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Clerk, Supreme Court of Appeals
Richmond,

Record No. 6395

In the
Supreme Court of Appeals of Virginia
at Richmond

PERCY LEE HILL

v.

CURTIS H. THOMAS

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

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. 6395

VIRGINA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 22nd day of April, 1966.

PERCY LEE HILL, Plaintiff in error,

against

CURTIS H. THOMAS, Defendant in error.

From the Circuit Court of the City of Newport News
Henry D. Garnett, Judge

Upon the petition of Percy Lee Hill a writ of error and *supersedeas* is awarded him on a judgment rendered by the Circuit Court of the City of Newport News on the 28th day of October, 1965, in a certain motion for judgment then therein depending, wherein Curtis H. Thomas 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 circuit court in the penalty of ten thousand dollars, with condition as the law directs.

RECORD

* * * * *

page 49] INSTRUCTION NO. 1

The Court instructs the jury that in the exercise of reasonable care, the following duties devolve upon a motorist operating a vehicle over and along the streets and highways of this Commonwealth:

1. To keep a proper and efficient lookout for other vehicles then using the street or highway.
2. To avail himself of what such lookout discloses, so as to avoid injury to himself or others.
3. To look when looking is effective, and to prudently act on what such lookout discloses.
4. To timely and seasonably apply the brakes of his vehicle when so to do would avoid a collision.
5. To operate the motor vehicle at a speed which is reasonable under the circumstances and conditions then obtaining, and under no circumstances to operate the vehicle in excess of the lawful speed limit.

The Court further instructs you that each of the foregoing duties is a continuing duty, and if you believe from the evidence that the defendant, Hill, violated one or more of these duties, then such violation constitutes negligence, and if you further believe that such negligence was a proximate cause of the accident and injuries complained of, then you must find your verdict for the plaintiff, Curtis Thomas.

* * * * *

page 54] INSTRUCTION NO. 6

The Court instructs the jury that while the driver of a vehicle within or approaching an intersection has the right of way over a vehicle in an intersection and turning to the left therein, this right of way does not relieve a driver within or approaching an intersection of the duty of keeping and maintaining a proper and efficient lookout and of the duty of using reasonable and ordinary care and caution in entering and passing through the intersection.

page 55] INSTRUCTION NO. 7

The Court instructs the jury that the law does not require every person riding in an automobile to be in perfect health. If a person is injured in an automobile collision through the fault of a defendant, that defendant's liability, if any, is in no way lessened by reason of the fact that the plaintiff was not in good health and that if the injuries sustained by the plaintiff in the collision were made more severe or aggravated because of the fact that the plaintiff was not in good health does not in anywise lessen or minimize the liability, if any, of the defendant to the plaintiff, Curtis Thomas, for the defendant takes the plaintiff as he finds the plaintiff.

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page 60] INSTRUCTION E

The Court instructs the jury that under the law in this State, as A. M. Apperson, the operator of the car in which the plaintiff was riding, approached the intersection of Warwick Boulevard with West Mercury Boulevard and before making a left turn into Warwick Boulevard, he was required to exercise reasonable care:

1. To yield the right of way to vehicles traveling west on Mercury Boulevard in close proximity to the intersection.
2. To keep his vehicle under reasonable control.
3. To keep a proper lookout for approaching traffic and to act on what the lookout disclosed or should have disclosed.

The Court further instructs you that Hill had the right to assume that Apperson would comply with each and every provision of the law as above set forth, until the contrary appeared to him or in the exercise of ordinary care should have appeared to him.

Therefore, if you find from the evidence that A. M. Apperson violated any one or more of the above provisions of the law, then he is guilty of negligence and if you further find that such negligence, if any, was the sole proximate cause of this accident and the injuries complained of, then you

are instructed that you must return your verdict in favor of the defendant, Percy Lee Hill.

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page 65] INSTRUCTION H

The following Tables of speed and stopping distances show the results of experiments made with automobiles, unloaded except for the driver, equipped with four-wheel brakes, in good condition, on dry, hard, approximately level stretches of highway free from loose material.

These Tables create no presumption in law.

SPEED IN		AVERAGE STOPPING DISTANCE		TOTAL STOPPING DISTANCE
Miles per Hour	Feet per Second	Auto Brakes (In Feet)	Average Driver Reaction Time (¾ Second) (In Feet)	Autos (In Feet)
10	14.67	5	11	16
15	22.0	12	16	28
20	29.34	21	22	43
25	36.62	32	27	59
30	44.0	47	33	80
35	51.3	63	38	101
40	58.7	82	44	126
45	66.0	104	50	154
50	73.3	128	55	183
55	80.7	155	61	216
60	88.0	185	66	251
65	95.3	217	71	288
70	102.6	252	77	329
75	109.9	289	82	371
80	117.2	328	88	416
90	132.0	425	99	524
100	146.6	514	109	623

Refused.

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page 67] INSTRUCTION E

The Court instructs the jury that under the law in this State, as A. M. Apperson, the operator of the car in which the plaintiff was riding, approached the intersection of Warwick Boulevard with West Mercury Boulevard and before making a left turn into Warwick Boulevard, he was required to exercise reasonable care:

1. To yield the right of way to vehicles traveling Mercury Boulevard in close proximity to the intersection.
2. To keep his vehicle under reasonable control.
3. To keep a proper lookout for approaching traffic and to act on what the lookout disclosed or should have disclosed.

The Court further instructs you that Hill had the right to assume that Apperson would comply with each and every provision of the law as above set forth, until the contrary appeared to him or in the exercise of ordinary care should have appeared to him.

Therefore, if you find from the evidence that A. M. Apperson violated any one or more of the above provisions of the law, then he is guilty of negligence and if you further find that such negligence, if any, was the sole proximate cause of this accident and the injuries complained of, then you are instructed that you must return your verdict in favor of the defendant, Percy Lee Hill.

page 68] VIRGINIA: Circuit Court of the City of Newport News, Thursday, the 28th day of October, 1965.

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Virginia: Circuit Court of the City of Newport News, Thursday, the 28th day of October, 1965.

This day came the parties in person, and by their attorneys, and thereupon came a jury to-wit: Percy R. Bunch, R. Berkley Hancock, Sr., Walter T. Broach, Roy B. Wright, A. E. Lenhart, Sr., B. F. Atkinson and Kenneth D. Penrose, who

were sworn to try the issue joined, and the evidence of the plaintiff being fully heard, the defendant, by his attorney, moved to strike the evidence of the plaintiff, which motion to strike, the Court doth overrule, to which ruling of the Court, the defendant, by his attorney, excepted, and after hearing fully the evidence the instructions of the Court and arguments of counsel, the jury retired to their room to consider of their verdict, and after sometime returned into Court having found the following verdict: "We the jury upon the issue joined find for the plaintiff and assess her damages in the sum of $8500.00. A. E. Lenhart, Sr., Foreman."

Whereupon, the defendant, by his attorney, moved the Court to set aside the verdict of the jury as being contrary to the law and the evidence (and various other reasons assigned at the bar and urged for leave to argue same) and grant the defendant a new trial, which motion the Court doth overrule, to which ruling of the Court the defendant, by his attorney, excepted.

Therefore, it is considered by the Court that the plaintiff recover against the defendant, the sum of Eighty-five Hundred Dollars ($8500.00), together with interest thereon after the rate of six (6%) per centum per annum from the 28th day of October, 1965 until paid and her costs herein expended.

* * * * *

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MOTION

Now comes the defendant, Percy Lee Hill, and moves the Court to vacate the judgment rendered on October 28th, 1965, and set aside the verdict of the jury in favor of the plaintiff and enter up final judgment for the defendant, Percy Lee Hill, or in the alternative, that the defendant, Percy Lee Hill, be awarded a new trial for the following reasons:

1. The verdict of the jury is contrary to the law and the evidence.

2. The verdict of the jury is without evidence to support it.
3. The verdict of the jury is excessive.

Respectfully submitted,
DANIEL W. WILKINSON, JR.
Attorney for Percy Lee Hill

I certify that on Nov. 12, 1965 I delivered a true copy of the foregoing pleading to such counsel of record for the plaintiff.

ARTHUR G. LAMBIOTTE, p.d.

Filed 11/12/65. H.D.G., Judge.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Prior to the expiration of sixty (60) days from final judgment, the defendant, Percy Lee Hill, files herewith his notice of appeal and lists his assignment of errors as follows:

The Court erred:

1. In refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence upon motion of the defendant.
2. In granting Instruction No. 2 offered by the plaintiff over the objection of the defendant.
3. In granting Instruction No. 6 offered by the plaintiff over the objection of the defendant.
4. In granting Instruction No. 7 offered by the plaintiff over the objection of the defendant.
5. In refusing to grant Instruction E as offered by the defendant.

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

7. In refusing to set aside the verdict of the jury upon motion of the defendant immediately following the verdict on the ground that the verdict was contrary to the law and the evidence, and without evidence to support it.

8. In refusing to set aside the verdict of the jury and to enter up judgment in favor of the defendant.

page 76] 9. In refusing to set aside the verdict of the jury and grant a new trial on all issues.

PERCY LEE HILL
By ARTHUR G. LAMBIOTTE
Counsel

Filed December 22, 1965.

By GEO. S. DeSHAZOR, D. C.

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ASSIGNMENT OF CROSS-ERROR

The plaintiff, by counsel, assigns as cross-error committed by the Trial Court as follows:

1. The action of the Trial Court in allowing counsel for the defendant, after the trial was completed, to dictate into the record his objections and exceptions, as well as reasons therefor, to certain instructions granted and refused by the Court.

CURTIS H. THOMAS
By LARRY M. TOPPING
Her Attorney

Filed January 3, 1966.

Mr. Harold Berkey

By GEO. S. DeSHAZOR, JR., Clerk

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ORDER

Upon motion of the defendant, Percy Lee Hill, by counsel, to vacate the judgment heretofore entered to set aside the verdict of the jury in favor of the plaintiff and to enter up final judgment for the defendant, Percy Lee Hill, or in the alternative that the said Percy Lee Hill be awarded a new trial, and the Court having heard argument of counsel and being of the opinion that the matter was one to be submitted to a jury for consideration, does hereby ORDER and DECREE that the motion by the defendant, Percy Lee Hill, be denied and overruled, to which ruling of the Court this defendant objects and notes his objection thereto.

Date: 2/1/66 *Nunc pro tunc*
Enter: 11/16/65

HENRY D. GARNETT
Judge

page 5]

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MR. HAROLD BERKEY,
called as a witness by the Plaintiff, being first duly sworn, testified as follows:

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page 6]

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Q. Where are you employed, Mr. Berkey?

