real estate listed in the name of Oscar William Fox, Jr., Chincoteague, Virginia. I found two lots and a building —

Q. That was a building belonging to his Father, nothing in the name of Oscar William Fox?

A. No, *S*ir.

James S. Baird

Q. Now, did you go to the office of the Commissioner of Revenue of Accomack County, and if so, what did you find there?

A. On June 1, 1965 I contacted Mr. Willard Gladding, who is the Deputy Commissioner of Revenue in the Commissioner of Revenue's Office at Accomac. Mr. Gladding allowed me to examine the records in his office with him and we were unable to find where Oscar William Fox, Jr. had filed a 1964 State Income return.

Q. What did you find?

page 14] A. We did find where Oscar William Fox and wife at Maddox Boulevard, Chincoteague, had filed a personal property return on May 1st, 1965.

Q. They were the parents of Oscar William Fox, Jr.?

A. Yes.

Q. Now, what about the Sheriff's Office? What did you find in the Sheriff's Office of Accomack County?

A. On June 1, 1965, I contacted Deputy Sheriff Robert Tull of the Accomack County Sheriff's Office. Deputy Tull lives at Chincoteague, and in talking with Deputy Tull he referred to Oscar William Fox, Jr., as "Bill Fox." Mr. Tull stated that he had known the subject all of his life and, as far as he knew, he had always lived at Chincoteague. Mr. Tull stated that he thought the subject now lived at 614 South Main Street, Chincoteague because he always saw his vehicles parked there.

Mr. Tull further advised me that the subject was married to the former Miss Mildred Jester, daughter of Mr. Clarence Jester, who owns the apartment building at 614 South Main Street, Chincoteague, where Bill lives.

Q. Now did you check the town office at Chincoteague?

page 15] A. Yes, Sir. On June 3, 1965 I contacted Miss Virginia Birch, who is the Town Clerk at Chincoteague. I asked Miss Birch if Oscar William Fox, Jr. had water in his name and if he was paying any town tax. Miss Birch advised me that the subject did have water in his name and when she examined the water ledger, which she allowed me to see, she found that it was listed in the name of "Bill Fox," 614 South Main Street, Chincoteague. This ledger

James S. Baird

sheet indicated the monthly water bill had been paid for the months February through June 1965. Miss. Birch could not find the subject's name on the town tax book.

Q. What was the check you made with the Eastern Shore Public Service Electric Company show in regard to furnishing him with electricity?

A. On June 3, 1965 I contacted Mr. C. E. Saunders, who is the Business Manager for the Eastern Shore Public Service Company at Chincoteague, Virginia. I asked Mr. Saunders if Oscar William Fox had electricity in his name at 614 South Main Street. Upon examining the records in his office, which I was allowed to see, we found that the service

page 16] at 614 South Main Street was in the name of Mildred Fox, wife of Oscar William Fox, Jr.

Q. Then I believe you went to Delmar, Delaware, that is right, is it not?

A. Yes, Sir, on June 8th, 1965 I went to the Post Office at Delmar, Delaware. I there contacted Mr. W. C. Calloway, who is the Postmaster at Delmar, Delaware. Mr. Calloway advised me that he had been Postmaster for a little over two years, and that Oscar William Fox, Jr. had had a post office box there since before then. Mr. Calloway stated that he did not know the subject, and that he knew most of the people that got mail there. Mr. Calloway stated that a Mr. Joseph Walker lived at 206 North Second Street.

Q. And 206 North Second Street is the address given by Oscar William Fox, Jr., is that right?

A. Yes, Sir. I also on June 8th, 1965, while at Delmar, contacted Mr. George P. Hearne, who is the postman who delivers mail to that section of Delmar. Mr. Hearne advised me that he had delivered mail for subject Fox at that address but he would not know the subject if he saw him. He further said that he had never seen any trucks parked in that vicinity with the name of Oscar William Fox, Jr.

page 17] on them.

Q. Did you go to 206 North Second Street?

A. Yes, I went to 206 North Second Street, Delmar, Delaware on June 8th, 1965. There was no one home at that time and I went to a bar and liquor store which is owned and operated by Mr. Joe Walker. After identifying myself and

telling Mr. Walker why I was there, Mr. Walker stated that he did live at 206 North Second Street, and that Oscar William Fox, Jr. and a nephew of his, Page Walker, did share a room in his home and that they would stop by from time to time and lay over for the night when they were on the road. Mr. Walker also advised me that Mr. Fox's wife and child had never stayed there and he had never seen them. He further stated that he kept no records of the rent for this room.

Q. Did you check the Delaware State Tax Office?

A. Yes, Sir. On June 9th.

Q. Who did you talk to there?

A. I contacted a Mrs. Tull in this office and, after telling her who I was and why I was there, Mrs. Tull was unable to find any records of Mr. Fox filing a State income tax return in that office, and from there she put me

page 18] in contact by direct telephone with a Mrs. Levalle in the Delaware State Home Office at Wilmington, Delaware. Mrs. Levalle advised me that the records in that office showed that Oscar William Fox, Jr, and wife, Mildred Fox, filed a return in 1963, which listed his occupation as trucking and his wife's as secretary. Mrs. Levalle also advised that Oscar William Fox, Jr. and wife, Mildred Fox, had filed a Delaware State Income return for the year 1964.

Q. Now, I believe you then went to the Division of Motor Vehicles? The one in Dover, Delaware.

A. Yes, Sir, On June 9th, 1965 I went to the Motor Vehicle Department, which is located at Dover, Delaware, and there I was allowed to examine the registration and title file in this office for vehicles registered in the name of Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware.

Q. Did you make a list of the equipment that was registered by Mr. Fox in Delaware?

A. Yes, Sir.

Q. Could you give us that list?

A. I found a 1961 International, Serial number FA 78339G, which had been issued 1965 C34842 registration.

page 19] The title file indicated that this vehicle had been purchased February 2nd, 1961 from Parks Motor Company at Parksley, Virginia, and the conditional sales lien in the amount of Nine Thousand One Hundred and Sixty

Five Dollars and Eighty Four Cents was recorded in favor of the Citizens Acceptance Corporation, Salisbury, Maryland.

Q. You can leave those amounts out, if you will. What is the second one?

A. No. 2 was a 1962 International truck, Serial number SB 228925F, which had been issued 1965 Delaware registration C41323. The title indicated that this vehicle had been purchased on April 28th, 1962 from Parks Motor Company, Parksley, Virginia.

Q. The lien was in favor of what company?

A. The lien was in favor of the Citizens Acceptance Corporation, Salisbury, Maryland.

Q. What was the third one, Mr. Baird?

A. The No. 3. vehicle was a 1961 International truck, Serial FB 20631F, which had been issued 1965 Delaware registration C-14642. The title indicated that this vehicle had been purchased on May 1st, 1962 from Oliver Bowden, Jr.,

page 20] Church, Street, Chincoteague, Virginia The lien was in favor of Citizens Acceptance Corporation, Salisbury, Maryland.

Q. What was the fourth one?

A. The fourth one was a 1964 International truck, Serial EF 27754, which had been issued Delaware registration C24477. This equipment had been purchased on March 11th, 1964 from Parks Motor Company, Incorporated, Parksley, Virginia. The lien was in favor of the Wilmington Trust Company, Georgetown, Delaware.

Q. Now the fifth one, I believe, was a pick-up truck?

A. Yes. The fifth one was a Ford pickup truck, serial F10CF273374.

Q. We need not go into that but it was purchased from whom, do you know? (I might say, if the Commission please, that the State Corporation Commission does not require any evidence of license or card from us on a two axle truck).

Commissioner Catterall: He has got four identification markers?

Mr. Seibert: He has more than that. We will pass over that number five.

James S. Baird

page 21] Q. Now give us No. 6.

A. No. 6 was a 1961 International truck, Serial number FA 81082F, which had been issued Delaware registration C-40518. The title indicated that this vehicle had been purchased May 11th, 1961 from Parks Motor Company, Inc., Parksley, Virginia, and the lien was in favor of the Citizens Acceptance Corporation, Salisbury, Maryland.

Q. That lien was satisfied and recorded in the name of another company?

A. The lien was satisfied on February 24th, 1965 and another lien was recorded on February 19th, 1965 in favor of Maryland National Bank, Snow Hill, Maryland.

Q. Now No. 7.

A. No. 7 was a 1960 International truck, Serial FA56572F, which had been issued Delaware registration C-8403. This vehicle had originally been issued a Virginia title number 713989, issued January 28, 1960 to Oscar Fox, Chincoteague, Virginia.

Q. The lien was with what company?

A. The lien was in favor of the Citizens Acceptance Corporation, Salisbury, Maryland. The vehicle
page 22] was purchased on April 15, 1961 by Oscar William Fox, Jr., and a note was recorded in favor of Oscar Fox, Sr., Chincoteague, Virginia.

Q. How about No. 8?

A. No. 8 was a 1963 International truck, Serial EF 21440, which had been issued Delaware registration C 38542. This vehicle had been purchased February 2, 1963 from Parks Motor Company, Inc., Parksley, Virginia and the lien was in favor of Citizens Acceptance Corporation, *Salsbury,* Maryland, and changed on March 18, 1964 to the Wilmington Trust Company, Georgetown, Delaware.

Q. How about No. 9?

A. No. 9 was a 1962 International truck, Serial EF 13811 H, issued Delaware registration C 18306, and the title indicated that this vehicle had been purchased November 11th, 1961 from Parks Motor Company, Inc., Parksley, Virginia. The lien was recorded in favor of the Citizens Acceptance Corporation, Salisbury, Maryland, and had been changed on February 4th, 1964 to the Wilmington Trust Company, George-

town, Delaware.

Q. Did you find that several trailers were registered all with Delaware plates on them?

page 23] A. Yes, Sir. Do you want me to go into those?

Mr. Seibert: If the Commission please, we have nothing to do with trailers and unless it is pertinent for the Department of Motor Vehicles, we won't go into that.

Mr. Woodroof: It would be pertinent.

Mr. Seibert: All right. Let's go into those, No. 10.

A. No. 10 was a 1961 TBC Trailer, Serial RT 3561305, which had been issued Delaware registration T-2832. This trailer had been purchased on May 18th, 1961 from the Truck Body Corporation, Lynchburg, Virginia, and the first lien was recorded in the name of the Lynchburg National Bank & Trust Company, Lynchburg, Virginia. This lien was satisfied on June 5th, 1963 and a new lien was recorded on February 23rd, 1965 in favor of the Maryland National Bank, Snow Hill, Maryland.

Q. Number 11.

A. Number 11 was a 1962 TBC Trailer, Serial RT-3662337, issued Delaware registration T-20179. This trailer was purchased on March 30th, 1962 from the Truck

page 24] Body Corporation, Lynchburg, Virginia, and the lien was recorded in favor the Lynchburg National Bank & Trust Company, Lynchburg, Virginia.

Q. No. 12.

A. No. 12 was a 1964 Great Dane Trailer, Serial 25954, Issued Delaware registration T 13322. This trailer had been purchased February 11th, 1964 from the Watson Automotive Equipment Company, Baltimore, Maryland, and the lien was recorded in favor of that Company.

Q. No. 13.

A. No. 13 was a 1965 Pontiac, Serial No. 266575 E 116753, which had been issued Delaware registration 161668. This was purchased on December 7th, 1964 from Bratten Pontiac Corporation, 897 Little Creek Road, Norfolk, Virginia. A lien was *record* on this vehicle in favor of the Maryland National Bank, Snow Hill, Maryland.

James S. Baird

Q. No. 14.

A. No. 14 was a 1960 Chevrolet sedan, Serial 01819 B 170207, which had been issued Delaware registration 81936. This vehicle was purchased April 2, 1963 from Duncan Brothers Corporation, Pocomoke City, Maryland. The lien was recorded in favor of the Maryland National Bank,

page 25] Snow Hill, Maryland.

Q. No. 15.

A. No. 15 was a 1962 Chevrolet hard top, Serial No. 21847 B 196733, issued Delaware registration 186978, purchased on March 29, 1962 from Duncan Brothers, Pocomoke, Maryland.

Q. No. 16?

A. No. 16 was a 1951 Trailmobile Trailer, which had been issued Delaware registration T 15511, and the title file was out of files and could not be located.

Mr. Seibert: Now, if the Commission please, I would like to call attention and place in the record the cards issued by the Transportation Division of the State Corporation Commission, for the years issued:

Card issued on March 18, 1964, card 19263, Oscar William Fox, Jr., 206 North Second Street, Box 138, Delmar, Delaware, International Serial Number EF 27754-H, Delaware tag.

On June 26th, 1964 the following cards:

page 26] Card 72813 International 78339 G Delaware tag
Card 72814 International EF21440, Delaware tag
Card 72815 International V 195 FA 81082 F Delaware tag
Card 72816 International SB228925 F Delaware tag
Card 72817 International EF 13811 H Delaware tag
Card 72818 International W-195 FA 56572 F Delaware tag
All cards signed by Oscar William Fox, Jr.