Mr. Percy Lee Hill

A. Employed at Broadway-Warwick in the Hilton Shopping Center.
Q. What is your title?
A. Manager.
Q. Do you know Mrs. Curtis Thomas?
A. I do.
Q. How long have you known Mrs. Thomas?
A. About fifteen years.
Q. Did she ever work in the Broadway Department store?
A. Yes.
Q. Did she work under your supervision?
A. Yes.
Q. Can you say to the Court and Jury what her attendance record was prior to October 27, 1963?
A. No problems. She had no loss of work.

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page 7]

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Q. Has she returned to work since October 27, 1963?
A. No, sir.

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Q. Would you like to have her back in your employment?
A. Yes.

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page 8]

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MR. PERCY LEE HILL,
called as an adverse witness by the Plaintiff, being first duly sworn, testified as follows:

Mr. Percy Lee Hill

DIRECT EXAMINATION

By Mr. Fox:

Q. Will you state your name, please.

A. Percy Lee Hill.

Q. How old are you?

A. 23.

Q. How old were you, Percy, when this accident happened October 27, 1963?

A. 21.

Q. Were you involved in an accident on October 27, 1963, at the intersection of Warwick Boulevard and Mercury Boulevard with a car being driven by a Mr. Apperson?

page 9] A. Yes, sir.

Q. And Mrs. Thomas was riding as a passenger in Mr. Apperson's car?

A. Yes, sir.

Q. You were the driver of the car?

A. Yes, sir.

Q. Who was in the front with you?

A. Bertha Wiggins was in the front seat.

Q. Bertha Wiggins was in the front seat. Who was in the rear seat?

A. Robert Crocker and Ellen Thomas.

Q. Where were you all headed, Percy?

A. We were headed back to Hobson.

Q. What time was it when the accident happened?

A. About 9:45.

Q. It was dark then?

A. Yes, sir.

Q. You had your headlights on?

A. Yes, sir.

Q. And where had you been prior to the accident, Percy?

A. We had been to Bertha Wiggins's aunt's house, but she wasn't home.

Q. What was her name, the aunt's name?

page 10] A. I can't remember her name at the moment right now.

Q. When did you determine it was Bertha Wiggins' aunt's house that you had been to?

A. Before we left she asked could I take her to her aunt's house.

Q. She asked you to take her to her aunt's house in Newport News?

Mr. Percy Lee Hill

A. Yes, sir.

Q. Now what time was it, Percy, when Bertha asked you to bring her over to Newport News to see her aunt? Was it that afternoon?

A. It was dark, about 8:00 o'clock.

Q. When she asked you to do that?

A. Yes, sir.

Q. That was over in Hobson?

A. That is right.

Q. Where were you when she asked that?

A. At my cousin's house.

Q. Is that Ellen Thomas?

A. That is right.

Q. Who else was there?

A. Robert Crocker.

Q. Robert Crocker was there?

A. Yes, sir.

page 11] Q. And Bertha was there?

A. No, Bertha came there.

Q. Was anyone else there before Bertha got there?

A. No, sir.

Q. This was at 8:00 o'clock and she asked you to take her to her aunt's house in Newport News?

A. That is right.

Q. Where did the aunt live?

A. On 21st Street.

Q. On 21st Street?

A. That is right.

Q. Do you recall on April 15, when you were in Court about this case, when I asked you about who you were going to visit, you didn't know it was Bertha's aunt at that time?

A. Yes, sir, I knew it was her aunt.

Q. What time did you get to her house when you got over here?

A. I don't know exactly what time it was.

Q. Did you come directly from Hobson to Bertha's aunt's house on 21st Street?

A. That is right.

Q. Did you stop anywhere at all?

A. No, except the toll and red lights.

page 12] Q. How long did you stay at the aunt's house?

A. We waited about ten minutes after she wasn't home.

Mr. Percy Lee Hill

Q. Then what did you do?

A. Then we left and stopped at Rich's Drive-In, and had a drink, sodas.

Q. Then what did you do?

A. Left there and headed toward Hobson.

Q. You didn't stop anywhere else other than Rich's?

A. No.

Q. Where is Rich's Drive-In located?

A. I don't know what street.

Q. Was it Jefferson Avenue or over near 21st Street?

A. Over near 21st Street.

Q. What block of 21st Street?

A. I don't know.

Q. You don't know?

A. No, sir, I am not too familiar with Newport News.

Q. You are familiar with the intersection of Mercury Boulevard and Warwick Boulevard, are you not, Percy?

A. Yes, sir.

page 13] Q. You know that is a very busy intersection, don't you?

A. Yes, sir.

Q. Did you have your radio on as you were driving your car, Percy?

A. No.

Q. Were you talking with people in the car as you were driving along?

A. No, I wasn't talking, they was talking.

Q. You were not talking?

A. No.

Q. Well as you neared the top of the overpass on Mercury Boulevard, just prior to going down the hill, Percy, how fast were you driving the car?

A. About 25 miles per hour.

Q. Had you looked at the speedometer?

A. Yes, sir.

Q. Whereabouts had you looked at it?

A. At the time I got to the top of the overpass.

Q. You looked at your speedometer?

A. That is right.

Q. And it registered how much?

A. 25.

Mr. Percy Lee Hill

Q. 25. Was it exactly 25?

page 14] A. Yes, sir.

Q. Did you slow up as you went down the hill or did you speed up?

A. I slowed up, took my foot off the gas, had my foot on the brake.

Q. At the top you were going exactly 25, you took your foot off the gas and put it on the brake and went down the hill?

A. Right.

Q. And at that time you were not talking with any of the occupants in the car, but you think the other two were talking?

A. That is right.

Q. You had your headlights on?

A. Right.

Q. Was there any vehicles ahead of you as you went down the hill, Percy?

A. No.

Q. Any obstructions to your view as you looked down the hill and drove down the hill, anything to block your vision ahead of you?

A. No, sir.

Q. Was it raining or were the streets dry?

A. Dry.

Q. Dry?

page 15] A. Yes, sir.

Q. Is the area well lighted, Percy? Lots of light there?

A. Yes, sir.

Q. Gas station over to the left as you went down the hill?

A. Yes, sir.

Q. And lots of street lights?

A. That is right.

Q. What type of brake did you have on your automobile, were they power brakes or regular brakes?

A. Regular brakes.

Q. Were the brakes in good operating condition?

A. Yes, sir.

Q. Car in good shape mechanically?

A. Yes, sir.

Mr. Percy Lee Hill

Q. Where was your vehicle, Percy, when you first observed the traffic light that controlled your driving?

A. What vehicle are you talking about?

Q. Your car? Where was your car when you first saw the traffic light at the intersection?

A. Well I was, when I first saw the light, I couldn't see it until I come over the overpass.

Q. You had to get over top, going down before you could see it?

page 16] A. Yes, sir.

Q. Where were you, were you at the top or going down the hill?

A. When I first saw it, I started down the hill.

Q. What color was the light then?

A. Red.

Q. Where was your automobile when it changed from red to green?

A. I was all the way down the hill off the overpass.

Q. All the way down the hill?

A. Yes.

Q. And just before going into the intersection?

A. Yes, sir, I just about stopped.

Q. Just about to stop?

A. Yes, sir.

Q. What speed would you say you were going then?

A. About 10.

Q. And the light, did you see it turn green for you?

A. Yes, sir.

Q. What did you do then?

page 17] A. Proceeded straight through.

Q. Did you step on the gas?

A. I just mashed on a little, going about 15 miles per hour.

Q. Got up about 15?

A. Yes, sir.

Q. When you got to the bottom of the hill, you say you slowed down to about 10. Did you look at your speedometer there?

A. Yes, sir.

Q. At the bottom of the hill you looked at your speedometer and you were going 10 miles per hour?

Mr. Percy Lee Hill

A. Yes, sir, coming to a stop.
Q. I understand, but you did look at the speedometer?
A. Yes, sir.
Q. And you mashed on it a little bit and started forward?
A. Yes, sir.
Q. You got to 15?
A. Right.
Q. Did you look at your speedometer again?
A. I didn't go no faster than that.
Q. I asked you did you look at your speedometer?
page 18] A. Yes, after I proceeded on, I did.
Q. You looked again?
A. Just glanced again.
Q. Where were you — did you see it register 15?
A. Yes, sir.
Q. Where was your car at that time, Percy?
A. Under the light.
Q. Which lane of traffic were you in? Now you know there were two lanes to go across Mercury and across the James River Bridge, is that right?
A. Yes, sir.
Q. Was there also a lane where you could have turned right to go to Hilton Village?
A. Yes.
Q. And also a lane where you could have turned left to go toward Newport News?
A. Right.
Q. Which of the two lanes were you in that go across James River Bridge, the one closest to Hilton Village or closest to downtown Newport News?
A. I was in the third lane.
Q. The third lane. Would that be the one the closest to Hilton Village? I don't know which one you refer to as the third lane.
page 19] A. You say there were two turn lanes, to the right, and one to the left, so I was in the third lane from the right.
Q. Third lane from the right?
A. Yes, sir.
Q. That would be the first lane going straight through

Mr. Percy Lee Hill

the intersection, is that true?

A. Yes, sir.

Q. Where was Mr. Apperson's car when you first saw it, Percy?

A. Stopped at the red light.

Q. Whereabouts was it stopped at the red light?

A. On the opposite side of the highway.

Q. Was it headed toward you?

A. Yes, sir.

Q. You saw it in a stopped position?

A. That is right.

Q. When did you determine that you saw it? At that particular point, Percy, that night, or later on when you talked with your attorney, Mr. Lambiotte, and tried the case in April?

Mr. Lambiotte: If your Honor —

The Court: I don't think that is proper examination.

page 20] Mr. Fox: I want to cross examine him on his testimony he gave in response to my questions in April.

The Court: First you must lay the foundation, Mr. Fox.

Mr. Fox: I was trying to get there.

Q. Percy, you recall testifying on April 15, when I called you to the witness stand and asked you certain questions, don't you?

A. Yes, sir.

Q. Do you recall on that day I asked you, "You say you didn't put on brakes as far as you know before the accident. Did you see the Apperson car before the collision?" Do you remember my asking you that question?

A. Yes, sir.

Q. And your answer was, "There was a lot of cars over on the street he was on but I didn't pay any attention." Do you remember saying that?

A. No, sir.

Q. Do you deny saying that? If the reporter that was here and took it down and is a part of the record that Mr.

Mr. Percy Lee Hill

Lambiotte has, if it said you said it, would you deny saying it?

A. No, sir.

page 21] Q. Do you agree then you said that on that occasion?

A. Well I seen the car.

Q. Then I went on to ask you, "When the collision occurred, he was not over on the street, he was in the intersection?" And you said, "Yes, sir." Then I asked you, "Did you see him before the collision occurred?" And your answer, "When I seen him, he was just about running into me. I didn't have time to do anything." Do you recall saying that?

A. Yes, sir.

Q. That is not *consistant* with what you have told me awhile ago that you saw him stopped for the red light?

A. I seen him stopped on the road right before I proceeded through the light.

Q. You did?

A. Yes, sir.

Q. You were in error when you testified as I just asked you about, you made a mistake?

A. I don't understand.

Q. Did you also see the blinker light on Mr. Apperson's car for left turn signal when you saw him stopped over there?

A. Yes, sir.

page 22] Q. Do you know how long he was in a stopped position over there, Percy?

A. No, sir.

Q. How long would you estimate he did stop?

Mr. Lambiotte: He just said he didn't know.

The Court: Let him go ahead. Can you estimate it?

A. No, sir.

Q. Can't estimate it?

A. No.

Q. Are you sure he was stopped or was he moving?

A. Stopped.

Q. Did you see another car behind him stopped?

A. Yes, sir.

Mr. Percy Lee Hill

Q. How many did you see back there?

A. There was about two or three. —

Q. Were all of them stopped? — I didn't mean to interrupt you.

A. There was two or three, maybe more.

Q. Traffic was heavy then, is that true?

A. Yes, sir.

Q. Well did you see Mr. Apperson's car start off?

A. Yes, sir.

page 23] Q. When he started from the stopped position, Percy, where were you at that time?

A. I was right in the center of the intersection.

Q. You were right in the center of the intersection when he started from a stopped position?

A. Right in the center.

Q. Right in the center of the intersection, is that true?

A. That is correct.

Q. Did you stop your car there or did you keep going?

A. I kept going.

Q. What part of your car was damaged in this collision?

A. The left front fender.

Q. What other parts?

A. The fender, from the blow his car hit, my fender bent inside up, and bent the bumper too.

Q. Any damage to the side of your car and to the rear?

A. There was a small place on the side.

Q. Did you apply your brakes before the impact occurred between the two cars, Percy?

A. I mashed on them just a little, not hard,

page 24] before it occurred.

Q. You mashed on them a little?

A. Just put my brakes on to slow down, but didn't stop.

Q. Did you put down any skid marks out there before the impact occurred?

A. That is when I mashed on hard trying to stop, seeing he didn't stop.

Q. You put down some skid marks then?

A. Yes, sir.

Q. At that time when you mashed on hard, is that when you were going 15 miles per hour?

Mr. Percy Lee Hill

A. I couldn't say how fast I was going then because I wasn't watching my speedometer, but I hadn't speeded up.

Q. You had looked at your speedometer there when you were in the intersection?

A. That was before the impact.

Q. How much before the impact? How long before the impact?

A. That was right underneath the light.

Q. When you looked at the speedometer?

A. That is right.

Q. The impact occurred beyond the light towards the James River Bridge, is that right?

page 25] A. That is right.

Q. How much on the other side of the traffic light toward the James River Bridge was it the accident happened, Percy?

A. Well I don't know exactly how much —

Q. Can you tell us how much you travelled from underneath the light to when the impact happened?

A. It was about a car length, I know.

Q. About a car length?

A. I can't give any definite answer.

Q. That is your estimate, approximately one car length, is that correct?

A. Yes, sir.

Q. You saw the skid marks later on that night, that were on the road?

A. Yes, sir, I seen them after I got out of the car.

Q. Percy, at a speed of 15 miles per hour, can you tell how many feet it would take you to stop your car?

Mr. Lambiotte: Objection, if your Honor please. I don't think he is qualified to give an opinion on a question like that. I think it is an improper question with this witness.

page 26] Mr. Fox: I haven't asked his opinion. I asked if he could tell, and if it is his car, he should be able to tell us.

The Court: You will disregard the remarks of Mr. Fox that he ought to be able to tell you. That is argumentative. You

can ask him if he knows how long it takes him to stop his car at 15 miles an hour.

Mr. Fox: That is what I asked.

The Court: Whether he ought to know is a matter for the Jury to determine.

Q. Can you tell us how many feet it would take you to stop your car at 15 miles per hour?

A. No, sir, I never estimated it.

Q. Never estimated it?

A. Never timed myself on it.

Q. But you do say your brakes were in good condition?

A. Yes, sir.

Q. Can you look in the courtroom and pick out some object about how far it would take you to stop at 15 miles an hour?

A. No, sir.

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

page 27] CROSS EXAMINATION

By Mr. Lambiotte:

Q. You are 23 years old, is that right, Mr. Hill?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. Yes, sir.

Q. How many?

A. Three.

Q. What do you do for a living?

A. Oystering.

Q. Where?

A. In the James River.

Q. Where do you live?

A. I am living at 303 North Fourth Street, Suffolk.

Q. How long have you been in the oystering business?

A. About five years.

Q. How much education have you had, Percy?

Mr. Percy Lee Hill

Mr. Fox: I don't know what relevancy how long he has been in the oystering business has with the happening of this accident or this law suit.

page 28]

The Court: It may or may not. He has a right to identify the witness, who he is, what he does for a living. You may continue.

Q. How much education have you had?

A. I went through the 8th grade.

Q. What did you do after you finished the 8th grade?

A. I worked at the packing house, Smithfield Packing House, eighteen months and started working in the oystering business ever since.

Q. Now this day you had gone over to Newport News to visit an aunt of Bertha Wiggins?

A. That is right.

Q. At the time this accident occurred, you were on your way back to Hobson, is that correct?

A. Yes.

Q. You were on Mercury Boulevard coming over the overpass?

A. Yes, sir.

Q. In your own words would you please describe just what happened, what actions you took, and what happened with reference to this other vehicle you were in the accident with, in your own words now?

page 29]

A. Well as I was coming down the overpass, the light was on red.

Q. All right, go ahead.

A. So I slowed my vehicle down. Just as I got to the line, before I got to the white line, indicating stop, the light turned green, so I proceeded on.

Q. O. K.?

A. And I got under the light when Mr. Apperson's car headed right straight, like he was going right straight through, and all of a sudden, he made a left turn.

Q. Did you see him when he made the left turn?

A. Yes.

Q. What did you do?

A. I tried to pull my car to the right to avoid it, but I couldn't avoid it, so I applied my brakes to try to stop, but that still didn't do no good.

Mr. Percy Lee Hill

Q. So you applied your brakes twice in the course of going down this hill?

Mr. Fox: I object to Mr. Lambiotte's leading the witness.
The Court: Yes, sir, you can't lead the witness.

Q. Now Percy, where was this other car when you started to apply your brakes?
A. You mean before the impact?
page 30] Q. Yes?
A. He was just about on me then, and making a sudden left turn.
Q. Did you see him before he made the turn?
A. Yes, sir.
Q. Did you see him when he made his turn?
A. Yes, sir.
Q. How long had you had your car, Percy?
A. A week.
Q. Do you still have it?
A. No.

Mr. Lambiotte: That is all.

REDIRECT EXAMINATION

By Mr. Fox:
Q. Did I understand you to say in response to Mr. Lambiotte that you not only put on brakes but pulled your car to the right?
A. That is right.
Q. Do you recall I asked you again on April 15 of this year when you were testifying, I asked you the question, "You then put on the gas and proceeded through?" "That is right." Question, "And before this impact you never turned your car to the right, did you?" Answer, "To the right?" Question, "Your car to the right? You were in the middle lane and stayed in the middle lane?" Answer, "That is right."
page 31] A. I was in the middle lane, but I pulled to the right some.
Q. How far to the right did you pull?
A. Just about across the line.

Q. But you didn't get out of the middle lane, right up to the line?

A. No, I didn't get all the way.

Q. Did you pull a foot to the right, four feet to the right, or ten feet to the right? How many did you pull?

A. I don't know.

Q. You don't know?

A. No, sir.

RECROSS EXAMINATION

By Mr. Lambiotte:

Q. I have a couple more. Percy, do you know how many lanes there are going west on Mercury Boulevard after you pass through this intersection?

A. Headed toward the Bridge?

Q. That is right?

A. There is two lanes.

Mr. Lambiotte: That is all.

Mr. Fox: Nothing else.

The Court: All right, you may step down.

page 32] MR. LOUIS A. PARKER,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:

Q. State your name, please.

A. Louis A. Parker.

Q. Where do you live?

A. 45 Bedford Road, Newport News.

Q. What is your position?

A. I am assistant to the City Traffic Engineer for the City of Newport News.

Q. Mr. Parker, at my request do you have a diagram of the intersection of Warwick Boulevard and Mercury Boule-

Mr. Louis A. Parker

vard with you that reflects the intersection as it was October 27, 1963?

A. Yes, I do.

Q. May I have that please, sir.

(Witness complied with request of counsel).

Mr. Lambiotte: No objection.

Q. Mr. Parker, if you will, will you identify on there Warwick Boulevard. Bring it around so that the Jury can see it.

A. Warwick Boulevard runs north and south.

page 33] The Court: Let's take it over there so that they can see it.

(At this time, diagram was shown to the Jurors, and explained as follows:)

Q. Now Mr. Parker, if you will identify Warwick Boulevard?

A. Warwick Boulevard runs North and South.

Mr. Lambiotte: I think the Jury should be advised that this plat is not to scale.

Q. Will you point out Mercury Highway or Mercury Boulevard?

A. Going this direction, east and west.

Q. Is this diagram reflecting this intersection to scale?

A. No, it is not, and it is so noted on the diagram.

Q. Is this intersection controlled by any traffic control?

A. Yes, there is a signal located here.

Q. Traffic signal?

A. Yes, sir.

Q. What type signal is it?

A. This is a full action signal which means we have the control of the timing on the signal, certain portions of the timing.

Q. What, green and red signals?

page 34] A. Yes, sir.

Q. You have some figures here and I ask you

what is the width of the two eastbound lanes of Mercury Boulevard west of the intersection?

A. Thirty-four feet.

Q. And the two eastbound lanes or rather the westbound lanes on Mercury Boulevard west of the intersection?

A. Also thirty-four feet.

Q. Can you state to the Court and Jury the distance from — first of all, identify this shaded area there, what does that represent?

A. The shaded area represents a grass median, also here on Warwick, this location, a small island on the east side of the intersection right here.

Q. Do you know the width of the shaded area or grass island dividing the east and westbound lanes on Mercury Boulevard?

A. Approximately twenty feet.

Q. Would you take a pencil and put that on there, I don't believe you have it on there?

A. No, I don't. (Witness complied with request of counsel).

Q. Now from the eastern tip of this island that you mentioned to the western tip of the island, on the

page 35] eastern side of the intersection, what is the length of that, Mr. Parker?

A. Ninety-six feet as on this sketch.

Q. Going from the southern end of the grass strip of Warwick Boulevard, or rather from the northern end of the southern end, what is the distance there?