Now issued in 1965 to Oscar William Fox, Jr., all on June 17, 1965, address 206 North Second Street, Delmar, Delaware:

Card 64474 International WF 530, Delaware tag
Card 64475 International EF-27754 Delaware tag

James S. Baird

Card 64476 International 78339-G Delaware tag
Card 64477 International EF 21440 Delaware tag
Card 64478 International V195FA81082F Delaware tag
Card 64479 International SB20631F Delaware tag
Card 64480 International EF13811H Delaware tag
All cards signed by Oscar William Fox, Jr.

Chairman Dillon: You want to put those in?
Mr. Siebert: Yes, Sir. They are part of the records of the Commission.
page 27] Chairman Dillon: Will you have a copy of them made.
Mr. Siebert: I will have a copy of them made.
Chairman Dillon: And that will be put in as Exhibit No. 1.

Mr. Siebert:
Q. Now, Mr. Baird, I believe you made some road checks in connection with this operation. Will you begin and state the dates on which you made these checks and what they developed.
A. On May 25, 1965, at approximately 3:45 P. M. on Route 175, just East of Wattsville, in Accomack County, I had the occasion to check a tractor-trailer being operated by Moody Kellam Miles, Jr., of Saxis, Virginia.
Q. When you say "being operated," you mean?
A. Being driven.
Q. Being driven?
A. Yes, Sir. The driver presented me with a chauffeur's license which was a Virginia Chauffeur's license, which indicated his address to be Saxis, and I knew him personally. He was operating a 1963 International tractor, Serial Number EF 21440, which was displaying
page 28] 1965 Delaware Registration C 38542, issued for this tractor to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware.

The 1964 Great Dane Trailer, Serial 25954, was displaying 1965 *Deleware* Registration T 13322, issued for this trailer to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware. The 1964 State Corporation Commission's identification marker No. 72814 was issued June 26, 1964, for the

above tractor to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware.

Mr. Miles stated to me that he had never been dispatched or paid from 206 North Second Street, Delmar, Delaware. He stated that he had been driving for Billy Fox for three years and he and Billy usually settled up after six or seven loads anywhere they could get together. The operator, Mr. Miles, said he worked on a commission and got his own loads. He stated that when he was home he left the truck parked at Highway Service, Oak Hall, Virginia, and had never left it or picked it up from 206 North Second Street, Delmar, Delaware.

Q. Now on June 2nd did you make a check again?

A. You want this one?

page 29] Q. You can take up the one on May 26th first.

A. On May 26th, 1965, at approximately 11:45 A. M. on Route 13 at Mappsville, I had the occasion to check a 1961 International truck. This truck was displaying a 1965 Delaware registration C 14642, issued for this truck to Oscar William Fox, Jr. 206 North Second Street, Delmar, Delaware. The driver of this truck was Oscar William Fox, Sr. and he presented me with a Georgia operator's license, which listed his address as P. O. Box 151, Savannah, Georgia, and in talking with Mr. Fox he stated that he was empty at that time and he had just come from Parks Motor Company at Parksley, Virginia, where he had had some work done on the truck. I checked with the Division of Motor Vehicles in Richmond on May 26th, 1965 and the records there reveal that Oscar William Fox, Sr., of Maddox Boulevard, Chincoteague, Virginia, had had a Virginia operator's license and this had expired on March 31st, 1965.

Q. Now, what is your next one?

A. The next one was on June 2, 1965 at approximately twelve noon on Route 13 just North of Accomac

page 30] in Accomack County, I had the occasion to check a tractor trailer being operated by Marvin Joe Fisher, Mears, Virginia. Mr. Fisher presented me with a Virginia Chauffeur's license, which indicated his address to be Mears, Virginia. I also knew him personally and knew he did live at Mears.

James S. Baird

The truck he was driving was a 1962 International Tractor, Serial EF 13811H and was displaying 1965 Delaware registration C18306 issued for this tractor to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware, and the 1962-63 TBC trailer, Serial RT 3863357, was displaying 1965 Virginia Registration RT/H 18-306, issued for this trailer to Oscar William Fox, Jr., Chincoteague, Virginia. This license had been issued on April 13, 1965.

The tractor was displaying identification marker issued by the State Corporation Commission 72817, which was issued for this tractor to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware. The driver stated that he had been driving for Mr. Fox about one year and when he was home he always left the truck parked at the C & D Truck Stop, Pocomoke City, Maryland, unless it was going to

page 31] be loaded with seafood and then he would leave it at Chincoteague. He stated he and Billy Fox usually settled up at the C & D Truck Stop and that he had never been *tom206* North Second Street, Delmar, Delaware.

Commissioner Catterall: Was that a State Corporation Commission identification marker or classification plate?

Mr. Seibert: It could be the identification marker and classification plate bearing the same number.

Commissioner Catterall: This seems to be a Virginia licensed vehicle.

Mr. Seibert: No, Sir.

Commissioner Catterall: I thought he said it was licensed in Virginia.

A. The trailer.

Mr. Seibert: The trailer.

A. The trailer was licensed in Virginia and the license was issued to Oscar William Fox, Jr. at Chincoteague.

Chairman Dillon: But the tractor was licensed in Delaware?

A. The tractor was licensed in Delaware also

page 32] to him at the address 206 North Second Street, Delmar.

Mr. Seibert:

Q. Now go ahead with the one of June 8th.

A. On June 8, 1965, at approximately 11:35 A. M. on Route

175, about one mile East of Wattsville in Accomack County, I had the occasion to check a tractor trailer being operated by Donald Luther Riley, 425 South Main Street, Chincoteague, Virginia. This driver had a Virginia operator's license, which gave his address as 425 South Main Street, Chincoteague. The tractor was a 1961 International tractor, Serial FA 81082F, and was bearing 1965 Delaware registration C 40518, issued for this tractor to Oscar William Fox, Jr. 206 North Second Street, Box 138, Delmar, Delaware.

The 1961 TBC Trailer, Serial RT 3561305 was displaying 1965 Delaware Registration T 2832 issued for this trailer to Oscar William Fox, Jr., 206 North Second Street, Delmar, Delaware.

The 1964 State Corporation Commission identification marker 72818 was issued for International Tractor Serial FA 56572 F to Oscar William Fox, Jr. 206 North Second Street, Delmar, Delaware.

page 33] Q. Now you have another on June 8th, haven't you?

A. On June 8th, 1965 at approximately 11:50 A.M., about two miles East of Wattsville on Route 175 in Accomack County, I had occasion to stop and check a tractor trailer driven by James Henry White. He presented me with a Virginia chauffeur's license indicating his address to be 37 Beebe Road, Chincoteague, Virginia. The tractor he was driving was a 1961 International Tractor Serial FA 78339 G, which was displaying 1965 registration, issued for this tractor to Oscar William Fox, Jr., at 206 North Second Street, Delmar, Delaware.

The trailer, a 1962 TBC trailer, Serial 3662337 was displaying 1965 Delaware registration T 20179, which was issued for this trailer to Oscar William Fox, Jr., at 206 North Second Street, Delmar, Delaware.

It was bearing a 1964 State Corporation Commission marker 72813, which was issued for this tractor to Oscar William Fox, Jr., at 206 North Second Street, Delmar, Delaware.

Q. Now, Mr. Baird, will you give us the time you spent in checking vehicles on Chincoteague and the number

page 34] of vehicles you found at Chincoteague, Virginia, which were operated in the name of Oscar Wil-

liam Fox, Jr. I believe you did it in about twenty out of twenty seven days; is that right?

A. Yes, Sir. Commencing on May 25th, 1965, I went to Chincoteague twenty days out of twenty seven days, and found vehicles parked at various locations apparently during their leisure time.

Commissioner Catterall: You mean they were empty?

A. I don't know that they were empty. They were just sitting there, parked there.

On May 25th, 1965 at two thirty P.M. at Maddox Boulevard on *Chincotague,* in the vicinity of Mr. Fox's Father's home, I found a 1961 International truck, displaying Delaware Registration C14642, and a Great Dane Trailer displaying Delaware Registration T-13322, and a 1963 International Tractor, displaying Delaware registration C-38542 and a 1951 Trailmobile Trailer, displaying Delaware 2-15511, and another green International tractor, and the license on this I could not see at the time, and a 1962 Blue Chevrolet automobile hardtop, displaying Delaware license 186-978.

page 35] By Mr. Seibert:

Q. That was a passenger car?

A. Yes.

Q. All right.

A. That was on May 25th. On May 26th, 1965 at 10:45 A.M., on Maddox Boulevard, Chincoteague, Virginia, I found a 1962 International truck, ten wheel, displaying Delaware C-41323.

A 1951 Trailmobile Trailer, Delaware registration T-15511.

A 1962 TBC trailer Delaware registration T-20179.

A 1961 International Tractor, Delaware registration C-34842.

And a 1962 Blue Chevrolet Hardtop sedan, the same number as before.

Q. All right.

A. Also on May 26th, 1965 at 11:00 A.M. at 614 South Main Street, Chincoteague, Virginia I observed a 1962 Black Ford Pickup truck parked in front of this address. This was displaying Delaware registration C-1358.

James S. Baird

Q. When you say "this address" you mean 614
page 36] South Main Street?
A. Yes, Sir.

Q. All right.

A. On May 27th, 1965 at 614 South Main Street, Chincoteague, at 3:35 P. M., I observed a 1962 Blue Chevrolet Hardtop, this bearing Delaware registration 186978, parked at this address.

On May 27th, 1965, 3:45 P. M. parked on the North side of Beebe Road, Chincoteague, near the home of one of the operators, Mr. White, I observed a 1961 International tractor, Delaware C40518, and a 1961 TBC Trailer T-2832.

On *May27th,* 1965 at 3:55 P. M., parked at Jones & Mason's Garage, Chincoteague, Virginia, I observed a 1951 Trailomobile Trailer, Delaware T15511; an International tractor, Delaware C40518; 1961 International truck C-14642.

On May 27th, 1965 at 4 P. M. I observed parked on Maddox Boulevard, *Chincotrague,* Virginia, a 1962 International truck, Delaware Registration C-41323; a 1962 TBC Trailer, Delaware T-20179; 1961 International Tractor, Delaware C-34842 and a 1962 Ford pickup truck, C-1358.

On May 28th, 1965 at 1:40 P. M. on Beebe
page 37] Road, Chincoteague, Virginia, I observed parked
a 1961 International tractor, license Delaware C-40518 and a 1961 TBC Trailer T2832, Delaware registration.

On May 28th, 1965 at 1:45 P. M., parked at Jones & Mason's Garage at Chincoteague, Virginia, I found a 1961 International truck, Delaware C-14642, 1960 International tractor Delaware C-8403, and a 1951 Trailomobile Trailer, Delaware T-15511.

On May 28th, 1965 at 1:50 P. M. at 110 Maddox Boulevard, Chincoteague, Virginia, I found a 1961 International tractor C-34842, a 1962 TBC Trailer T-20179, and a 1962 Ford Pickup Delaware C-1358.

On May 28th, 1965 at 2 P.M. parked in front of Chincoteague High School, Chincoteague, a 1962 Chevrolet Hardtop, Delaware registration 186978.

On May 28th, 1965, at 2:20 P. M. I was coming off of Chincoteague and on the Chincoteague Draw Bridge, and I

met Oscar William Fox, Jr. coming onto Chincoteague, operating a 1962 International truck. This truck bore license C-41323. I turned around and followed this truck to where it parked on Maddox Boulevard.

page 38] On May 29th, 1965, 2:05 P. M., on Maddox Boulevard, Chincoteague, I found a 1962 International truck with Delaware registration C-41323; 1962 TBC trailer registration T020179; 1964 International Tractor C-24477, and a 1951 Blue Chevrolet Hardtop 186978, Delaware license.

Commissioner Catterall: How far is Maddox Avenue from 614 South Main Street?

A. I would say roughtly about seven or eight blocks.

Q. Is Maddox Avenue especially suitable for parking trucks?

A. No, Sir. It is a residential section. There is a vacant lot across the street, just up the street a little way from Mr. Fox's home where he parks some of these trailers and some are parked along the curbing of the street.

Q. Some along the curbing and some on the vacant lot?

A. Yes, Sir.

By Mr. Seibert:

Q. Continue.

page 39] A. On May 29th, 1965 at 2:10 P. M. at Jones & Mason's Garage, Church Street, I observed a 1960 International tractor, Delaware registration C-8403, and a 1951 Trailmobile trailer T-15511.

On May 29th, 1965 at 2:10 P. M. I observed a 1964 International tractor, which turned off of North Main Street on to Church Street into Chincoteague. It was bearing Delaware 1965 C-24477 and was being operated by Kenneth Northam of Parksley, Virginia.

Q. May 30th now?

A. On May 30th, 1965 at 8:30 A. M. parked at Annis Texaco, Nelsonia, Virginia, in Accomack County a 1964 International tractor C24477.