A. One Hundred Twenty-one feet as noted on the sketch.

Q. And are there any other obstructions in that intersection, in that area?

A. None whatsoever.

Q. From the crest of the hill to the western edge of this concrete strip is approximately how far, or how far?

A. Five hundred five feet. We had it so noted as the crown of the bridge and end of the bridge, and distance from the end of the bridge to the median.

Q. From the bridge to the median, Three hundred thirty-five feet?

A. And from the center of the crown to the end of the bridge.

Q. Is this the approximate incline —

Mr. Louis A. Parker

A. I think about 8%, correct, vertical curve.

Q. If you are headed east on Mercury Boulevard what type of traffic lights govern you as you get to this intersection headed east on Mercury Boulevard?

page 36]

A. You have a standard red, amber and green ball.

Q. Are there any other controls there?

A. Well now, for the eastern traffic?

Q. No, sir, on Mercury Boulevard on the eastern side headed west?

Court: Did I understand there was an arrow headed east?

A. No, sir.

Q. Headed west what are the controls?

A. Westbound traffic, there is an advanced green arrow which allows the westbound traffic to make an advanced left.

Q. How long is that advanced green arrow?

A. Ten seconds.

Q. Is there also a green light?

A. At the same time the green arrow comes on, a green ball comes on which allows the through traffic and also left turn traffic.

Q. At that time what is the traffic control for traffic headed east?

A. For the duration of the time, red.

Q. That ten seconds, is that a constant time?

page 37]

A. Constant time in the control box cannot be changed.

Q. On the eastern side of the intersection and headed west, how many traffic lanes are there?

A. Three. Three lanes plus a right turn lane which moves free all the time with a green arrow in that direction.

Q. How many lanes are there for westbound onto Mercury Boulevard on the eastern side?

A. Would you repeat that?

Q. How many lanes are there for westbound into Mercury Boulevard on the eastern side?

A. Three.

Q. All three of them through lanes?

A. No, one is marked as a left turn lane, one adjacent to the median, and two lanes adjacent to that lane are through

lanes, and this shaded, triangle shaped area, represents a painted median to keep this traffic from moving too far in this direction, and right turn traffic moves in this direction.

Q. This shaded area is not any obstruction on the road, it is painted?

A. It is painted on the surface of the street.

Q. What is the width of the three lanes
page 37A] that you have for westbound Mercury Boulevard?

A. Thirty-four and four-tenths feet, and it is so marked.

Q. What is the speed limit at this intersection for Warwick Boulevard and Mercury?

A. 35.

Q. On the 27th of October, 1963?

A. That hasn't been changed.

Court: Did he say 25 or 35?

A. 35.

Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Do you know the distance of the length of this island here?

A. Approximately seventy-five feet.

Q. Will you put it in?

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page 45]

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DR. EUGENE LOWENBERG,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:

Q. State your name, please.

A. Eugene Lowenberg.

Dr. Eugene Lowenberg

Q. What is your profession?
page 46] A. I am a surgeon.
Q. Where is your office located, Doctor?
A. In the Professional Arts Building, Norfolk, Virginia.
Q. Doctor, will you state to the Court and Jury something about your medical and educational background?
A. Well, I have been in practice 38 years. I had my residency training in New York at Belvin, Lennox Hill, and Mt. Sinai Hospitals.

Mr. Lambiotte: I will stipulate that Dr. Lowenberg is a qualified physician and surgeon.
Mr. Fox: I appreciate Mr. Lambiotte's offer, but I would like for the Jury to hear some of his qualifications, if your Honor please.

Q. Just some of your background, Doctor, don't go into detail.
A. I have been specializing in vascular surgery approximately 25 years.
Q. Are you on the staff of any hospitals?
A. Norfolk General, DePaul, Lee Memorial, Portsmouth General, U. S. Public Hospital, U. S. Naval Hospital. I am consultant at the last two hospitals.
Q. What did you say your specialty was?
A. Vascular surgery, surgery of blood vessels.
page 47] Q. What do you mean by vascular surgery?
A. Surgery of blood vessels.
Q. In the course of your profession, did you have occasion to see and treat Mrs. Curtis Thomas?
A. Mrs. Thomas was referred to me on 11-14-63 by Dr. Hunnicut of this city.
Q. Did you see her on November 14 — is this 1963?
A. I did, in my office.
Q. Did you obtain a history from her at that time?
A. Yes, sir.
Q. What was the history?
A. Patient came in complaining of red, swollen, throbbing areas in the left leg approximately in the calf. She stated that on the 27th of October she hit her shin of this left leg

when she was in the back of a car, and bruised the area. She was sitting in the back of the car riding with Mr. A. J. Apperson.

Q. Doctor, let me interrupt you there, if you will, sir. She gave you a history of being in an accident, is that true, sir?

A. That is true.

Q. Did you examine her at that time?

A. Yes, sir.

page 48] Q. What did your examination disclose?

A. Now, this is technical.

Q. Yes, sir, I understand.

A. Examination of Mrs. Curtis Thomas — this was a note for Dr. Hunnicutt, and was made on November 15 — There are massive varicosities from ankle to groin. On the basis of one to five, I would grade them, grade four. About three inches above the anterior aspect of the ankle —

Q. Could I interrupt you and ask you where that would be?

A. Three inches above the ankle on the inner side of the leg, about where your hand is, about three inches above the anterior aspect, there is an area of coppery red discoloration, the size of a silver dollar. Under this area there are some thrombosed veins. The patient states she struck her leg in this area October 27, 1963. Along the mesial side of the leg, there are conglomerate masses of thrombosed veins. These involve the posterior and anterior tributaries and massive thrombosis of the great saphenous vein.

Q. Where does that run from?

A. The great saphenous is also known as the long saphenous vein because it is the longest vein in the body. It begins on the sole of the foot just below the inner aspect of the ankle and ascends to the groin.

Q. All right, sir.

page 49] A. The rest of it would continue to be technical.

Q. Let me ask you this. The vericose veins which you have described, did they exist prior to October 27, 1963?

A. I stated on the basis of one to five, I would grade them, grade four. Well certainly considerable time was necessary to develop veins that large.

Q. That was my point, they were there before any accident to Mrs. Thomas?

Dr. Eugene Lowenberg

A. I believe that strongly.

Q. What occurs to veins of that nature when some injury happens to them, Doctor?

Mr. Lambiotte: If your Honor please, I object to that.

Court: Sustained, entirely too general.

Mr. Fox: If your Honor please, he described what he saw.

Court: There are all types of injuries, Mr. Fox, and your question was what happens to these veins that have been injured.

Q. What would happen to Mrs. Thomas's leg when she sustained the injury she described to you, what would be the normal —

page 50] Mr. Lambiotte: Isn't he leading the witness? Why can't he ask what he found?

Court: I think that question is too broad too, Mr. Fox.

Q. Describe what you found in Mrs. Thomas's leg. Can you state to the Court and Jury what your opinion is and the reason for it?

A. In simple terms, Mrs. Thomas unquestionably had enormous vericose veins which existed many years prior to the accident. At the time she was seen, she had thrombosed veins. She gave a history of being injured. It was my opinion at that time and my diagnosis that the veins had thrombosed as a result of trauma.

Q. What do you mean by trauma?

A. Injury.

Q. As I understand, it is your opinion that the thrombosed veins you saw in Mrs. Thomas's leg, was a result of injury?

A. That is correct, sir.

Q. What treatment did you give her?

A. We hospitalized Mrs. Thomas and surgically removed the varicose veins including the thrombosed veins.

Q. Do your notes indicate when she was hospitalized?

page 51] A. She was operated on the 18th. I think she was hospitalized the day she came to Norfolk, the 14th.

Q. Sometime prior to the 18th?

Dr. Eugene Lowenberg

A. That is correct.

Q. What operation did you perform, sir?

A. Resection of thrombosed veins of the left leg, left long and short saphenous ligation and stripping. Kondoleon procedure along the mesial side of the left leg —

Q. Can you explain to the Court and Jury what you mean by the word, stripping, you just used?

A. The vein is long, the branches are many, and we have, you know, this network or system of veins. In order to save cutting the leg all up, we remove them with instruments that either pass through inside the veins and strip them from the leg, just as an electrician that rewires a house would pull the wires to get rid of the old wires.

Q. Go ahead, Doctor. Do your records reflect how long Mrs. Thomas was in the hospital?

A. I don't have that information here. I can tell when she was first seen at the office after surgery. She was seen on 12-3-65, so I imagine she left the hospital about a week before that.

Q. You were not sure of that date?

A. No.

Q. Doctor, was any operation performed to
page 52] Mrs. Thomas's right leg?

A. Yes, sir.

Q. Did she complain of any pain in the right leg?

A. No, sir.

Q. Was there any reason to operate on the right leg when you operated on the left leg?

A. I specialize in this sort of thing and have for a long time. It has been my feeling that varicose veins get worse all the time and they tend to develop complications, so it was felt advisable, inasmuch as it was so large, to remove the other leg at the same time she was hospitalized.

Q. What was the course of Mrs. Thomas's convalescence following her operation?

A. Convalescence was delayed by slow healing of a wound about three or four inches above the inner aspect of the ankle. This was the site of the presumed trauma.

Q. What do you mean by it was —

Court: What do you mean by presumed trauma?

Dr. Eugene Lowenberg

A. Presumed injury. I did not see the accident. She told me she had the accident. This was the site she told me she hurt her leg.

Q. All right, sir, you say it was slow?

page 53] A. There was an area of about an inch or half inch which took about four months to heal. After healing, there was an area of hardness in that site and some hardness remains there now in that I saw Mrs. Thomas about a week ago.

Q. You saw her about a week ago?

A. Yes, sir.

Q. Are you scheduled to see Mrs. Thomas any time in the future?

A. I think Mrs. Thomas was told to come back in about a week or two weeks.

Q. She has an appointment with you?

A. That is correct.

Q. When you saw her, Doctor, I believe you said a week ago, did you observe that hardness you mentioned in her leg?

A. Yes, sir, it is still there.

Q. Doctor, in the course of her convalescence after she had been discharged from the hospital, did you prescribe any type of medication or treatment for her?

A. Yes, sir, the leg continued to swell and ordinary elastic bandages did not control the swelling, so the leg was bound from time to time with what we call gelatose bandages, which is a type of applying strong pressure to theleg. We apply a bandage to the leg and over that apply an elastic

page 54] adhesive which had the ability to contract, or ordinary elastic stockings, or ordinary elastic bandages.

Q. How many times did you do this, if you know?

A. Well, this type bandage was applied 2-19-65, which was a good while after the accident. Another 3-11-65. 3-25-65.

Q. Were they designed to hold down the swelling?

A. Overcome swelling and try to get a better result from the hard area along the inner aspect of the left ankle. I think it has.

Q. These were applied to the left leg only?

A. That is correct.

Dr. Eugene Lowenberg

Q. No complication to the right leg?

A. That is right.

Q. Did you prescribe any type of medication for Mrs. Thomas?

A. During the time in which the one incision and of course there were many incisions made, couple of hundred, the one incision difficult to heal, various medications were ordered, salves, antibiotics, applied to the unhealed area.

Q. Do you have an opinion based on reasonable medical *certainly* to describe the condition you found in Mrs. Thomas, the operation and convalescence, was it painful?

page 55] A. I think the swollen leg ached. I think the hard area hurt her.

Q. Doctor, I have here a bill from you to Mrs. Thomas. What does that reflect there?

A. That was the charge for her initial examination in the office and for her surgery.

Q. How much is that, Doctor?

A. $365.00.

Q. Since the surgery and her convalescence, has there been some additional visits from her to your office for treatment, and can you state to us how many times you have seen her?

A. There has been an additional charge made of $35.00. Most of the charges were because of the expense of the special dressings that I said I used, the gelatose bandages.

Q. In addition to the $365.00 there would be $35.00?

A. That is correct.

Mr. Fox: I offer this bill as Plaintiff's Exhibit 2.

Court: Any objection?

Mr. Lambiotte: I don't think so. No, I have no objection to that.

page 56] Court: Receive it and mark it Plaintiff's Exhibit 2.

(Bill of Dr. Lowenberg was received and marked by the Clerk as Plaintiff's Exhibit 2).

Q. Doctor, do you have an opinion based on reasonable medical certainty as to this hard area that you described still exists, as to whether that will continue in the future or not?

Dr. Eugene Lowenberg

A. Approximately two years have now lapsed. I would say that is a permanent change.

Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Doctor, you saw Mrs. Thomas last, about a week ago?

A. On 10-21-65.

Q. When was the last time you saw her before that?

A. On 7-1-65.

Q. Now, Doctor, the way I understand now, thrombophlebitis is an inflammation of the wall of the blood vessel?

A. Thrombophlebitis refers to inflammation and clot because the two go together, the same that the term has been coined thrombophlebitis, it is extremely rare for a vein that has a clot in it not to get inflammed, whether page 57] the inflammation starts the clot, or the clot starts the inflammation is not always clear, but the result is always the same, the blood is stagnated, and therefore the name thrombo, because the clot is there, and phebitis because the vein wall is inflammed.

Q. Over what area of her leg was this thrombophlebitic condition located?

A. It extended from the ankle all the way to the groin.

Q. It is true that thrombophlebitis can be caused by other things other than trauma, is that not correct?

A. Yes, usually spontaneous or trauma.

Q. I didn't ask you —

A. They are the only two things I know.

Q. My question, isn't thrombophebitis also caused by other things or another thing other than trauma?

A. Spontaneous.

Q. What do you mean by spontaneous?

A. A person may have these enormous veins for years and years and wake up one morning with the vein tender, hard and hot, tender and inflammed and give no history of trauma, so we have to say it is spontaneous. The trauma may have been there and we can't get a history, and the patient may not be cognizant of the trauma.

Dr. Eugene Lowenberg

page 58] Q. The operation you performed with regard to the varicose veins, what is the name of that operation?

A. It is called high sapheno-femoral ligation thrombectomy and stripping.

Q. May I refer to this operation as thrombectomy and stripping?

A. Yes, sir.

Q. This was performed on both the right leg and the left leg?

A. That is correct, sir.

Q. When you saw her initially, she had a severe varicose condition in both legs?

A. Correct, sir.

Q. Doctor, if you had seen this patient before the accident, before her accident, without the bruise on her leg, would you have recommended the same operation that you so performed in November, 1963?

A. It wouldn't have been the same operation because there would be no clots to remove. It is more work to remove thrombosed veins than varicose veins, but I would have recommended surgery.

Q. You would have recommended the stripping part of it?

A. That is correct

Q. Did you find the thrombophlebitic condition

page 59] in any of the right leg?

A. No, sir.

Q. None at all?

A. No.

Q. Now what area, or what was the size of the area, or the size of the bruise on her left calf, do you recall?

A. About three inches above the anterior aspect there is a red area the size of a silver dollar.

Court: The size of a silver dollar?

A. Yes, sir.

Court: Before or after the Great Society?

A. You are right, no longer silver.

Q. Doctor, is it possible that Mrs. Curtis could have had the thrombophebitis in the upper part —

Mr. Fox: I object to what is possible. I think the doctor testified where the thrombosed area was. What is possible, I don't think —

Court: I don't think he ought to answer possibility.

Q. You stated she had a place on the left calf the size of a silver dollar?

page 60] A. That is right.

Q. There were thrombosed veins under this place?

A. Yes, sir.

Q. You further stated a thrombophebitic condition from her ankle to her groin?

A. That is correct.

Q. With respect to the thrombophebitic condition in the upper part of her leg, based on a reasonable degree of medical certainty, can you say that came from the blow on her calf?

A. I can only say that the stagnant blood in varicose veins, that is what varicose veins are, it is a dilated vein that has stagnant blood within. That is why people refer to it as poor circulation. With thrombosis in that system, it attempts to ascend the leg and go the whole length of the great saphenous vein, but has a valve in the groin that stops it, and that is where the high saphenous ligation comes in.

Court: *Lets* go over that question again. I am not sure he answered that. Read the question again.

Reporter: "With respect to the thrombophebitic condition in the upper part of her leg, based on a reasonable

page 61] degree of medical certainty, can you say that came from the blow on her calf?"

A. I would say at the time I saw Mrs. Thomas, I thought she had thrombophebitis involving wherever it went evolving from the thrombosis that started above her ankle.

Mr. Lambiotte: I think that is all.

REDIRECT EXAMINATION

By Mr. Fox:

Q. Doctor, Mr. Lambiotte asked you about the last time

you saw Mrs. Thomas, which was October 21, 1965. Last time before that, July 1, 1965. Do your records reflect when you last saw her before July 1?

A. This year, 1965, Mrs. Thomas was seen on 2-19-65; 2-26-65; 2-11-65; 3-25-65; 4-22-65; 7-1-65; and 10-1-65.

Q. And you are to see her in one week from now, or two weeks?

A. As I recall, two weeks.

Q. Two weeks from now?

A. Yes, sir. That is correct, she was told to return in two weeks.

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MR. PHILLIP R. PARROTT,

called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:

Q. What is your name, please?

A. Phillip R. Parrott.

Q. Where do you live?

A. 7400-A River Road.

Q. Where are you employed?

A. Employed at Southern Life Insurance Company now.

Q. Directing your attention to October 27, 1963, where were you employed?

page 63]

A. City of Newport News police officer.

Q. What was your job with the police department?

A. Accident investigator.

Q. In the course of your job, did you have occasion to investigate an accident that occurred at the intersection of James River Bridge or Mercury Boulevard and Warwick Boulevard?

Mr. Phillip R. Parrott

A. Yes, sir, I did.

Q. And what time do your notes reflect that you arrived at the scene of the accident?

A. I arrived 9:55. I was advised the accident had occurred approximately ten minutes prior to this.

Q. About 9:45?

A. I arrived 9:55.

Q. You were told the accident occurred approximately ten minutes prior to that time?

A. Yes, sir.

Q. Now from your investigation, what type of vehicles were involved in this accident?

A. Two vehicles, 1959 Ford convertible and —

Q. Who was operating that car?

A. Percy Lee Hill.

page 64] Q. All right, sir, and how about the other vehicle?

A. The other vehicle was a 1959 Ford, four door sedan, operated by Andrew J. Apperson.

Q. Now what were the weather conditions, Mr. Parrott?

A. It was clear and dry, in the nighttime.

Q. Nighttime?

A. Yes, sir.

Q. Is the area lighted there by street lights or any other type of lights?

A. Yes, sir, the area is lighted by street lamps.

Q. Any businesses located at that particular intersection at that time?

A. Yes, on the east side of the Warwick Boulevard, but not right at the intersection. They are both north and south of the intersection.

Q. Now when you arrived at the scene, did you observe the vehicles that you have described?

A. Yes, sir, I did.

Q. Did you see any damage to the vehicles?

A. Yes, sir, I did.

Q. What damage did you observe on the Ford convertible operated by Percy Lee Hill?

page 65] A. There was damage to the front bumper, the left front fender and the hood.

Q. Did you see any damage to the rear of his car?

Mr. Phillip R. Parrott

A. No, I did not.

Q. Any on the left side of his car?

A. The left front fender was damaged. Of course the whole fender, which would be the side of the car.

Q. But none to the rear of the side is what I was getting at?

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

Q. What about damage to the car driven by Mr. Apperson?

A. Damage to the right front fender, hood, grill, front bumper and windshield.

Q. And the windshield?

A. Yes, sir.

Q. Did you determine whether or not there were any skid marks put down by either one of the vehicles?

A. Yes, sir, I did.

Q. Which one, sir.

A. I found skid marks leading to the wheels of Vehicle No. 1, operated by Mr. Hill.

Q. What length were the skid marks?

A. The skid marks were eight feet in length.

page 66] Q. Did you ascertain that from the rear of the vehicle?

A. They were extending from all four wheels. The skid marks from the front wheels were beneath the car, and the rear wheels were behind the car. I measured from one wheel, I believe it was the left rear wheel. I measured eight feet.

Q. Eight feet from the left rear wheel?

A. Yes, sir.

Q. How long would you estimate Percy Hill's 1959 Ford to be, Mr. Parrott?

A. I think it was about eighteen feet long.

Q. Eighteen feet?

A. Yes, sir.

Q. Were you able to determine the point of impact in reference to the roadway by any means, Mr. Parrott?

A. I found debris laying at the same position the cars were located, and I was advised the vehicles had not been moved since the accident.

Q. Did you make any measurements, Mr. Parrott, as to where this point of impact was?

A. Yes, sir, I did.

Q. Where did you measure from?

Mr. Phillip R. Parrott

A. Considering the island on the east side of Warwick Boulevard dividing the east and westbound traffic
page 67] of Mercury Boulevard, I measured from that island north to the point of impact.

Q. And how far was that, Mr. Parrott?

A. It was ten paces.

Q. Would you estimate your pace to be approximately three feet?

A. In that area, yes, sir.

Mr. Lambiotte: Mr. Fox, please let the witness answer. The question is leading to me.

Q. How long would you estimate your pace?

A. Roughly three feet.

Q. You said it was ten paces north of this island. Where was it in reference to what would be the westbound lanes of Mercury Boulevard? I will ask this, how many lanes are there for westbound Mercury Boulevard on the eastern side of this intersection?