On May 30th, 1965, at 1:00 P.M. parked on Beebe Road, 1962 International truck, Delaware registration C-41323.

James S. Baird

On May 30th, 1965, at 1:05 P. M., parked at Albert Nocks Garage, Chincoteague, Virginia, a tractor and two trailers. I could not see the license number on these trailers, but the name of Oscar William Fox, Jr. of Delmar, Delaware was painted on the side.

On May 30th, 1965 at 1:10 P. M. parked on Maddox Boulevard, Chincoteague, Virginia, a 1961 International truck, C 34842, Delaware registration, and a 1962 TBC Trailer, displaying Delaware registration T-20179, and a 1962 Chevrolet hardtop.

page 40]

Q. Mr. Baird, unless it is otherwise than Delaware registration just give the number.

A. On May 31st, 1965, at 9 A. M., parked at Annis Texaco, Nelsonia, Accomack County, Virginia, 1964 International Tractor C-24477.

On May 31, 1965 on the North side of Beebe Road, 1962 International truck C-41323.

On May 31, 1965, at 10:50 A. M. at Albert Nocks Garage, Chincoteague, Virginia, one International tractor and two trailers. I could not see the license number on these trailers but they were bearing the name of Oscar William Fox, Jr., Delmar, Delaware painted on the side.

On May 31, 1965 at 10 A. M. parked on Maddox Boulevard, Chincoteague, Virginia, 1962 Chevrolet Hardtop, *1961 International* tractor G-34842, and a 1962 TBC Trailer T-20179.

On June 2, 1965 at 8:45 A. M., at Highway Service Station, Oak Hall, Virginia, a 1963 International tractor C38542 and a 1964 Great Dane Trailer, T-13322.

Again on June 2, 1965, at Albert Nocks Garage, Chincoteague, Virginia, there was one tractor and two trailers. I could not see the license number on these trailers and tractor.

page 41]

On June 2, 1965 at 9:15 A. M., parked on Maddox Boulevard *Chincotague,* Virginia, a 1961 International truck, C-14642, and a 1962 Ford pickup C-1358.

On June 2, 1965 at 9:18 A. M. at Chincoteague High School, Chincoteague, Virginia, I observed a 1962 Blue Chevrolet Hardtop, 186978.

On June 3rd, 1965 at 9:50 A. M. parked at Albert Nocks

Garage, two trailers and one tractor.

On June 3rd, 1965 at 9:50 A. M. on Church Street, I met a 1962 International tractor displaying Delaware C-41323.

On June 3rd, 1965 at 9:55 A.M. parked on Maddox Boulevard, Chincoteague, a 1961 TBC trailer T-2832, a 1961 International Tractor C-40518, a 1962 Ford Pickup truck C-1358, a 1962 Chevrolet Hardtop 186978, and a 1961 International truck C-14642.

Commissioner Catterall: How about letting the reporter just copy the rest of it? How much more do you have?

page 42] A. Two more pages.

Mr. Seibert: Two and a half more pages.

Chairman Dillon: How about letting her just copy that in the record? Do you have any objection to that?

Mr. Mapp: No, Sir. We think it is entirely immaterial, the evidence that is being introduced, but we have no particular objection to it. Certainly have no objection to submitting a copy in the record.

Chairman Dillon: Then it will be copied into the record as if read.

Commissioner Catterall: The rest of those too, if you give a copy to the reporter, she can check all of those license numbers.

Mr. Seibert: I have a copy.

Commissioner Catterall: For the reporter.

Mr. Seibert: I will give her a copy.

NOTE: The following is the information to be copied into the record by the reporter.

A. On June 5th, 1965 at 6:00 P. M. at Annis Texaco, Nelsonia, Accomack County, 1964 International

page 43] tractor, C-24477.

On June 7, 1965, 8:50 A. M. on Beebe Road, 1962 International truck C41323.

On June 7, 1965, 9:00 A. M. parked on Maddox Boulevard, 1961 International truck C-14642, and a 1962 Chevrolet Hardtop, 186978.

James S. Baird

On June 7, 1965 9:15 A. M. at Albert Nocks Garage, 1962 TBC Trailer, T-20179, and a 1961 International Tractor C-34842, and another trailer but could not get the number.

On June 8, 1965 at 10:55 A. M. at Albert Nocks Garage, one trailer.

On June 8, 1965, 10:55 A. M. at Jones & Mason Garage, one International Tractor.

On June 8, 1965 at 11 A. M. on Maddox Boulevard, 1962 Chevrolet Hardtop, 186978, and 1961 International truck C-14642.

On June 8, 1965 at 11:20 A. M. on Route 175, two miles East of Wattsville, headed East, Oscar William Fox, Jr. operating C-1358 1962 Black Ford Pickup.

On June 9, 1965 at 9:17 A. M. at Jones & Mason Garage, one tractor and one trailer.

page 44] On June 9, 1965 at 9:20 A. M. on Maddox Boulevard, one 1962 Chevrolet Hardtop, and one International truck C-14642.

On June 10, 1965, 2:45 P. M. at Jones & Mason Garage, 1960 International Tractor, C-8403, and 1962 International truck, ten wheeler, C-41323.

On June 10, 1965, at 3:00 P. M. at Albert Nocks Garage, 1961 International Tractor, C-040518; 1963 International Tractor, C-38542; 1964 Great Dane Trailer, T-13322; 1961 International Truck, G-14642; 1961 TBC Trailer T-2832, and another trailer T-1026.

On June 10, 1965, at 3:45 P. M. on Maddox Boulevard, 1962 TBC Trailer, T-20179, 1961 International tractor, C34842, 1962 Chevrolet Hardtop, 186978, 1962 Ford Pickup C-1358.

On June 11, 1965 at 2:55 P. M. at Albert Nock's Garage, one trailer T-1026.

On June 11, 1965 at 3:00 P. M. on Maddox Boulevard, Chincoteague, 1 1962 Ford Pickup C-1358; 1 1962 International Truck C-41323; 1961 International Tractor C-34842, and one 1962 TBC Trailer T-20179.

page 45] On June 11, 1965 at 3:10 P. M. at Jones & Mason Garage. 1960 International Tractor C-8403.

On June 11, 1965, at 3:15 P. M. at Willow & Church Streets,

James S. Baird

1962 Chevrolet Hardtop No. 186978, being operated by a white female.

On June 15, 1965 8 P.M. on Maddox Boulevard, a 1961 International tractor, C-34842; 1962 TBC Trailer, T-20179; 1962 Chevrolet Hardtop 186978; 1962 Ford Pickup, C-1358.

On June 16, 1965 at 8:05 P.M. on Maddox Boulevard, a 1961 International Tractor C-34842, 1962 TBC Trailer T-20179; 1962 Chevrolet Hardtop 186978; 1962 Ford Pickup C-1358; 1962 International Truck C-41323.

On June 17, 1965 at 7:45 P.M. on Church Street C-1358, 1962 Ford Pickup.

On June 17, 1965 at 7:50 P.M. on Maddox Boulevard, a 1962 Chevrolet Hardtop 186978; 1961 International Truck, C-14642; 1962 International tractor C-18306; 1961 International Tractor C-34842, 1962 TBC Trailer, T-20179.

On June 18, 1965 at 6:55 P. M. at Route 175 and 13, 1964 International Tractor, C-24477; 1965 Great Dane Trailer; 1962 Ford Pickup, Driver Kenneth Northam was talking to Oscar William Fox, Jr.

page 46] On June 18, 1965, at 7:35 P. M. on Maddox Boulevard, one 1962 International Truck, C-41323; 1962 Chevrolet Hardtop 186978; 1961 International Tractor C-34842; 1962 TBC Trailer T-20179.

On June 18, 1965 7:40 P. M.? at Jones & Mason Garage 1961 International Truck C-14642.

On June 18, 1965, 7:55 P. M., on Route 175, Wattsville, new red International Tractor and trailer headed East towards Chincoteague.

On June 18, *196,* at 8:00 P. M., Route 13, one mile South of New Church, 1962 Ford Pickup being operated by Oscar William Fox, Jr. No. C-1358.

On June 20, 1965 at 8:18 P. M. at 614 South Main Street, Oscar William Fox, Jr. and wife sitting out in front of their apartment.

On June 20, 1965, 8:20 P.M. on Beebe Road, one tractor and trailer.

On June 20, 1965 at 8:25 P. M. at Albert Nocks Garage, 1 New red International Tractor and Trailer.

On June 20, 1965 at 8:30 P. M. on Maddox Boulevard 1962 Chevrolet Hardtop 186978; 1961 International Tractor C-34842; 1962 TBC Trailer T20179.

page 47] By Mr. Seibert:

Q. Mr. Baird, will you first give the Delaware license number and then state on what dates, as you went over this morning, you found these vehicles in Virginia?

A. Delaware registration C-14642, I observed it on May 25th, May 27th, May 28th, June 2nd, June 3rd, June 7th, June 8th, June 9th, June 10th, June 17th and June 18th.

Q. Now the next one.

A. The next one C-38542, I observed it on May 25th, June 2nd and June 10th.

Q. Now the next one.

A. C-41323, I observed it on May 26th, May 27th, May 28th, May 29th, May 30th, May 31st, June 3rd, June 7th, June 10th, June 11th, June 16th and June 18th.

Q. Now the next one.

A. Delaware C-34842 I observed it on May 26th, May 27th, May 28th, May 30th, May 31st, June 7th, June 10th, June 11th, June 15th, June 16th, June 17th, June 18th and June 20th.

Q. How about the next one?

A. G-40518 on May 27th, May 28th, June 3rd

page 48] and June 10th.

C-8403 on May 28th, May 29th, June 10th and June 11th.

C-24477 on May 29th, May 30th, May 31st, June 5th and June 18th.

C-18306 on June 17th.

Q. That tractor-trailer and two trailers you saw in the garage, how long were they there?

A. The tractor trailer I saw parked at Albert Nocks Garage, which I could not see the license number of, was there on May 20th, May 31st, June 2nd and June 3rd.

Mr. Seibert: I believe that is all we have from this witness.

Chairman Dillon: Any cross examination, Mr. Mapp?

CROSS EXAMINATION

By Mr. Mapp:

Q. Mr. Baird, you are attached to the Virginia State Police but you have been assigned to the Transportation Division of the State Corporation Commission to investigate alleged

violations of the licensing provisions; is that correct?

page 49] A. Yes, Sir.

Q. And when were you so assigned?

A. The last part of 1964 and then again this year in May and June of this year, 1965.

Q. Regarding the year 1965, you have been on this tour of duty for two months?

A. Approximately two months or a little less.

Q. I understood you to say that you had occasion to talk to Mr. Oscar Fox, Jr. on May 25th?

A. Yes, Sir.

Q. During the course of your two months investigation did you talk to Mr. Fox at any other time?

A. No, Sir.

Q. When you talked to him on May 25th did he or did he not tell you that he was a resident of the State of Delaware?

A. You want me to state exactly what he said?

Chairman Dillon: I would like to know what he said.

A. I asked him for his operator's license and registration card, and he wanted to know what he had done, and I told him nothing at that time but I just wanted to

page 50] see his registration card and his operator's license. He then asked me if he had to show them to me and I told him that the law required him to do so, and he replied by saying: "This is a Hell of a law, and this world would be a lot better off if there were no such laws." Mr. Fox then presented me with the cards and I asked him to come on back to the car while I got the information I needed off of them, and while I was sitting in the car and he was standing outside of my car, and I was writing the information down, he asked me why we kept stopping his trucks and bothering him, and I told him if he had Virginia tags on his trucks, they would not be stopped as much. He said he did not have to have Virginia tags because he lived in Delaware, and was not going to buy any God damn Virginia tags and would sell his trucks before doing so. He then told me if I would get off my God damn ass and do some work we would be better off. And when I handed him the cards back I thanked him and he replied "You are not so God damn pleased."

Q. Aside and apart from the unfortunate language Mr.

Fox used to you he did maintain that he was a resident of the State of Delaware, is that correct?

page 51] A. Yes, Sir.

Q. He exhibited to you his operator's license which had been issued by the State of Delaware?

A. Yes, Sir.

Q. Before I forget it, now Mr. Fox's trailers as well as his tractors on the motor vehicle here involved, were registered in the State of Delaware, were they not?

A. All except one trailer which is registered in Virginia to him with the address of Chincoteague.

Q. But the others are registered in the State of Delaware, trailers and tractors alike?

A. Cars included.

Q. The license fee on trailers is lower in Virginia than it is in Delaware, is it not?

A. Yes, Sir.

Chairman Dillon: How about the combined fees on tractors and trailers?

A. It would be less in Virginia.

Q. Much less?

Chairman Dillon: The combined fees would be much less in Virginia than in Delaware?

page 52] A. On both—the tractor and trailer?

Commissioner Catterall: Wait a minute, Judge. It would be greater.

Chairman Dillon: No, the total fee of the tractor and the trailer is much greater in Virginia than it is in Delaware.

Mr. Seibert: You didn't say that.

Commissioner Catterall: You said less.

Chairman Dillon: If I said less, I meant greater.

Commissioner Catterall: That is what I say.

Chairman Dillon: He understood what I meant.

Mr. Seibert: Answer that.

A. The fee in Virginia is much greater than the combined fee for a tractor and trailer in Delaware.

Mr. Seibert: That is what I meant.

By Mr. Mapp:

Q. Mr. Fox expressed dissatisfaction with this new law, and

during the course of your examination or investigation, that was no new experience, was it?

A. I have never been talked to like that.

page 53] Q. I don't mean the language which I apologize for Mr. Fox using any such language, but there has been in the course of your investigation, you have run into considerable opposition and disappointment in this law among the truck operators in the State of Virginia, have you not?

Commissioner Catterall: What law are we talking about?

Mr. Mapp: Talking about the license tax law. The law that set the fees on these motor vehicles.

Commissioner Catterall: The complaint was as to his being asked to show his driver's *livense*. Your client was objecting to the law that required him to show his driver's license.

Mr. Mapp: No, *S*ir, the law he said was "a Hell of a law," as I understood it, was dealing with —

Chairman Dillon: Showing his driver's license.

A. Yes, showing his driver's license.

By Mr. Mapp:

page 54] Q. Mr. Baird, you have quoted in some detail the Commissioner of Revenue of Accomack County, Mr. Tull, the Deputy Sheriff, and a Miss Virginia Burch, in charge of the water at Chincoteague, Tom Scarborough in the Telephone Office and at Delmar the post master and George Hearne, the postman, and Joe Walker, also of Delmar, in all of those conferences in which you have quoted those people was Mr. Fox present?

A. No, *S*ir, he was not.

Q. I think your investigation disclosed that he had filed his Delaware income tax returns in the State of Delaware?

A. Yes, *S*ir, for 1963 and 1964.

Q. Do you know about 1962?

A. No, *S*ir. I do not.

Q. You don't know whether he filed it that year or not?

A. No, *S*ir.

Q. Do your investigations also show that he filed his Federal returns with the District Director for the State of Delaware?

A. I did not check that.

Q. I think you testified that his personal automobile was

James S. Baird

licensed in Delaware?

A. Yes, Sir.

page 55] Q. As a matter of fact, sometime ago did you have occasion to arrest Mr. Fox on a charge of operating his motor vehicle, his automobile, with improper registration in Accomack County?

A. Some several years ago.

Q. About when, do you know?

A. I would have to say I imagine, three or four years ago. I don't know, I don't remember that far back.

Q. What was the basis of your charge?

A. I forget now, I believe the charge was improper registration and no Virginia driver's license, I believe. I don't recall.

Q. On the registration charge was that tried in the County Court of Accomack County?

A. Yes, Sir.

Q. What happened?

A. It was dismissed.

Q. And he has his operating license in the State of Delaware and has had them for several years?

A. Yes.

Q. You said you talked to Mr. Joe Walker?

page 56] A. Yes.

Q. At Delmar?

A. Yes.

Q. Did he tell you that he had rented a room, and that Mr. Fox shared a room there with another man at his place?

A. Yes, Sir.

Q. Mr. Walker operates a bar and restaurant combination, does he not?

A. Yes, he does.

Q. How far is that from the address of his home?

A. Just a short distance. I don't remember exactly how far, some four or five blocks.

Q. In other words, if he is operating his restaurant, he is not in position to observe someone going in and out of his home from his place of business?

A. I don't believe so.

Q. Have you looked at the bill heads used by Mr. Fox?

A. No, Sir.

Q. You don't know whether they list Delaware,

page 57] Chincoteague or both, do you?

A. No, Sir, I do not.

James S. Baird

Q. You did not ask Mr. Fox about that?

A. The day I stopped him I asked for a manifest and he said he did not have one, not at that time.

Q. You did not pursue it any further?

A. No, *S*ir.

Q. You did determine from interviewing the postoffice that he did have a postoffice box at Delmar?

A. Yes, *S*ir.

Q. You also determined from the Postmaster, if I understood you correctly, that he had had that for over a two year period?

A. Yes, *S*ir, the postmaster said he had been postmaster for a little over two years, and Mr. Fox had had the box since before that time.

Q. Now, the postman, Mr. Hearne, who delivered the mail, he would not have occasion to deliver mail that was deposited in the postoffice box, would he?

A. He said he had delivered mail at that address to Mr. Fox.

Q. For Mr. Fox?

page 58] A. Yes.

Q. At that address?

A. Yes, *S*ir.

Q. Did he say how many times?

A. No, he indicated that it had been a few times, just a few times, but he did not know the subject and would not know him if he saw him.

Q. Did you determine whether or not Mr. Fox had obtained his insurance policies on the motor vehicles here in question at Delmar, Delaware?

A. No, *S*ir, I did not check that.

Q. So you don't know one way or the other?

A. No.

Q. I think you testified that the Commissioner of Revenue's records disclosed that Mr. Fox had not paid a personal property tax here in Virginia?

A. Correct.

Q. And he had not been listed for taxation here in Virginia?

A. *Thatis* right.

Q. Did you check on the situation at Delmar to see if he had

been listed for taxation there?

page 59] A. No, Sir.

Q. Did you check to see whether he was a registered voter in the State of Virginia or the State of Delaware?

A. I checked in Virginia. He is not registered in Virginia. I did not check in Delaware.

Commissioner Catterall: Mr. Seibert, has the Division of Motor Carrier Taxation ever audited this tax payer's account?

Mr. Seibert: I am unable to say. I can find out very quickly.

Commissioner Catterall: During the recess you might find out and see what their files show.

Chairman Dillon: 11:35 A. M. The Commission will recess for ten minutes.

11:40 A. M. The Commission resumes its session.

By Mr. Mapp:

Q. Mr. Baird, you testified that you have talked to some of Mr. Fox's drivers at various times during the course of your investigation. One of them was Moody Miles. Did I understand you correctly to state that Mr. Miles told you that he settled up with Mr. Fox at the con-

page 60] clusion of approximately the sixth or seventh load?

A. Yes, Sir.

Q. Did he also tell you he worked on commission?

A. Yes. He said he worked on commission and got his own loads.

Commissioner Catterall: Did he say where the loads came from and went to?

A. No, Sir, we did not go into that.

By Mr. Mapp:

Q. And Mr. Fisher told you that the place he usually settled up with Mr. Fox was at C. & B. at Pocomoke City, Maryland. Of course that is not in Accomack County, Virginia?

A. No, Sir, it is just across the line.

Q. At Chincoteague did you investigation disclose that Mr. Fox had a terminal in the sense of Turner's Express or Miller Truck Lines like they have a terminal?

A. No, Sir, no terminal.

Q. And the trucks that you saw if I was catching you correctly in that long list, you would see or observe at various and sundry places, some on Chincoteague and sometimes off of Chincoteague?

page 61] A. Most of them I have marked here were on Chincoteague at one of about three places, either on Maddox Boulevard in the vicinity of his Father's home or at Jones & Mason's Garage or Albert Nocks Garage.

Q. His Father drives for Mr. Fox, Jr., does he not?

A. I don't know whether he drives regularly. I see him driving from time to time.

Q. And Mr. Fox has no financial interest in Mason's Garage, has he?

A. I don't know.

Q. As a matter of fact he loads a lot of his seafood and produce at Chincoteague, does he not?

A. I believe so. I think so.

Q. Now, of course you don't know how frequently the trucks were seen in other localities in Delaware and New York, Philadelphia, Florida or any other points, do you?

A. No, Sir.

Q. And he does have a number of trucks. I believe there are seven involved here?

A. Yes, I believe so.

Commissioner Catterall: Seven or eight?

page 62] Mr. Seibert: Seven. The eighth one was a two axle truck.

By Mr. Mapp:

Q. Mr. Baird, during the time of your investigation during May and June that is a very active season in Accomack County for both seafood and farm produce, isn't it?

A. For farm produce it is. I don't know too much about the seafood.

James S. Baird

Q. In other words, that is a seasonable time of year when there is a great concentration of trucks from all over the Eastern seaboard in Accomack and Northhampton Counties, is it not? Is that not true during May and June?

A. Yes, Sir, in those two counties but not so many on Chincoteague though.

Q. Do you know how many of these units of Mr. Fox's are engaged primarily in hauling farm produce and how many are engaged primarily in hauling seafood?

A. No, I do not.

Q. Now, while you testified that you had seen these various units at various and sundry times during the
page 63] course of your investigation. How many times have you seen Mr. Fox personally during the two months' period?

A. I would be unable to say. I haven't kept a record on the number of times I have seen him. It is just routine to see him when I am working. It is very seldom I miss many weeks seeing him, especially if I go to Chincoteague.

Q. You did not keep a log on that?

A. No, Sir, not on the times I saw him.

Q. And he has a number of local drivers there in Accomack County?

A. Yes, Sir.

Q. Now, in observing these trucks, I think some of them you testified you were unable to see the license number. How did you identify the trucks as being Mr. Fox's trucks?

Commissioner Catterall: It was the trailers he said he could not see the license on.

Mr. Mapp: Sir.

Mr. Seibert: The tractors too.

A. Some of the tractors too. He has his name painted on each side of the vehicle.

page 64] Q. What does he have painted on the side of the vehicles?

A. Oscar William Fox, Jr., Delmar, Delaware.

Mr. Mapp: We have no further questions.

James S. Baird

REDIRECT EXAMINATION

By Mr. Seibert:

Q. Now, Mr. Baird, you said I believe —

Mr. Mapp: Pardon me, if you will excuse me, one other thing. Mr. Baird, you, of course, are familiar with the reciprocity agreement in existence between the State of Virginia and the State of Delaware, are you not?

A. To some extent, yes.

Q. Do you have a copy of that?

A. Yes, I have.

Q. Would it be possible for you to file a copy of that agreement in the record.

Mr. Seibert: We have a copy of that in the files of the Commission.

Commissioner Catterall: Have you a copy that you can put in the record?

Mr. Seibert: We can make a copy.

Chairman Dillon: We will reserve Exhibit No.
page 65] 2 for that, and they will furnish the copy.

Mr. Mapp: That is fine. Thanks.

By Mr. Seibert:

Q. Now, Mr. Baird, I believe your investigation developed at Delmar, Delaware that a room was rented to Mr. Fox and to Mr. Walker, is that right?

A. That is what Mr. Walker advised me, Mr. Joseph Walker, the man who lives at 206, he stated that the room was shared between Mr. Fox and Mr. Walker, who was also in the trucking business.

Q. Has Mr. Fox got any terminal in Delaware?

A. I was unable to find any, no.

Q. Does he have one at the address he gave of 206 North Second Street, Delmar, Delaware?

A. That is a private residence located in the residential district of Delmar.

Q. And no location there for a terminal?

A. No, Sir.

Q. What kind of produce is raised on Chincoteague?
A. None that I know of.

page 66] Chairman Dillon: Mr. Attorney General, do you have any questions?
Mr. Woodroof: We have no questions.
Mr. Mapp: I would like to ask him just one more question.
Chairman Dillon: All right.

By Mr. Mapp:
Q. It is quite a seafood place, is it not?
A. Quite a seafood place.
Q. Oysters, clams, crabs, fish and things of that nature?
A. *Ye, Si*r.

Chairman Dillon: You have anything further?
Mr. Woodroof: No, *S*ir.
Chairman Dillon: You may stand aside. Do you want to excuse this witness? Will you need him any further?
Mr. Seibert: I don't think so.
Chairman Dillon: You may be excused if you wish to go.
Mr. Seibert: Thank you, Mr. Baird.

Witness stood aside and excused.

page 67] Mr. Seibert: Judge Catterall asked if we had made an audit of his records, and I have Mr. Stuart up here, who will be glad to give that information.
Commissioner Catterall: Let Mr. Stuart tell you what he has got.
Mr. Seibert: Do you have, Mr. Stuart —
Chairman Dillon: Let's put him on the stand and have *himgive* the information there.

ALBERT STUART,
a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:
Q. What is your name?

Albert Stuart

A. Albert Stuart.

Q. What is your position?

A. Director of the Commission's Division of Motor Carrier Taxation.

Q. Are you in charge of the reporting of operations on Virginia highways for motor fuel road tax and the furnishing of reports and checking of accounts, is that

page 68] right?

A. Yes.

Q. Has any audit been made of the accounts of Mr. Oscar William Fox, Jr.?

A. Yes, Sir. The account was audited through June 30th, 1963.

Q. Where did you go?

A. Our address which we have carried for Mr. Fox throughout the time the road tax account has been active has been at 206 North Second Street, Delmar, *DElaware*. Our auditor, Mr. John Carlisle, at the time visited that address and was unable to complete or make an audit, and apparently left a note for Mr. Fox in that our file indicates that a reply was received from Mr. Richard F. Hall, Attorney-at-law at Accomac, advising Mr. Carlisle that he had the records that he was seeking in his office and would make them available at any time in Accomac or vicinity. It would appear from our files that the records were ultimately sent to this office and the audit was made and there were no additional tax assessments involved.