A. There are three lanes headed west and then one lane to bear off to the right.

Q. Now of the three lanes headed west, would you describe then what type of lanes they were?

A. Well there are two westbound lanes and one left turn lane, a lane for southbound traffic.

Q. So on the eastern side there would be a southbound lane for left turn traffic to go south on Warwick Boulevard, and two lanes straight through on Mercury
page 68] Boulevard?

A. That is right.

Q. And a third or fourth lane to turn and go right on Warwick Boulevard?

A. That is right.

Q. In reference to the two lanes to go straight through on Mercury Boulevard, where was the impact?

A. That would be hard to say unless I knew exactly how wide these lanes are.

Q. Could you determine in which lane it was in on Mercury Boulevard westbound?

A. It is a hard situation to say there because once you cross Warwick Boulevard, then Mercury Boulevard is two lanes,

and the lanes are not marked in the middle of the intersection, so it would be hard to determine and say what lane any particular vehicle was in at that point.

Q. In other words you can't recall now, in looking at the cars, which lane the Hill vehicle would have been on Mercury Boulevard?

A. No, sir, that is not what I am saying. I know exactly where the car was, but what I am saying, it would be a hard thing to say what particular lane any vehicle was in, at the point the accident occurred.

Q. Because there were no lanes marked off where they were?

page 69] A. There were no lanes marked off.

Q. If Mr. Hill's vehicle would have continued in a straight line west on Mercury Boulevard, which lane would he have entered?

A. If the vehicle had continued —

Mr. Lambiotte: I am going to object to that question because this man doesn't know which lane the vehicle was in prior to the time of the accident, and I don't believe that is a proper question for the witness at this time.

Court: I don't think it is properly laid. Sustained.

Q. Mr. Parrott, from your examination of the Hill vehicle, as you saw it there in this intersection, in which lane of Mercury Boulevard was it headed westbound?

A. The way it was headed, it was directly for the outside lane of Mercury Boulevard westbound.

Q. By outside lane of Mercury Boulevard, do you mean closest to the shoulder —

Mr. Lambiotte: If your Honor please.

Mr. Fox: I would like to finish the question.

Q. Do you mean by outside lane, the lane closest to the shoulder of the road, or lane closest to the center of the road?

page 70] Court: Which shoulder are you talking about?

A. The shoulder of the road with regard to his car, I guess.

Mr. Phillip R. Parrott

Court: You are talking about the shoulder on the left side of the road, or right?

Q. The shoulder on the right side of Mercury Boulevard. Which do you mean as being the outside lane?

A. I mean the extreme northern lane, the one next to the righthand side of the road.

Q. I show you Plaintiff's Exhibit 1 — and with the Court's permission, can he come over here?

Court: Yes, sir.

Mr. Fox: I want to ask him to point out to the Jury the divider from where he measured from.

Q. This is Plaintiff's Exhibit 1, and I ask you if you will look at it and identify Warwick Boulevard and Mercury Boulevard on this plat?

A. This is Mercury Boulevard. — Warwick Boulevard (indicating chart).

Q. Would you state to the Court and jury what cement divider you were talking about that you made —

page 71] Mr. Lambiotte: How can he do that? He has never seen the plat.

Court: Let's see if he knows.

Q. Can you recognize anything that looks to you like a cement divider on Mercury Boulevard?

A. This is what I would call the island here.

Q. All right, sir, which one were you referring to that you made measurement ten paces north, awhile ago?

A. This point right here.

Court: I would like him to point out to me.

A. This point here (indicating). I stepped directly north of here.

Q. Mr. Parrott, you were not meaning to indicate that the point of impact was in that line of that divider, but that is the divider you stepped from, is that true?

Mr. Phillip R. Parrott

A. That is the point where I made my basic measurement. I went from there, north.

Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Officer, when you arrived at the scene could you describe how these cars were positioned in relation
page 72] to each other?

A. Yes, sir, the Hill vehicle was headed west, the Apperson vehicle was headed practically north, not a true north, of course. They were still against each other. The left front of the Hill vehicle and the right front of the Apperson vehicle.

Q. By looking at the damage on the two vehicles, were you able to determine where the impact occurred on the Hill vehicle?

Mr. Fox: I think Mr. Parrott can tell what damage he found on the vehicle, but I don't think he can tell him where the point of impact was initially.

Court: Sustained.

Q. Could you tell, Officer Parrott, where the main damage was located on the Hill vehicle? In other words, where it was damaged most severely?

Mr. Fox: I object to that question.

Court: Sustained.

Q. Now Officer, you have testified that you found eight feet of skid marks?

A. Yes, sir.

Q. Now when you — and where in relation to Warwick Boulevard did you find the debris?
page 73] A. The debris was found directly in the center of Warwick Boulevard, right in the middle of the intersection. Straight in the center of the islands separating the north and southbound lanes.

Mr. Phillip R. Parrott

Q. And you found the two cars there together?
A. That is correct, sir.
Q. And you have given us one measurement and that is ten paces north of that island that divides the east and westbound traffic on Mercury Boulevard on the east side of the intersection which you just pointed out on the plat, is that right?
A. Yes, sir.
Q. Officer, did you take a statement from Percy Hill at that time?
A. Yes, sir, I did.
Q. What was his statement?

Mr. Fox: If your Honor please, I object to the introduction of a statement.
Court: Sustained.

Q. Did he tell you how fast he was going?
A. Yes, sir.

Mr. Fox: I object to that question.
Court: Overruled. Did he tell you, yes or no.
page 74] Mr. Fox: It is a self-serving declaration.
Court: All he did was to ask whether he told him how fast he was going, and he said, yes, he did.

Q. Did you take a statement from Percy Hill at the scene of the accident?
a. Yes sir, I did.
Q. How soon after you arrived did you take the statement?
A. It was a matter of a few minutes.
Q. And you say you arrived ten minutes — you arrived at 9:55?
A. Yes, sir.
Q. Your investigation revealed the accident occurred at 9:45, is that correct, sir?
A. That is correct, sir.
Q. Now would you please relate the contents of that statement that Percy Hill gave you at that time?

Court: I already ruled he can't do that.

Mr. Phillip R. Parrott

Mr. Lambiotte: I think this is a part of the *res gestae,* a statement made by the party at the time of the accident. I think that would be very important, and I think page 75] he is entitled to read a statement that is taken from this man.

Mr. Fox: I think Mr. Lambiotte wants to argue this point, and it ought to be out of the presence of the Jury.

Court: I don't think so. Let's hear what he has to say.

Mr. Lambiotte: I think this is a statement made by a party to the accident right after the accident. I think it is part of his investigation, part of the *res gestae.* I think he should read the statement made at the scene of the accident. He stated it was made a matter of a few minutes later.

Court: My understanding of *res gestae,* Mr. Lambiotte, is not measured in time alone. I overrule.

REDIRECT EXAMINATION

By Mr. Fox:

Q. Did you take a statement from Mr. Apperson also?

A. Yes, sir.

Q. You talked to him at the scene?

A. Yes.

Court: Same objection applies to that.

page 76] Mr. Fox: I wanted to ask the same thing. That is all, I have nothing else.

Court: Anything further from this gentleman?

Mr. Lambiotte: I thought Mr. Fox was referring to my argument. I was not through.

Mr. Fox: I am sorry, I thought you were through. I did not mean to interrupt.

RECROSS EXAMINATION

By Mr. Lambiotte:

Q. Did you ascertain whether there were any witnesses to this accident?

A. Yes, sir, I did.

Q. Who was it you determined to be a witness?
A. Mr. Tripolites, I believe his name is pronounced, Diamond Tripolites.

Mr. Lambiotte: That is all.

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MR. ANDREW J. APPERSON
called as witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:
Q. State your name, please.
A. Andrew J. Apperson.
Q. Where do you live?
A. Norfolk, Virginia.
Q. Are you employed?
A. No, sir, I am retired.
Q. Retired from where?
A. From the service with the Pullman Company, 38 years.
Q. Directing your attention to October 27, 1963, were you involved in an accident with Percy Lee Hill?
A. That is right, sir.
Q. Who was in your car with you?
A. My wife, my wife's sister, my wife's
page 78] brother, and his wife.
Q. Who was in the front seat with you?
A. My brother in law, Willie Holladay.
Q. Where was your wife seated?
A. In the back.
Q. Who else was in the rear seat?
A. Willie Holloday's wife and my sister-in-law, Mrs. Thomas.
Q. Do you know where Mrs. Thomas was seated in the rear of your car?

Mr. Andrew J. Apperson

A. I don't know that I can say specifically, no, sir.

Q. Where, or rather what time approximately was it when this accident occurred?

A. It was at night in the vicinity of 9:00 o'clock.

Q. 9:00 o'clock?

A. Somewhere in that *visinity*.

Q. Could it have been earlier or later?

A. A few minutes, yes, sir.

Q. Where you had been, Mr. Apperson, prior to this accident?

A. We had been to my wife's brother's home in Isle of Wight County, in Carrollton, Virginia.

Q. Where were you going when the accident
page 79] happened?

A. Coming back to my brother-in-law's home, Willie Holladay, in Hilton.

Q. Will you state to the Court and Jury what occurred, Mr. Apperson, as you proceeded east on Mercury Boulevard just prior to reaching the intersection with Warwick Boulevard. Tell the Court and Jury what happened.

A. I came up to the Warwick Boulevard intersection in the lefthand lane, as I was going to make a lefthand turn. My light was green — my light was red, excuse me. I came to a stop.

Q. All right, sir, do you know how long you remained in a stopped position?

A. I couldn't say definitely, but it wasn't but a minute, or a minute or two.

Q. Then what happened thereafter?

A. The light turned green and I indicated with my light indicator that I was going to make a lefthand turn, and started to make my lefthand turn diagonally into Warwick Boulevard.

Q. What was the condition of traffic at that time when you started your turn?

A. The time the light turned green, there was no traffic, no cars in the opposite side of the Warwick Boulevard, so I started to make my lefthand turn.

page 80] Q. What thereafter happened?

A. As I had gotten partially into my lefthand turn, I observed this car coming over the overpass, and he was coming at what I considered an excessive rate of speed. I realized there was a possibility I couldn't possibly make it, so I brought my car to a full stop.

Mr. Andrew J. Apperson

Q. Can you estimate to the Court and Jury what speed this vehicle was going that you just described coming over the overpass?

A. That would be pretty hard to do coming from the opposite direction, but I would estimate as near as is humanly possible he was going at least 45.

Q. At least 45?

A. Yes, sir.

Q. What, if anything, did you do at that time? I believe you stated you stopped your car?

A. I brought my car to a full stop.

Q. What happened thereafter?

A. He continued on through without slowing down or without any deviation of his line of traffic, and collided with my car. That is all.

Q. What part of your car was damaged?

A. The right front fender and right door.

Q. What about Mr. Hill's car? What part of his car was damaged?

page 81] A. His car was damaged similarly on the left.