Q. Where was that audit made?

A. It would appear that the records were sent

page 69] to this office from Mr. Richard F. Hall, an Attorney-at-law at Accomac.

Chairman Dillon: You mean your own office here?

A. Yes.

By Mr. Seibert:

Q. From Mr. Hall at Accomac?

A. The letterhead indicated "Courtgreen, Accomac, Virginia."

Q. And you sent the records of Mr. Fox from your office

to their office there?

A. It would appear so, *S*ir.

Chairman Dillon: Do you wish to ask him any questions?

Mr. Mapp: Just one question.

CROSS EXAMINATION

By Mr. Mapp:

Q. Your records disclose that your representatives attempted to contact Mr. Fox at the Delmar address?

A. Yes.

Q. And that he left a note there or a letter or something there for Mr. Fox at that address?

A. Yes. It would appear so.

page 70] Q. And that ultimately was received by Mr. Fox's attorney, Mr. Hall, at Accomac, Virginia?

A. Yes, *S*ir.

By Mr. Seibert:

Q. When was that audit made, Mr. Stuart?

A. October 7th, 1963. Mr. Carlisle stated that on October 7th the undersigned executed the audit from records forwarded to this office by the carrier.

Chairman Dillon: You may stand aside.

Mr. Seibert: Thank you.

Witness stood aside.

Mr. Seibert: That is our case.

page 71] Chairman Dillon: Mr. Mapp, do you have any evidence?

Mr. Mapp: Yes, *S*ir. We would like to call Mr. Fox.

OSCAR WILLIAM FOX, JR.,

a witness introduced on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Jacobs:

Q. Mr. Fox, what is your full name?

Oscar William Fox, Jr.

A. Oscar William Fox, Jr., and I live at 206 North Second Street, *Dlemar,* Delaware.

Q. Mr. Fox, how long have you lived at this address?

A. Since 1960.

Q. Is that when you moved to the State of Delaware?

A. Uh huh.

Q. Do you own or rent there?

A. Rent.

Q. From whom do you rent?

page 72] A. Joe Walker.

Q. He owns the house where you live?

A. Yes, he does.

Q. You have a room in this house?

A. Yes, Sir.

Q. And you have been living there ever since you have been in Delaware?

A. Yes, I have.

Mr. Jacobs: Now, if Your Honors please, for business reasons, Mr. Walker was not able to attend this hearing as a witness. I have a letter signed by him which I would like to introduce.

Chairman Dillon: We can't put it in as an exhibit but we will let you pass it to the file.

Commissioner Catterall: Pass it up here.

Chairman Dillon: Let us read it and then pass it to the file.

Commissioner Catterall: How much rent do you pay?

A. Mr. Walker has a bar and restaurant, and I furnish the seafood that he needs which more than satis-

page 73] fied him.

Q. How much seafood do you furnish him?

A. I furnish him all of his fish and clams or whatever he needs for his business.

Q. Are you in the seafood business?

A. No, I haul seafood out of Chincoteague.

Q. Do you buy that for his restaurant?

A. I give it to him.

Q. Do you purchase the seafood and deliver it to his restaurant?

Oscar William Fox, Jr.

A. Uh huh.

Q. And about how much a month do you pay for this seafood you give him?

A. I don't know right this minute.

Q. I don't mean to the penny, but about how many dollars do you spend a month?

A. I would say around fifty dollars.

Q. You buy fifty dollars worth of fish and oysters every month?

A. Uh huh.

Q. And you do that in lieu of rent?

A. Uh huh.

page 74] Q. Fifty dollars per month for one room?

A. Uh huh.

Chairman Dillon: And who do you share the room with?

A. Page Walker.

Q. Does he stay there very much?

A. I don't keep up with him.

Q. If you share a room with him you certainly ought to know whether he is there or not?

A. Well, he drives a truck —

Q. Suppose your wife comes in to stay with you?

A. Well he drives the truck, and he would probably not be there.

By Commissioner Catterall:

Q. Does he pay anything for his half of the rent?

A. I don't know what he does.

Chairman Dillon: How many nights a week do you stay there?

A. Sometimes two, three, maybe sometimes four.

Q. Where do you spend the other nights?

A. Sometimes I spend them at Chincoteague, I have spent them in Florida. One of these trucks

page 75] does go to Florida and I stay with it.

Q. Do you have a home in Chincoteague?

A. No.

Q. Do you rent an apartment?

Oscar William Fox, Jr.

A. No.
Q. Does your wife rent an apartment?
A. No.
Q. Do you pay for any electricity in an apartment?
A. Yep.
Q. Whose apartment is that?
A. My wife's father's. It is my wife's father's house.
Q. Do you rent it?
A. No.
Q. Do you live there?
A. When I stay there.
Q. Why do you pay for the electricity?
A. Because I think I should pay it.
Q. Why?
A. Because if I stay in it when I am there I think it is no more than right I should pay for it.

Q. In fact, you stay there more than you do in
page 76] Delaware?
A. No, Sir.

Q. Would you say you stayed in Delaware more than you did at Chincoteague?
A. Yes.
Q. Does your wife go with you in Delaware?
A. At times and sometimes her Mother is sick down in Williamsburg and she stays over with her at times, and she stays at Chincoteague.

Chairman Dillon: Go ahead.

By Mr. Jacobs:
Q. Mr. Fox?
A. Uh huh.
Q. You stated you moved to Delaware in November 1960?
A. Uh huh.
Q. Was it your intent when you moved there to make it your permanent residence?
A. Yes, Sir.
Q. Have you ever changed this intent?
A. No, Sir.

Oscar William Fox, Jr.

Q. It has been stated here that you are in the
page 77] trucking business, is that right?

A. Yes, *S*ir.

Q. Are all of your trucks licensed and titled in the State of Delaware?

A. Yes, *S*ir.

Q. Have they been so titled and licensed ever since 1960 or early 1961?

A. Yes, *S*ir.

Q. When you moved into Delaware?

A. Yes, *S*ir.

Q. Do you own a private automobile?

A. Yes, *S*ir.

Q. And where is that automobile licensed and titled?

A. In Delaware.

Q. Do you have an operator's license?

A. Yes, *S*ir.

Q. From what state?

A. Delaware.

Q. Now it has been brought out here that there is one trailer that you own that has a Virginia license; is that correct?

page 78] A. Yes, *S*ir.

Q. Other than that one trailer, have you ever licensed a truck or automobile in Virginia since moving to Delaware?

A. No, *S*ir.

Q. Could you tell the Commission why you have one trailer with a Virginia license on it?

A. If there is a load in Virginia that I have to pick up—

NOTE: Reporter could not understand witness and it was not plain on the belt.

Commissioner Catterall: I did not get that.

A. If there was a load that had to be picked up and consigned in Virginia, with Virginia tags on that trailer, I could lease a Virginia tractor from someone else.

Q. That is the only time you have ever moved any property intrastate, that one time?

Oscar William Fox, Jr.

A. That is right.

Q. One trip or do you use it regularly?

A. Sometimes, whenever it is necessary.

Q. When you registered that trailer in your name with Virginia tags, what did you give as your

page 79] residence address?

A. Chincoteague.

By Mr. Jacobs:

Q. That is your Father's residence?

A. Yes.

Q. And that is 110 Maddox Boulevard?

A. Yes.

Q. Do you vote?

A. No, Sir.

Q. Have you ever registered to vote in either Delaware or Virginia?

A. No, Sir.

Q. Where do you file your Federal income tax return?

A. At Wilmington, Delaware.

Q. With the District Director in Wilmington?

A. Uh huh.

Q. Have you ever filed a *Federalincome* tax return with the District Director here in Richmond?

A. No, Sir.

Q. Do you file a State income tax?

A. Yes, Sir.

page 80] Q. Where do you file this State income tax return?

A. With the State of Delaware.

Commissioner Catterall: Why did you go to a lawyer in Accomac to help you with your Federal income tax?

A. When my Father was in this business he had him and I just kept using him.

Mr. Jacobs: I have here, Your Honors, copies of Mr. and Mrs. Fox, Jr.'s Delaware income tax.

Chairman Dillon: I don't think there is any dispute about

that at all. I am just wondering why Virginia has not jumped on him also for income tax.

By Mr. Jacobs:

Q. Have you ever filed a Virginia State income tax return?

A. No, Sir.

Q. Where do you get your mail?

A. At Delmar, Delaware.

Q. Do you have a postoffice box there?

A. Yes, box number 38.

page 81] Q. Is some of your mail delivered at your home there?

A. Yes, Sir.

Q. And you pick it up there?

A. Yes, Sir.

Q. What name and address appears on your truck?

A. Oscar William Fox, Jr., Delmar, Delaware.

Q. And where are your trucks insured?

A. What agent is my insurance with?

Q. What company?

A. Nationwide.

Q. And what address are these trucks insured from?

A. Delaware.

Chairman Dillon: Who is your agent?

A. Paul Merritt.

Q. Where does he live?

A. Chincoteague.

Mr. Jacobs: Paul Merritt, Chincoteague. I would like to introduce a bill from this insurance company that Mr. Fox referred to.

Chairman Dillon: It will be received

page 82] as Exhibit No. 3.

By Mr. Jacobs:

Q. Mr. Fox, have you ever paid personal property tax in Virginia on these two trucks?

A. No, Sir.

Q. Have you ever been billed for personal property tax?

A. This year.

Oscar William Fox, Jr.

Q. This is the first year?
A. Yes, Sir.
Q. You were not billed for 1962, 1963 and 1964?
A. No, Sir.
Q. Have you paid the bill you received this year?
A. No, Sir.
Q. Do you intend to pay that bill?
A. No, Sir.
Q. Have you ever been picked up prior to Mr. Baird's investigation beginning in May 1965, prior to that time, were you ever picked up for improper registration?
A. In 1961.
Q. Where?
page 83] A. I was on Chincoteague at that time.
Q. Was this matter heard in the County Court of Accomack County?
A. Yes, Sir.
Q. What was the outcome?
A. They dismissed the case.
Q. You alleged at that time you were a resident of Delaware?
A. Yes, Sir.
Q. Is it true you spend some of your time on Chicoteague?
A. Yes, Sir.
Q. Well, why is that?
A. I haul seafood out of Chincoteague each day on these trucks.
Q. You are on Chincoteague for business reasons?
A. Uh huh.
Q. You stated that you send a good deal of your time at your home at Delmar, Delaware. Do you spend any of your time at other places other than Delmar and Chincoteague?
A. Yes, Sir.
Q. Why is that?
page 84] A. Well —
Q. And where?
A. Sometimes in the late part of the summer I spend sometime in Salisbury with them in loading them, and sometimes I have been to Florida with them, — that is while they are loading.

Oscar William Fox, Jr.

Q. In other words, you often have to be at various places to attend to your business; is that correct?

A. Yes, *S*ir.

Q. Now how many trucks do you own, Mr. Fox?

A. Eight.

Q. One of these, I believe has been testified here as a two axle truck which we are not concerned with here today?

A. Yes, *S*ir.

Q. Now, let's just talk about the other seven trucks, what do they haul?

A. Four of them hauls produce and three of them seafood.

Q. As far as the four trucks that haul produce, where do they pick up this produce?

page 85] A. Well when the season is in Florida, they pick up in Florida and they follow the crops as they come up the coast. As they come up the coast, the crops, the trucks move with them. When they come to North Carolina the trucks move to North Carolina.

Q. Do they haul out of South Carolina?

A. Yes, *S*ir.

Q. And they haul out of North Carolina?

A. Yes, *S*ir. *THey* haul out of Virginia, Maryland, Pennsylvania and New York State.

Q. And this is a year around operation for you?

A. Yes, *S*ir.

Q. And they are continuously moving from place to place, depending on the crops; is that correct?

A. Yes, *S*ir.

Q. Now, would you just run over, Mr. Fox, a typical week's operation of one of these produce trucks? Just take a typical example of where one of your trucks would pick up from, where it would go and unload, and the return trip and so forth?

A. Well, if we were hauling out of Florida, they would load in Florida, and if it goes to New York, they would unload in New York and leave New York and go to

page 86] Riverhead, L. I. and leave there and get a return load back to Florida.

Q. They take the return load back to Florida in order to

reload produce in Florida?

A. That is right.

Commissioner Catterall: What is the return load?

A. Potatoes, Long Island potatoes.

Mr. Jacobs:

Q. Do your trucks, I am speaking now of these produce trucks, have regular times to check in to you or in which to be located at one place?