Q. On the left?

A. On the lefthand side.

Q. Did you return to Norfolk following the accident that night, Mr. Apperson?

A. I didn't get there, sir.

Q. You did not?

A. I did not.

Q. Did you return to Norfolk following the accident?

A. No, I stayed at my sister-in-law's home.

Q. You mean, Mrs. Thomas.

A. Mrs Thomas, yes, sir.

Q. Can you state to the Court and Jury, Mr. Apperson, whether or not following this occurrence, Mrs. Thomas was in the hospital in Norfolk?

A. That is right, sir.

Q. What hospital was that?

A. Norfolk General.

Q. Can you state to the Court and Jury where Mrs. Thomas went when she was discharged from the Norfolk General Hospital?

A. She came to my home.

Q. How long did she stay there, Mr. Apperson?

A. About three weeks.

Mr. Andrew J. Apperson

page 82] Q. Can you state to the Court and Jury whether or not you heard her complain any during that time she stayed at the hospital?

Mr. Lambiotte: Objection.
Court: Sustained.

Q. What was Mrs. Thomas' condition at the time she arrived at your house?
Court: That is too broad.
Mr. Lambiotte: He can't describe her condition when she came from the hospital. He can state whether she was walking, or how she got there.
Court: You can ask him those questions.

Q. Did she walk from Norfolk General Hospital to your house?
A. No, sir, she was brought —

Mr. Lambiotte: I think that question is facetious.
Mr. Fox: I tried to ask the question —
Court: He cannot testify as to her condition because it is too broad. Her condition is an all-encompassing phrase.
page 83] Mr. Fox: May he describe what he observed about her?
Court: Yes, sir, he certainly can.

Q. Will you do that?
A. When she came out of the hospital, she came to my home in a car, she had undergone an operation in the hospital. Naturally her leg was in bandages and we had to assist her —
Q. By we, who do you mean?
A. My wife and myself, one on either side, to get her up the stairs to the room she was occupying while she stayed at my home.
Q. How long did she stay there, Mr. Apperson?
A. Stayed there three weeks.
Q. Did you observe anything unusual about her leg while she stayed there at your house?
A. I don't know exactly what you mean by unsual.
Q. Can you describe what you saw about her left leg, Mr. Apperson?

Mr. Andrew J. Apperson

A. I saw where the operation had been on her leg, and I know she had to undergo treatment two or three times a day when she first came home from the hospital, for the first week or so, anyway.

page 84] Mr. Lambiotte: I object to that if your Honor please. I don't think there has been a proper groundwork laid as to what treatment, or the fact that any treatment was given, unless he knows within his knowledge what treatment, if any, was given. He stated she had to undergo treatment, and I don't know what he is referring to, and I think that response to the question should be stricken.

Court: I think that whether or not she had to undergo treatment is not for this witness to state. What occurred, if he knows whether or not she has had treatment, he may state.

Q. What type of treatment were you referring to?

A. This was a treatment prescribed by her doctor who operated on her leg.

Q. Did you assist in the treatments?

A. No, sir.

Court: You will disregard that statement that the gentleman has made about treatment as prescribed by the doctor, because that is complete hearsay. He may describe what treatments were rendered, if any, to this lady. You determine whether it was in keeping with what was prescribed by the doctor.

page 85] Q. Did you observe anyone give any treatment to Mrs. Thomas?

A. My wife assisted her with the treatments.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Mr. Apperson, you were returning to Newport News from where when this accident occurred?

A. Returning from Carrollton, Isle of Wight County.

Q. You had just come across the James River Bridge?

A. That is right.

Q. Travelling east on Mercury Boulevard?

A. What?

Mr. Andrew J. Apperson

Q. You were travelling east on Mercury Boulevard?
A. Yes, sir.
Q. You came to the intersection of Mercury and Warwick Boulevards, is that correct?
A. That is correct.
Q. You stated that you stopped at the intersection there for a red light?
A. That is right, sir.
Q. When did you first observe this red light?
page 86] A. As I pulled up to the intersection.
Q. About how far from the intersection?
A. In the lefthand lane right at the approach to the Warwick Boulevard.
Q. About how far is that from the intersection?
A. When the red light was on?
Q. When you first observed the red light?
A. It was as I approached the intersection.
Q. Do you know how far you were from the intersection?
A. I can't specifically say that, no, sir.
Q. As I understand, you pulled your car up to the intersection and stopped?
A. That is right.
Q. How long did you remain there?
A. Until the light changed.
Q. How long was that?
A. I don't know the length of that light. I couldn't have been more than a few seconds, probably three or four seconds.
Q. Three or four seconds?
A. I don't know the length of the time of those lights. Never have had an occasion to time them at all.
Q. Don't you have an idea how long you sat there and waited for this light?
page 87] A. I would say it was a normal time of changing a light from red to green.
Q. What would that be?
A. That, I can't say.
Q. Is your answer then that you don't know?
A. Probably a minute.

Mr. Fox: I submit, Mr. Lambiotte, he answered that he

Mr. Andrew J. Apperson

doesn't know how long he has remained there.

Court: He is under cross examination.

Q. Your answer to my question, you don't know?

A. That is right. I couldn't state specifically.

Q. At the time you stopped, did you observe any traffic behind you?

A. No, sir, I did not.

Q. Was there any traffic behind you?

A. I couldn't say, I didn't observe any.

Q. The light turned green, and then what happened?

A. The light turned green and I saw no traffic on the opposite side of Warwick Boulevard, and I started to make a gradual lefthand turn into Warwick Boulevard.

Q. Did you have your turn signal on?

page 88] A. Yes, sir.

Q. When did you put your turn signal on?

A. Just about the time I started to come away from the intersection.

Q. About the time you started to come away from the intersection?

A. I was in a stopped position.

Q. And the light turned green?

A. I turned my indicator on that I was going to make a left hand turn and started in the left turn.

Q. Were you moving at the time you put your left turn signal on?

A. No, sir, I turned it on before I started.

Q. Before you moved?

A. Yes, sir.

Q. Did you turn the left turn signal on before the light changed from red to green?

A. Certainly not. I don't think I did.

Q. As I understand, the light changed from red to green, you were stopped, you put your turn signal on —

A. I was already stopped, I was in a stationary position at the time the light changed.

Q. You say you proceeded in a diagonal direction rather than straight out?

A. Made a gradual turn to clear the two

page 89] traffic lanes — I don't know how you say it — the southbound of Warwick Boulevard, to put

Mr. Andrew J. Apperson

me into the northbound lanes on the other side.

Q. How far had you gotten into the intersection when you first observed Mr. Hill's vehicle?

A. I had just about started into the intersection. I don't think I could state specifically how far as to distance, but I just started into the intersection when I observed this car coming down over the overpass.

Q. You don't know how far you were into the intersection?

A. I couldn't state specifically, no, sir.

Q. Do you have any idea?

A. I don't. No, I don't know that I have.

Q. Do you recall where the island is located that separates Warwick Boulevard northbound and southbound of Warwick Boulevard?

A. Yes, sir.

Q. Had you reached that island?

A. No, sir.

Q. All right, as you stated —

A. You are speaking, if I may interrupt, you are speaking of the northbound island?

Q. Yes, sir?

A. No, I hadn't reached that.

page 90] Q. Would you say you were half way between that island and the position you were in when you were stopped?

A. I can't say specifically, I don't believe half way, I think maybe a little better than a third of the way.

Q. You had just moved off from the stop light and travelled a third of the way, is that correct?

A. As near as I could estimate, yes, sir.

Q. And you say you first saw the Hill vehicle when it was at the top of the overpass?

A. I wouldn't know. I couldn't specifically state the exact location of the Hill vehicle at the time I saw it because there was no cars there when I started my lefthand turn when I come away from my stopped position, and then I observed the headlights of this car coming toward me at a high rate of speed. Where it was on the overpass, I couldn't say.

Q. But you say when you started off from your stopped position, there were no vehicles?

A. There were no vehicles at the overpass at the other side of Warwick Boulevard.

Mr. Andrew J. Apperson

Q. Now as you started to make your turn, do you recall how many westbound lanes there are on Mercury Boulevard, coming off the overpass? Coming toward you?

page 91] There is a left turn lane —

A. I can't be too specific, but I think there are two lanes.

Q. Two lanes?

A. Yes, sir.

Q. There are two westbound lanes and there is also a left turn lane, isn't there?

A. No, sir, it is my impression you come off the left turn lane on Mercury Boulevard right into the two lanes coming across from the overpass across Warwick Boulevard.

Q. All right. As you were proceeding diagonally across the intersection, how far had you gotten in a diagonal direction? Can you position your car in relation to the westbound lanes of Mercury Boulevard coming toward you? Do you understand?

A. I think I understand what you mean, but as near as I could estimate, I don't think I had completely crossed the first lane.

Q. You had not completely crossed the first lane?

A. The eastbound lane.

Q. Where was your car when you brought it to a stop?

A. Sir?

Q. Where was your car when you brought it

page 92] to a stop?

A. Making a diagonal turn into Warwick Boulevard.

Q. With reference to the island that separates Warwick Boulevard?

A. I would say the front of my car was just about on a line with the island, the end of the island.

Q. How long had you remained there stopped before this accident occurred?

A. That is pretty hard to estimate as to a time status because of the rapidity which things happen. I heard this car coming and I looked up and saw the lights and realized it was coming at too high a rate of speed for me to attempt to go across. I brought my car to a stop and couldn't be more than ten seconds.

Q. Now when you first observed this car, where was it positioned on the overpass? Was it at the top?

A. No, sir, I couldn't specifically state that.

Q. You don't know where?

A. Because I was concentrating on the proper thing for me to do to protect myself. The car was coming, that is all I can tell you. The exact location on the overpass, I don't believe I could say.

Q. Do you recall testifying in this case on
page 93] April 15, 1965?

A. Yes, sir.

Q. And do you recall at that time that I asked you how far down the overpass was it when you first saw it, referring to the Hill vehicle, and you answered, "I would judge it was about half way down.?"

A. Well I haven't seen what you are reading from there and I don't know what it is, but I have no reason to object, it is possible I may have stated I did see it half way down the overpass.

Q. Do you recall testimony to that effect?

A. Not specifically, but if I said it, that is it.

Q. After hearing this, do you now upon reflection remember that that is where you first saw the Hill vehicle?

A. It might have been about half way down. As you well know it is pretty hard to judge distances and locations at night especially when you don't have lighting fixtures on the area you are trying to pass judgment on.

Q. That is true, and it is also difficult to judge speed?

A. That is true.

Q. Yet you are estimating this car is travelling at least 45?

page 94] A. I would gather he was doing at least that from the time I saw him to the time of impact.

Q. You now say at the time you saw him, he was half way down the overpass?

A. If I made that statement before as you have read, that is what I did say. It would be about the same. I don't see any reason why the distance should be any different today than it was then.