A. No, *S*ir.

Q. When do you see your drivers?

A. Whenever they want to see me.

Q. Now, for how long a period might that be?

A. I have had them hired a month and a half or two months without seeing them.

Q. Now when they are coming up from Florida, what route do they take, speaking of the route through Virginia?

A. Sometimes if they want to go by home they come up 13. A lot of times they will turn around and come page 87] up 95.

Q. In other words, sometimes they will come up 95 and not down to the Eastern Shore at all?

A. That is right.

Q. And other times they will come over the Bay Bridge to their homes, the driver's home?

A. Yes, *S*ir.

Q. All of your drivers live where?

A. In Virginia.

Chairman Dillon: You don't have any in Delaware at all?

A. No.

Mr. Jacobs:

Q. Why is it, Mr. Fox, that you have Virginia drivers?

A. Some of them were working for my Father and Virginia drivers seem to be better workers. They were good men and I kept them on.

Q. They have made you good men and you have kept them on?

Oscar William Fox, Jr.

A. Uh huh.

Q. Mr. Fox, Mr. Baird has testified that he has
page 88] often seen these trucks different trucks, at different days in Accomack County. Will you tell the Commission why you believe that to be?

A. Well, what draws them, it is either to their house or they were in Accomack County loading produce.

Q. Of course at the time Mr. Baird testified in May and June of 1965 trucks would have been loading on the Eastern Shore of Virginia?

A. Yes, Sir.

Q. How are these produce drivers paid?

A. On commission.

Q. Commission on the load that they carry?

A. Yes, Sir.

Q. Who procures the load for them? How do they get the load?

A. They get them.

Q. They get their own load?

A. Yes.

Q. So the more loads they carry, the more money they make?

A. That is right.

Q. So they stay on the road pretty well all
page 89] of the time? Is that correct?

A. That is right.

Q. I don't know that it is too pertinent but just what kind of investment do you have in these seven trucks?

A. You mean about what they cost?

Q. Yes.

A. I would say about a hundred and thirty five thousand dollars.

Q. This is a very expensive operation then, is it not?

A. Yes, it is.

Q. And you are interested as well as the drivers are interested in keeping these trucks on the road as much as possible and hauling as many loads?

A. More, I imagine.

Q. Now, let's look at your seafood operations for a minute. You say you have three trucks that haul seafood?

Oscar William Fox, Jr.

A. That is right.

Q. Now what, tell the Commission what their run consists of, a typical run of one of your seafood trucks, a typical week?

page 90]

A. They load on fish clams and oysters at Chincoteague and go to Green Back, and they leave Green Back, Virginia and go to Ocean City, Maryland and load fish, and then he will start dropping at Dover, Wilmington, Philadelphia and New York, then head for Long Island and pick up a load of potatoes, and come back to Baltimore, Washington and then come back to Chincoteague Island.

Q. Now, how are the seafood drivers paid?

A. They are paid a salary.

Q. You pay them by the trip?

A. Yes.

Q. They don't get a commission but they get paid according to the number of hauls they make too?

A. That is correct.

Q. Where are these drivers from?

A. Chincoteague.

Q. Why do you have Chincoteague boys on your seafood trucks?

A. Because they were on with my Father and Chincoteague boys can handle seafood, a boy that has been around it all of his life, they can handle it better than a boy from the mainland.

page 91]

Q. In other words, you feel he knows his business better than a driver from Richmond, the other part of the County, or some other part of the State?

A. Yes, Sir.

Q. It has been testified to by Trooper Baird that he has seen these trucks on various occasions at Nock's Garage on Chincoteague. Where do you have your trucks repaired?

A. At Nock's Garage for greasing and oil changing and some are repaired in Salisbury.

Q. Some are repaired in Salisbury?

A. Yes, and some in Baltimore. In the winter some are sent down to Georgia.

Q. Are any of your Diesel trucks repaired on Chincoteague?

A. No, Sir.

Oscar William Fox, Jr.

Q. In reality, Mr. Fox, these trucks are repaired anywhere in the Country, or anywhere on the East Coast they happen to be when they break down and have need for repairs; is that correct?

A. That is correct.

Q. Mr. Fox, you are charged under this rule
page 92] with making wilful misrepresentation of facts.
Did you make wilful misrepresentation of any facts in securing the State Corporation Commission's identification markers?

A. I don't see where I did.

Q. You told them you were a resident of the State of Delaware?

A. That is right.

Q. When you did that you believed you were a resident of the State of Delaware, did you not?

A. That is right.

Q. Do you still believe you are a resident of the State of Delaware?

A. I do.

Commissioner Catterall: What did you believe when you told D. M. V. you were a resident of Virginia?

A. Who.

Q. The Commission of Motor Vehicles?

A. I did not tell them — I just — I did not tell them I was a resident of the State of Virginia.

Q. You registered one vehicle in Virginia, did
page 93] you not?

A. Yes.

Q. And gave a Virginia address?

A. I gave them my Father's address.

Q. The thing you signed was supposed to be your name and address.

Chairman Dillon: It did not ask for your Father's address.

A. That was what I give them.

Q. You gave them the wrong information?

A. I guess I did but that is what I done.

Mr. Jacobs: You may answer Mr. Seibert.

Oscar William Fox, Jr.

CROSS EXAMINATION

By Mr. Seibert:

Q. Mr. Fox, you say you left Virginia in 1960?

A. November 1960.

Q. Why did you leave?

A. Because I could not afford to operate under the Virginia law, they are higher tags.

Q. In other words, you went to Delaware for the lower tag fees they have?

A. Yes, Sir.

Q. Did you rent the room from Mr. Joe Walker?

page 94] A. Yes.

Q. From the beginning?

A. Yes, Sir.

Q. Who shares this room with you?

A. Page Walker.

Q. Page Walker. Has Mr. Page Walker been your roommate all of these years?

A. Yes, Sir.

Q. He has been there since 1960?

A. I have. I don't know how long Mr. Page Walker has been there. He has been there a long time.

Q. He was there when you went there?

A. Uh huh.

Q. Since 1960 you have been sharing a room with Mr. Page Walker?

A. Yes, Sir.

Q. When do you share it together?

A. Sometimes we will hit there when he comes through on his truck. Mr. Page Walker drives his own truck. When he comes through if he happens to be there the same time I am we will share it together.

Q. What do you do when your wife is there?

page 95] A. Sometimes I have to get him a room, or I have to carry her out and get her a room.

Q. Has your wife ever stayed at this room with you?

A. Yes, Sir.

Q. When?

A. She has been there lots of times.

Q. When?

Oscar William Fox, Jr.

Chairman Dillon: What was the last time she stayed there?
A. It has been about two weeks ago.

Mr. Seibert:
Q. About two weeks ago?
A. Yes.
Q. What day?
A. It was a week end.
Q. Week end of what?
A. I just can't remember.

Chairman Dillon: Where is she today?
A. With her Mother in Williamsburg?

Mr. Seibert: Where?
A. In Williamsburg with her parents.
page 96] Q. In Williamsburg?

Chairman Dillon: Is she there on a visit?
A. Yes, Sir.
Q. When will she go back home, back to Accomac or Chincoteague?
A. She will go back to Delaware tonight with me if I go.
Q. But you are going to Chincoteague tonight, aren't you?
A. No, I am going to Delaware.

Mr. Seibert:
Q. You pay, I think you said, approximately fifty dollars for fish and oysters?
A. I reckon somewhere around that.
Q. Is that a month?
A. Yes, Sir.
Q. Do you buy those fish and oysters yourself?
A. Some of them I buy and some of it people on Chincoteague will give them to me.
Q. Some of them will give you fish and oysters every month?
A. Uh huh.
page 97] Q. Every month?
A. Yes. They will give them to me every day if I want them.
Q. How old are you, Mr. Fox?

Oscar William Fox, Jr.

A. Twenty four.
Q. And you married a Virginia girl?
A. Yes, Sir.
Q. Do you have a child?
A. Yes, Sir.
Q. Where does the child stay?
A. It is with its Mother now.
Q. Where does the child stay normally?
A. With its Mother.
Q. Where does its Mother normally stay?
A. In Delaware, or she will stay in Williamsburg with her parents.
Q. Where?
A. In Williamsburg with her parents.
Q. Her parents live in Williamsburg?
A. Yes, Sir.

Commissioner Catterall: Who lives at 614 South Main Street?

page 98] A. I stay there when I am on Chincoteague.

Chairman Dillon: You are under oath now.

A. I am, I know I am under oath.

Chairman Dillion: I want you to understand that. You will be guilty of perjury here in a minute, so tell the truth.

A. I am telling the truth.

Chairman Dillon: You had better stick close to it now.

A. Yes, Sir.

Mr. Seibert:
Q. What is 614 South Main Street, what is that?
A. An apartment house her Father owns.

Commissioner Catterall: Her Father owns?
A. Yes.

Mr. Seibert:
Q. I thought you just said he lives in Williamsburg?
A. He worked at the Naval Base at Chincoteague and when it closed, they transferred him back to Williamsburg.

page 99] Q. How long has he been at the Naval Base?

A. At Williamsburg. I think he went there in

1960 before we were married.

Q. And do you have any space at 614 South Main Street, have you ever stayed there?

A. Yes.

Q. Have you a bed there?

A. He has a bed there. He has the apartment I stay in at night. He furnished it.

Q. Where does your wife stay when you are on the road?

A. Sometimes she will stay at Chincoteague, sometimes she will stay down there with him.

Q. Does she stay in Delaware?

A. Not too much when I am on the road.

Q. Does she stay at all in Delaware when you are on the road?

A. No, Sir.

Commissioner Catterall: How old is her child now?

A. Eighteen months.

Chairman Dillon: And you your wife, and that

page 100] child and Walker live in that one room in Delaware?

A. Walker is not there most of the time when I am there.

Mr. Seibert: Most of the time when you are there. You mean to say then that you have taken your wife, your baby and yourself up there and you occupy that room in Delaware?

A. Yes.

Q. With this Mr. Walker?

A. Mr. Walker is not in the room when me and my wife are staying there.

Q. How often does your wife go with you to Delaware?

A. When I drive there most of the time unless she is in Williamsburg with her Mother.

Q. How *oftendo* you go?

A. Three or four times a week.

Q. Three or four times a week?

A. Uh huh.

Q. And your wife goes there three or four times a week?

Oscar William Fox, Jr.

A. Yes, *S*ir, when she goes.
page 101] Q. You are sure about that?
A. Yes, *S*ir, I am positive.

Commissioner Catterall: You mean to say she has been there a hundred days the past year?
A. She has been there seventy five I know.

Mr. Seibert:
Q. And your baby?
A. Yes, *S*ir.
Q. Every time your wife goes your baby goes?
A. Yes, *S*ir.

Commissioner Catterall: How many beds in that room?
A. One big double bed and a crib.
Q. When you and Walker are there at the same time you share a bed?
A. Uh huh.
Q. And you pay fifty dollars per month for a bedroom with one bed in it and another man?
A. Yes, *S*ir.

Mr. Seibert:
Q. And how much does Mr. Walker pay?
A. I don't know how much Mr. Walker pays.
page 102] Q. Aren't you interested in whether you are paying your share of that *roommthat* you occupy with him so much?
A. No, *S*ir.

Commissioner Catterall: Do you have a private bath?
A. It is down the hall, one bath. There is a bath upstairs and one down.
Q. Who else lives in that house?
A. Joe Walker, the fellow that owns it.
Q. He hasn't any wife?
A. Yes, he has a wife.
Q. He and his wife. Has he got children?
A. His two children are grown children. No children living there.

Oscar William Fox, Jr.

Mr. Seibert:

Q. Why did you pay the water bill at 614 Main Street?

A. I have been staying there and I use that water, so I figure it is my place to pay.

Q. How about electricity?

A. I use the electricity, so I figure it is my

page 103] place to pay for it.

Q. And you are the only person using 614 South Main Street?

A. Yes, Sir.

Q. Nobody else there at all?

A. No, Sir.

Q. I thought you said it was an apartment house?

A. It is just an apartment building. Now in another apartment at 616 there is another couple living there.

Q. It is an apartment with a different number?

A. Yes, Sir.

Q. Who furnishes the heat?

A. Mr. Jester.

Q. Who?

A. Mr. Jester, the man who is my wife's father.

Q. He furnishes the heat?

A. Yes, Sir.

Q. Where do you buy your groceries?

A. I buy them at Chincoteague or wherever I am at. If I am in Delaware I buy them in Delaware.

page 104] Q. All right. How many times — you said you operated at Salisbury, Maryland and Florida?

A. Uh huh?

Q. How much operation do you do from Delmar, Delaware?

A. I operate the whole business out of Delmar, Delaware but we don't haul out of Delmar.

Q. If you operate so much out of Delaware, why do you come down to Chincoteague?

A. I haul seafood out of Chincoteague too.

Q. Do you haul any out of Delaware?

A. What, seafood or produce?

Q. Anything?

A. No, I don't haul anything out of Delaware. I haul some potatoes but very little because Delaware don't have much

produce up there.

Q. So you haul a few potatoes and no seafood?

A. Not out of Delaware.

Q. And all of your seafood is in Virginia and Maryland?

A. Yes, Sir.

page 105] Commissioner Catterall: Did you hear Mr. Stuart testify that when he sent his man up to Delaware to look at your records, he could not find you there?

A. Yes, Sir.

Q. Where were your records then?

A. Mr. Richard Hall had them.

Q. Down in Accomac?

A. Yes, Sir.

Q. Where are your records today?

A. I think Richard Hall has them today.

Q. You have never had your records up in Maryland, have you? I mean Delaware.

A. I have had them in Delaware.

Q. But they are not there today, and they were not there when we looked for them the last time. You just carry them back and forth?

A. If Mr. Hall needs them I carry them down to him.

Q. Why does he need them today?

A. The Federal Government has been checking my income tax and they wanted to check them too. That is what they wanted and that is what he is doing with them.

page 106] Commissioner Catterall: It might pay us to send somebody down there today to see if Mr. Hall has those books because that is a very specific statement of fact.

Mr. Seibert: A very specific statement of fact, and a very specific statement of fact about the inspector being at his place in Delaware.

Chairman Dillon: If this gentleman is maliciously lying to us I want to get him for perjury. Now it seems to me that he is deliberately lying to us and I wish you would send one of your investigators right now to Mr. Hall and see if he has those records and also see why he has them.

Oscar William Fox, Jr.

Mr. Seibert: All right, Sir.

Commissioner Catterall: Have you got someone over on the Eastern Shore that can check that?

Mr. Seibert: Our man is here. Could you leave right now and check those records with Mr. Hall? (Note: Mr. Seibert asked the inspector this question.)

Chairman Dillon: I wonder if we couldn't get page 107] the State Police to do that.

Mr. Seibert: We can get the State Police.

Chairman Dillon: That would be quicker.

Commissioner Catterall: Mr. Stuart has his name and address. Get the name and address from Mr. Stuart and call the State Police in Accomac and see if those records are there.

Mr. Mapp: Mr. Hall is a very reputable attorney and a member of the Accomac Bar, and I am sure anything he told you on the telephone, would be correct.

Chairman Dillon: I am sure he is. How about calling him on the telephone?

Commissioner Catterall: Let Mr. Stuart call him.

Chairman Dillon: Find out why he has the file.

Commissioner Catterall: And why he has the records of the trucking trips in Accomac today.

Chairman Dillon: And how much of the time he keeps them there during the entire year.

Mr. Seibert:

page 108] Q. You are certain your wife goes along practically every time you go to Delaware?

A. Yes, Sir.

Commissioner Catterall: With the baby?

A. Yes, Sir.

Mr. Seibert:

Q. How many nights a week do you spend in Delmar, Delaware?

A. Sometimes two, three, four, five.

Commissioner Catterall: Do you use the kitchen there?

A. We eat in the kitchen.

Oscar William Fox, Jr.

Q. You cook your own meals when you are there?
A. My wife cooks our meals.
Q. And does Mr. Walker eat with you?
A. Page or Joe?
Q. Either one?
A. Joe Walker's wife fixes his meals. I don't know where *page* gets his. He gets his on the road I guess.
Q. You have two kitchens?
A. No, one kitchen.
Q. And you take turns in using the stove?
page 109] A. Yes, *S*ir.
Q. And what room do you eat in?
A. The kitchen.
Q. They eat in the kitchen and you eat in the kitchen?
A. Yes, *S*ir.
Q. They cook the meal and eat it in the kitchen and clean up and then you cook the meal and eat it in the kitchen?
A. Yes, sometimes we eat with Mr. Walker.
Q. You have three meals a day, I assume. Just describe a day with both families eating three meals a day.
Chairman Dillon: With the baby.
A. Well, the biggest part of the day I am not there, I am away from there, so I guess Mr. and Mrs. Walker just fix their own meals, but at suppertime they fix their own meal and sometimes we eat with them and sometimes when we get hungry our wife fixes us something.
Q. And for that luxury you pay fifty dollars per month?
A. Yes.

Mr. Seibert: I have no more questions.

page 110] RE DIRECT EXAMINATION

By Mr. Jacobs:
Q. Mr. Fox, let me clear this one thing up. What records does Mr. Richard Hall at Accomac have? He is your attorney; is that correct?
A. Yes, *S*ir.
Q. What record of *your* does he have there at Accomac?
A. You see these drivers when they make a trip, they put

Oscar William Fox, Jr.

them in an envelope — he don't have right up to the latest records. Paul Booth has the latest records for this quarter.

Mr. Seibert:

Q. Who is that?

A. Elmer Paul Booth.

Q. Who is he?

A. He is a bookkeeper.

Q. Where is he?

A. He works for Burton Seafood at Chincoteague.

Q. He keeps your records at Chincoteague?

A. He does the book work, him and Paul Demeritt.

Q. For all of your operations?

page 111] A. He takes care all the year of all the records, yes.

Q. All the records you keep are kept by Mr. Booth at Chincoteague?

A. Yes, and when the income tax returns is made up Mr. Halls he checks them, but the latest records for the last quarter Mr. Booth has them.

Q. And Mr. Booth makes up your income tax?

A. He gives it to Mr. Hall and Mr. Hall, makes up the income tax.

Q. Your attorney, Mr. Hall?

A. Uh huh.

Q. And he makes up your income tax?

A. Uh huh.

Q. And you file those in Delaware?

A. Uh huh.

Q. Made up in Virginia and filed in Delaware?

A. Yes, Sir.

Mr. Jacobs:

Q. Why do you have Mr. Demeritt and Mr. Booth, bookkeepers on Chincoteague and Mr. Hall, Attorney

page 112] at law at Accomac handle your records?

A. They handled them for my Father and when I took it, bought it, I just kept them right on.

Q. You just kept right on with them?

A. Yes.

Q. You were satisfied with the work they were doing?
A. That is right.

Mr. Jacobs: I have no further questions.

Mr. Seibert:
Q. You succeeded your Father, is that right?
A. He got out of it and I took the trucks over.
Q. And you continued doing exactly what he did?
A. Yes, Sir.

Chairman Dillon: Is that all from this witness?

NOTE: Counsel indicated they were through with this witness.

Chairman Dillon: You may stand aside.

Witness stood aside.

page 113] Mr. Jacobs: May it please the Commission, I have a letter here which I would be very interested in reading to the Commission from an official in the State of Delaware.

Chairman Dillon: Well I am going to recess now until two o'clock, so will you wait until after the recess to read that?

Mr. Jacobs: Certainly, Judge Dillon.

Chairman Dillon: 12:25 P. M. The Commission will recess until two P. M.

2 P. M. The Commission resumes its session.

Mr. Seibert: Mr. Stuart was asked to make a telephone call as to the records of Mr. Fox, and he has made that call and I would like to ask him to come around at this time please.

ALBERT STUART,
having previously testified, resumes the stand for further examination.

DIRECT EXAMINATION

By Mr. Seibert:
Q. Mr. Stuart, you were asked to make a call to an at-

torney in Accomack County, is that correct?

page 114] A. Yes Sir.

Q. Mr. Hall?

A. Yes, Sir.

Q. What Mr. Hall was that?

A. I called Mr. Richard F. Hall, Jr. in Accomac immediately upon leaving the Courtroom at 12:25 P. M.

Q. What information did you secure from Mr. Hall?

A. I identified myself to Mr. Hall and told him the Commission was in process of a hearing involving Mr. Oscar William Fox, Jr., and instructed me to ask several questions of Mr. Hall. I asked him if he had any trucking records of Mr. Fox and he replied that he did not. That they were originally in three boxed containers and that he had had them for a long time in connection with the Federal Government case pertaining to Social Security and withholding tax. Mr. Hall stated that on the last trip to Georgetown, Delaware which he and Mr. Fox made he returned the three cartons to Mr. Fox and that the only information pertaining to records in his office at present was in the nature of some summary sheets applicable to the cartons of records.

page 115] I asked Mr. Hall when he returned them and he said he could not give any definite dates since he did not remember. I said, "Has it been within a week, two weeks or a month?" He said "Definitely longer than a week ago," but he did not know just when. He said he represented Mr. Fox in connection with the Government matter, but that he did not maintain any active trucking records for Mr. Fox.

Chairman Dillon: Do you want to ask him any questions?

CROSS EXAMINATION

By Mr. Jacobs:

Q. Mr. Hall did say that he had had all the trucking records?

A. He did sir.

Chairman Dillon: You may stand aside.

Witness stood aside.

Chairman Dillon: Do you have anything further?

Mr. Jacobs: I would like to read this letter from an official in the State of Delaware, whom I talked to and which I think is pertinent. It is addressed to me.

page 116] Mr. Seibert: If the Commission please, I don't like to object to, but I don't think —

Chairman Dillon: We are not going to let him put it in as an exhibit but —

Mr. Seibert: But reading it to the record will still make it a part of the record.

Chairman Dillon: We won't take it down but we will hear it and give such importance to it as we think necessary.

NOTE: Reporter instructed not to take the letter down.

Mr. Jacobs: And evidently this Commission does not either, but this is not that case. This is a case —

Commissioner Catterall: That is your case, isn't it? Don't you have that case up in the Court of Appeals?

Chairman Dillon: Didn't you represent them in that case?

Mr. Mapp: Yes, Sir.

Commissioner Catterall: That was exactly that case, a Delaware tractor and a Virginia trailer. He

page 117] says now he won't tolerate it and in that case he wrote a letter and said we were doing wrong.

Mr. Jacobs: I was not familiar with that case. I never saw that letter. This man says he does feel that that is wrong and feels that that short changes both states when they have done that.

Commissioner Catterall: We ought to send that up to the Court of Appeals.

Mr. Jacobs: That is where a man has a tractor licensed in Delaware and a trailer licensed in Virginia, but this is not that kind of case. This is where a man has everything licensed in Delaware and Delaware feels that he is entitled to reciprocity.

Commissioner Catterall: But he began by saying that Mr. Fox is a citizen of Delaware.

Mr. Jacobs: Well, I just wanted to point out to the Commission the attitude of the officials of Delaware, and I just feel — I am not here today representing the State of Delaware, and I am not here representing the state of Virginia.

Commissioner Catterall: But did he not begin
page 118] by saying that a citizen of Delaware was getting this harsh treatment?

Mr. Jacobs: Yes, Sir, that is correct, Sir.

Commissioner Catterall: Because this case turns on whether that is true or not. So tell him not to be mad at us if we find that Mr. Fox is not a citizen of Delaware.

Mr. Jacobs: Well, I don't know whether they are willing for you to undertake that decision.

Chairman Dillon: We will not make that decision for Delaware but we do think we have the right to make it for Virginia. We don't want them making decisions for us either. Do you have any other evidence?

Mr. Jacobs: That is all.

Mr. Seibert: I would like to recall Trooper Baird.

page 119] JAMES S. BAIRD,
being recalled for further examination, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. You have testified before that you were in Delaware and went to Delmar, Delaware, is that correct?

A. Yes, Sir.

Q. Is this your first trip to Delmar, Delaware?

A. No, Sir, I was in Delmar, Delaware sometime last fall, the fall of 1964, on another investigation.

Q. And did you on that time have occasion to see Mr. Walker?

A. Yes, Sir, I went to 206 North Second Street at that time and knocked on the door and Mr. Walker came to the door and I asked for Oscar William Fox, Jr., but he did not know who I was talking about. That was in the fall of 1964.

Chairman Dillon: Did he have a room there then?

A. I asked him the second question — I said: "You mean he does not have a room here?" And he said "Oh, you are

talking about the trucker." He said "Yes, he
page 120] has a room here, and if you have a message or
wish to leave a note, I will see that he gets it
whenever he stops by."

Mr. Seibert:

Q. Another question, Mr. Baird, did he state to you on your last visit about the same thing that you could leave a message and he would give it to Mr. Fox?

A. No, *S*ir, not on June 8th, no, *S*ir. There was not anything mentioned about a message.

Q. Did he say that he knew Mr. Fox real well?

A. He indicated that he knew him well and I asked him like I testified before if Mr. Fox's wife and child had ever stayed there and he stated that he had never seen them.

Q. He said he had never seen Mrs. Fox or the child?

A. Yes, *S*ir, and that was on June 8th, 1965.

Commissioner Catterall: Did you ask him if they had a crib in the room?

A. No, *S*ir.

Q. You never thought of that?

Mr. Seibert: There was no occasion for him to
page 121] do that if he had not seen them.

Mr. Seibert: That is all I have.

Chairman Dillon: You may stand aside.

Mr. Mapp: I would like to ask him a question or two.

CROSS EXAMINATION

By Mr. Mapp:

Q. You said he said he had never seen Mrs. Fox. He did not say that Mrs. Fox had never been there?

A. Yes, *S*ir, he said he had never seen her. Neither the wife nor the child.

Q. But he did not say that they had never been there?

A. No, *He* did not say that.

Q. And from 1961, or from the fall of 1960 you made two trips to this house?

A. Yes, *S*ir.

Q. And they were both, I take it, in the day time?

A. Yes, *S*ir.

Q. And Mr. Fox was not there on either occasion?

page 122] A. No, *S*ir. Last fall Mr. Walker did not know him by name. I asked for him by name but he did not know him by name.

Q. But as soon as you identified him as a trucker, he did know him?

A. After the second question I asked him: "You mean he does not have a room here?" And he said: "Oh, you are talking about the trucker. He has a room here."

Q. And the second visit he did know?

A. Yes, *S*ir.

Q. And on just the two occasions that you were there, he was not at home at that time?

A. No, *S*ir.

Q. There is nothing unusual about that, is there, a man engaged in the trucking business, particularly the long distance trucking business, is not apt to be at home in the day time?

A. No, *S*ir. Those were the only two occasions I have been there and knocked. I have ridden by there on a number of occasions and have never seen any of the trucks or his automobile at that address.

Mr. Mapp: That is all.

page 123] RE-DIRECT EXAMINATION

By Mr. Seibert:

Q. Did he say that he knew the other man, that is his nephew, isn't it?

A. Mr. Page Walker is Mr. Joe Walker's nephew.

Mr. Seibert: I just can't figure how a man could jump in

and go in a house in the middle of the night and the man who owns the house never see him.

Chairman Dillon: All right, you may stand down.

Witness stood aside.

page 124] Mr. Seibert: That is all I have.

Chairman Dillon: Do you have anything further?

Mr. Mapp: No, *S*ir.

Chairman Dillon: The Commission finds that the defendant misrepresented material facts to obtain exemption cards, and we will impose a penalty on him of Five Hundred Dollars ($500.00), and we order him to surrender the registration cards and identification markers — that the registration cards and identification markers issued this defendant be surrendered.

Now, and we will also — you are asking, Mr. Woodroof, for one year's license on these vehicles in the sum of Five Thousand Five Hundred and Ninety Four Dollars?

Mr. Woodroof: Yes, *S*ir.

Chairman Dillon: Any interest?

Mr. Woodroof: We did not ask for any interest.

Chairman Dillon: Then we give judgment against the defendant in the sum of Five Thousand Five Hundred and Ninety Four Dollars.

page 125] Commissioner Catterall: The judgment will be cancelled if he pays the Motor Vehicle Department for the tags.

Chairman Dillon: That is right. The judgment will be cancelled if he buys the tags.

Commissioner Catterall: Either pay the money or buy the tags. Is that what you are asking for — you don't want the money and the tags?

Mr. Woodroof: Oh no, *S*ir.

Chairman Dillon: If he buys the tags that satisfies the judgment.

Mr. Woodroof: Yes, *S*ir.

Mr. Mapp: We would like to note an appeal to the Commission's decision.

Commissioner Catterall: You do that in writing, you understand.

Mr. Seibert: Within sixty days.

Commissioner Catterall: You are going to take up these tags unless he pays within thirty days.

Mr. Seibert: That is up to the Commission whether it should be imposed immediately or wait until he has time to prepare his appeal.

page 126] Commissioner Catterall: You have to give a bond if you are going to take an appeal, the way you did in that other case.

Chairman Dillon: That is right.

Mr. Mapp: We have sixty days, as I recall, in which to note an appeal and take an appeal.

Commissioner Catterall: But we only allow thirty days in which to pay our judgment, so you will have to give your bond within thirty days.

Mr. Mapp: Does the Commission know how much bond will be required?

Commissioner Catterall: You will have to give us a bond for twice the amount of the judgment. Isn't that what you did in the other case?

Mr. Mapp: Yes, as I recall.

Commissioner Catterall: You give the bond here and then we treat that as a *supersedeas* bond for twice the amount of the judgment.

Chairman Dillon: Twice the amount of the judgment. Call the next case.

page 127]

★ ★ ★ ★ ★

AT RICHMOND, NOVEMBER 9, 1965

★ ★ ★ ★ ★

This day came on for hearing the rule issued against the defendant; and, it appearing that the defendant secured seven registration cards and identification markers from the Commission for the operation of motor vehicles by representing falsely that he was not a resident of Virginia,

IT IS ORDERED:

1. That judgment be entered in favor of the Commonwealth against the defendant in the amount of $5,594.00; but said judgment may be satisfied by purchasing from the Division of Motor Vehicles on or before December 9, 1965, license plates for his vehicles and payment therefor of $5,594.00.

2. That the defendant be assessed a penalty of $500.00 and that all registration cards and identification markers issued to the defendant by the State Corporation Commission be cancelled.

3. The defendant, by counsel, having declared his intention of appealing to the Supreme Court of Appeals, execution of this judgment is suspended pending the decision of said Court provided, on or before December 9, 1965, the defendant furnishes bond with corporate surety satisfactory to the Clerk of the Commission in the penal sum of $10,000.00 conditioned to pay the costs of such appeal and the final judgment of the Supreme Court of Appeals.

Copies of this order shall be sent to William King Mapp and N. Westcott Jacob, counsel for the defendant, and to A. R. Woodroof and D. Gardiner Tyler, Assistant Attorneys General, Commonwealth of Virginia.

★ ★ ★ ★ ★

page 128]

★ ★ ★ ★ ★

AT RICHMOND, NOVEMBER 16, 1965

★ ★ ★ ★ ★

It appearing that the State Corporation Commission now being advised by the interveners in this case that the amount of the judgment entered against the defendant in the Commission's order of November 9, 1965, namely, $5,594.00 should be corrected to show the amount as $5,494.00, and that the Motion in this case be likewise corrected;

IT IS, THEREFORE, ORDERED:

1. That the Commission's order of November 9, 1965, be

corrected to show the amount of judgment against the defendant as $5,494.00.

2. That the Motion filed in this case by the interveners be corrected to show the amount of the judgment as $5,494.00.

Copies of this order shall be sent to William King Mapp and N. Wescott Jacob, counsel for the defendant, and to A. R. Woodroof and D. Gardiner Tyler, Assistant Attorneys General, Commonwealth of Virginia.

★ ★ ★ ★ ★

page 129]

★ ★ ★ ★ ★

Opinion, CATTERALL, *Commissioner*:

This case turns on whether Oscar William Fox, Jr., is a resident of Virginia or of Delaware.

He obtained identification markers for his vehicles by representing to the Commission that he was a resident of Delaware. Under §56-304.1 of the Code *identification markers* signify that the vehicle can be operated on Virginia highways *without* Virginia license plates. If Fox had not represented that he was a nonresident the Commission would have refused to issue identification markers and would have issued classification plates. Under §56-304 of the Code *classification plates* signify that the vehicle *cannot* be operated on Virginia highways without Virginia license plates. The use of S. C. C. identification markers on vehicles required to display D. M. V. license plates is an improper use of the markers. Because of that improper use the Commission imposed a penalty of $500 pursuant to the first paragraph of §56-304.12, revoked the markers pursuant to the second paragraph; and, pursuant to the third paragraph, entered judgment in favor of the Commonwealth for the fees owing for the D. M. V. license plates required by §56-304. The Commission's decision that a vehicle must display S. C. C. classification plates is a decision that it must also display D. M. V. license plates and that the fees for such license plates are owing to The Commonwealth.

The best definition of a man's domicile is "the place he is

away from when he is away from home." There
page 130] can be no doubt that Oscar William Fox, Jr. lives in Chincoteague, Virginia. He is away from Chincoteague driving over the highways much of the time, but always comes back to Chincoteague.

The defendant's actions designed to make it look as if he lived in Delaware and not in Virginia included the following:

1. He represented to the State Corporation Commission that he lived in Delaware when he applied for and got identification markers instead of classification plates for his vehicles.

2. He kept his name out of the Chincoteague telephone directory and subscribed for an unlisted telephone under the name of "Billy Fox."

3. He filed no State Income tax return in Virginia.

4. He paid no taxes to the town of Chincoteague.

5. He subscribed for Chincoteague water service in the name of "Bill Fox."

6. The electrical service furnished him in Chincoteague is billed to his wife, Mildred Fox.

7. He rented a P. O. box at the Delmar, Delaware post office.

8. He arranged with a man named Joe Walker of 206 North Second Street in Delmar for the privilege of sharing a room with Walker's nephew, Page Walker.

9. He filed federal and state income tax reports in Delaware.

10. He registered his vehicles in Delaware in the name of Oscar William Fox, Jr., 206 N. Second St., Delmar, Delaware.

11. He stated emphatically to the State Trooper investigating this case that he lived in Delaware.

12. He had a Delaware operator's license.

13. He has never registered to vote in either state.

page 131] From observing the defendant on the witness stand and hearing his testimony the Commission finds as a fact that he committed perjury whenever he thought it would bolster his case; but even if his testimony were true it did not make out a *prima facie* case of change of domicile.

The defendant admittedly lived in Virginia until the Virginia fees for licensing trucks were increased to the point where they were much more expensive than the Delaware

fees. His only reason for claiming a Delaware domicile was to escape Virginia license fees. It is legal to leave a state in search of a more congenial tax climate; but Mr. Fox, after the alleged abandonment of his Virginia domicile, continued to do in Virginia everything that he had previously done in Virginia. He lived with his wife rent-free in a house in Chincoteague owned by her father. They and their child are the only occupants of the house and they pay the bills for water, electricity and telephone service. All of his truck drivers live in Virginia and all of his trucks come back to Chincoteague after their trips. He stated: "I haul seafood out of Chincoteague each day on these trucks."

His bookkeeper lives in Virginia. He keeps no records in Delaware, he dispatches no trucks from Delaware, he has nothing that could be called a place of business in Delaware.

Mr. Joe Walker owns a house at 206 North Second Street in Delmar, Delaware. For the privilege of occupying half a bed with Walker's nephew, Fox gives Walker seafood every now and then. Fortunately for their mutual comfort, Fox and the nephew are seldom there at the same time. We do not believe Fox's statement that he is there twice a week and we do not believe his testimony that his wife and baby have accompanied him seventy-five times. Nor do we believe that in this stopover room for two truck drivers there is a crib for the baby to sleep in. The defendant's wife, according to his testimony, was in Williamsburg on the day of page 132] the hearing. Her failure to come to Richmond to corroborate her husband's testimony in a case of this importance compels the inference that she would not have corroborated his statement that she and the baby leave their house in Chincoteague to spend 75 nights a year in Delmar.

The defendant testified that he and his wife and baby were at the house in Delmar three or four times a week and shared the kitchen with the Walkers; that they took turns using the stove and that they ate in the kitchen. Walker told Baird that he had never seen Mrs. Fox. His statement is, of course, hearsay, but it was not objected to, and we had already reached the same conclusion from the evidence previously introduced.

DILLON, *Chairman,* concurs.

HOOKER, *Commissioner,* not sitting.

page 133]

* * * * *

AT RICHMOND, JANUARY 7, 1966

* * * * *

Oscar William Fox, Jr., having filed due notice of appeal in this case,

IT IS ORDERED that all of the original exhibits filed with the evidence, numbered and described as follows, be certified and transmitted to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by him to this Commission with the mandate of that court:

Exhibit No.	DESCRIPTION
1.	Cards issued by Transportation Division, State Corporation Commission, to Oscar William Fox, Jr., for 1964 and 1965.
2.	Reciprocity agreement, Virginia and Delaware, re. motor vehicles.
3.	Statement, Nationwide Mutual Insurance Company to Oscar William Fox, Jr., as of August 26, 1965.

END

* * * * *

page 134]

* * * * *

CERTIFICATE

Pursuant to an order entered herein on January 7, 1966, the original exhibits listed therein are hereby certified to the Supreme Court of Appeals of Virginia, to be returned by the Clerk thereof to this Commission with the mandate of that court.

It is further certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in this proceeding, with the original exhibits, contains all of the facts

upon which the action appealed from was based, together with all of the evidence introduced before or considered by this Commission.

Witness the signature of Jesse W. Dillon, Chairman of the State Corporation Commission, under its seal and attested by its Clerk this 12th day of January, 1966, at Richmond, Virginia.

JESSE W. DILLON
Chairman

Attest: WILLIAM C. YOUNG
Clerk

CERTIFICATE

I, William C. Young, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Oscar William Fox, Jr., by William King Mapp, Keller, Virginia 23401, of counsel, filed with me a notice of appeal therein which had been mailed to: A. R. Woodroof and D. Gardiner Tyler, Assistant Attorneys General, Attorney General's Office, Richmond, Virginia, and to Counsel for the State Corporation Commission, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, January 12, 1966.

WILLIAM C. YOUNG
Clerk

★ ★ ★ ★ ★

A Copy — Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Appeal of Right Awarded	1
Record	2
Rule	2
Order — September 15, 1965	2
Proceedings	3, 63, 67
Witnesses:	
James S. Baird	4, 64
Albert Stuart	36, 61
Oscar William Fox, Jr.	38
Order — November 9, 1965	68
Order — November 16, 1965	69
Opinion	70
Order — January 7, 1966	73
Certificates	73