Q. You further testified that this automobile made no movement to the right or to the left as it was approaching you after you had stopped your vehicle. Is that correct?

Mr. Andrew J. Apperson

A. You mean before the impact?
Q. Before the impact?
A. I couldn't say that, no sir.
Q. Well I believe you just testified that you stopped your car, and the Hill vehicle continued without slowing and without deviation?
A. That is correct.
Q. So he didn't veer to the right or left?
A. Not that I know of.
Q. Didn't slow down at all?
A. No, sir.
Q. Could you tell whether or not he applied his brakes?

page 95] A. I couldn't tell that.

Q. Do you recall anyone coming up to your car after the accident?
A. No, sir.
Q. Did anyone come up to your car after the accident?
A. Not to my knowledge.

Mr. Lambiotte: I think that is all.

REDIRECT EXAMINATION

By Mr. Fox:
Q. Just one question, did you immediately get out of your car after this collision?
A. After the collision I got out and walked over to the Hill car. I didn't go all the way.
Q. You did not stay in your car then?
A. No, sir.

Mr. Fox: No further questions.

Court: You may stand down.

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Mrs. A. J. Apperson

MRS. A. J. APPERSON,
called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:

Q. Will you state your name, please.

A. Mrs. A. J. Apperson.

page 97] Q. Where do you live, Mrs. Apperson?

A. In Norfolk, Virginia.

Q. Are you any relation to Mrs. Thomas?

A. Her sister.

Q. Directing your attention to October 27, 1963, Mrs. Apperson, were you riding in your husband's car and involved in an accident at Warwick Boulevard and Mercury Boulevard in Newport News?

A. Yes, sir.

Q. Who else was in the car?

A. My sister-in-law.

Q. What is her name?

A. Mrs. Holladay.

Q. Where was she seated?

A. In between Mrs. Thomas and myself, between my sister and I.

Q. Who else was in the car?

A. My brother, Mr. Holladay, and my husband.

Q. Who was driving the car?

A. My husband, Mr. Apperson.

Q. Where had you been just before the accident?

A. Over in Isle of Wight County to my brother's.

Q. Where were you going?

page 98] A. Going back to Newport News to take Mr. and Mrs. Holladay home and Mrs. Thomas home.

Q. Would you state to the Court and Jury what you recall as to how this accident happened? Was it dark?

A. Yes. Well, we came up to the stop light, the light was red.

Q. Did you see the light?

A. I did.

Q. What, if anything, did Mr. Apperson do?

A. We stopped and then when the light turned green, we proceeded across.

Q. Do you know whether or not Mr. Apperson gave any signal prior to moving off?

A. I don't know. I was on the back seat and I couldn't see the signal.

Q. Can you state to the Court and Jury whether or not you saw any vehicles approaching you when you started off?

A. No, sir, we did not.

Q. What happened thereafter, Mrs. Apperson?

A. After he got into the intersection, I saw this car coming down the overpass at a very rapid rate of speed, and it hit us. Of course, Mr. Apperson stopped the car.

Q. Did he stop the car before the impact?

page 99] A. Yes, sir.

Q. Do you know how fast the car was going that was coming down the bridge?

A. I can't judge the rate of speed. It looked fast to me, but I can't judge speed.

Q. Are you saying to the Court and Jury at the time of impact, the vehicle you were in was stopped? Is that what you are saying?

A. I didn't understand.

Q. At the time of the impact, was the car in which you were riding moving or stopped?

A. Stopped.

Q. Do you drive a car, Mrs. Apperson?

A. No, sir.

Q. What, if anything, or do you know what happened to Mrs. Thomas at the time of this impact?

A. Well it jerked us all and hit us all, but she complained she hit her head up there, but when we got home — is that what you want me to tell you?

Q. She hit her head?

A. She hit her head.

Q. When you got home, whose home are you referring to?

A. Her home.

Q. Did you spend the night there?

page 100] A. Yes, we did.

Q. What, if anything, did you observe about

Mrs. A. J. Apperson

Mrs. Thomas at her home that night.

A. After she had given us all something for our nerves because we were all so shaken up, I went in her room, and she was seated by her bed and rubbing her leg and looking at her leg, and I asked was she hurt, and she said, "Yes, I am."

Q. Did you observe anything on her leg where she was rubbing it?

A. I did.

Q. What did you observe?

A. It was a knot, and red and bluish kind of, but there was a knot, and she was rubbing it, and her leg was hurting her terrible bad then.

Q. You saw the knot you are referring to?

A. Yes, I did.

Q. Do you know of your own knowledge whether or not some few days later she was in the hospital in Norfolk?

A. Oh, yes. She went to her doctor over here and he advised her to go to the doctor in Norfolk to the hospital.

Q. Was she in the hospital in Norfolk?

A. Yes.

Q. Did you visit her while she was there?

page 101] A. Oh, indeed.

Q. When she was discharged from the hospital, Mrs. Apperson, do you know of your own knowledge where Mrs. Thomas went?

A. She came to my house.

Q. How long did she stay at your house following her discharge from the hospital?

A. Three weeks.

Q. And during this three-week period, did you assist her in any manner?

A. You mean with her injury? I did, and carried her meals to her. Is that what you mean? And I helped her treat her leg as the doctor has prescribed.

Q. What do you mean carried her meals?

A. Because she couldn't get down. She was injured, or her leg was.

Q. What about her leg did you observe, Mrs. Apperson?

A. He had, was giving her this treatment, stuff to put on her leg, and every day we had to put that treatment on her leg. I think we did it two or three times a day.

Mrs. A. J. Apperson

Q. Did this continue while she was still at your house?
A. Yes.

page 102] Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Mrs. Apperson, where were you seated in the rear of your husband's car?

A. I was in the back, on the righthand side.

Q. On the righthand side. Where was Mrs. Thomas seated?

A. On the lefthand side.

Q. Now where was Mr. Hill's vehicle when you first saw it?

A. Coming down the overpass.

Q. Could you be more specific? Was it at the top of the overpass, half way down the overpass, or —?

A. I don't believe I can say specifically. It was coming down the overpass.

Q. When you saw it were you able to formulate in your mind any estimation of how fast Mr. Hill's vehicle was travelling?

A. I can't estimate the speed. It looked awfully fast to me, but I don't know how to estimate speed. I don't drive. It was coming very fast.

Q. What do you mean by very fast?

A. From riding in cars I would say maybe 45, 40 miles, something like that, but I don't want to say anything that isn't right.

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Q. Is that your best estimate?

A. The best I can say, yes.

Q. Do you know where the vehicle you were riding in, where it was positioned in the intersection when you first saw this car?

A. Well he had made his turn out to — you know, into the intersection, and I can't tell you exactly the position it was placed in.

Q. But he had made his turn?

A. He was making his turn.

Q. When he pulled out from the light, did he go straight out?

Mrs. A. J. Apperson

A. No, he made a gradual turn.

Q. Gradually moving over to the left, is that right?

A. To the best of my knowledge. You know when you are riding in the back seat, I don't believe I know whether I can say that.

Q. Were you conversing with your sister and sister-in-law?

A. At the time?

Q. At the time you were at this intersection, were you all carrying on a conversation?

A. Not to my knowledge. If we did, I don't
page 104] remember it.

Q. Did you see the light when your husband pulled up to the intersection?

A. I saw the red light, then I saw the green light.

Q. You saw the red light and the green light. And you say you did not see him put his turn signal on?

A. No, I didn't look for that.

Q. Were there any vehicles behind your car when you stopped at this intersection?

A. I wouldn't know.

Q. Did anyone come up to your car after the accident?

A. Not that I recall.

Q. When you say you first saw Mr. Hill's vehicle, did you continuously watch this car until the accident occurred?

A. You mean watch the other car that hit us?

Q. Yes?

A. Well I don't know whether to say I did or didn't. I saw the lights of the car, then Mr. Apperson stopped and I saw the car coming, and I knew it was going to hit us, so I guess I did watch it.

Q. According to what you saw, did this car make any attempt to slow down at all?

page 105] A. Not to my knowledge. I didn't think it did.

Q. Did this car move from its lane of travel, did it go to the right or left?

A. Not that I noticed.

Q. It just continued straight on down?

A. Yes.

Q. Approximately how long had your husband had his car stopped in the intersection before this impact occurred?

Mrs. William J. Holladay

A. How long I couldn't tell you either. He had stopped and then in just a little while, in a second, it came into him. He had stopped. I can't say in minutes, I can't say.

Q. When he stopped his car, where was the other vehicle?

A. It was coming down the incline.

Mr. Lambiotte: That is all.

Court: You may have a seat in the courtroom.

MRS. WILLIAM J. HOLLADAY,
called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

page 106] By Mr. Fox:

Q. Will you state your name please.

A. Mrs. Laura O. Holladay.

Q. Where do you live?

A. Carrollton, Virginia.

Q. What is your husband's name?

A. William James Holladay.

Q. Directing your attention to October 27, 1963, did you live in Carrolton, Virginia, at that time?

A. No, sir.

Q. Where did you live?

A. 506 Hamlin Street, Newport News — Hilton Village.

Q. On that date, October 27, 1963, Mrs. Holladay, were you riding in a car being driven by Mr. Apperson when you were involved in an accident?

A. Yes, sir.

Q. Will you state to the Court and Jury what you remember about how this accident occurred?

A. Well we were coming back from over in the country, we had been over to visit.

Q. Who was driving?

A. Mr. Apperson.

Q. All right?

Mrs. William J. Holladay

A. And we had come across the James River
page 107] Bridge and came to the intersection of Warwick Boulevard and the traffic signal light was red, and Mr. Apperson stopped, gave his righthand signal, and he got into the lefthand traffic lane because he was going up to Hilton to take us home first.

Q. All right?

A. And he stopped and waited for the light to change.

Q. Did you see the light at Warwick Boulevard yourself?

A. Yes, sir.

Q. When you got there, what color was it?

A. Red.

Q. Did you see it change color?

A. Yes, sir.

Q. What did you see it change to?

A. Green.

Q. What did Mr. Apperson do then?

A. Proceeded into the intersection.

Q. At that time did you see any traffic approaching your vehicle, Mrs. Holladay, coming from the overpass?

A. No, sir.

Q. Did you later on see a vehicle coming from that direction?

page 108] A. Yes, sir.

Q. What, if anything, happened to the vehicle you were in?

A. Mr. Apperson brought his car to a stop after he got into the intersection.

Q. What thereafter happened to the car?

A. The car was struck.

Q. Can you estimate to the Court and Jury the speed of the vehicle that you saw coming down the overpass?

A. No, sir.

Q. Are you any relation to Mrs. Thomas?

A. My husband's sister.

Q. Do you drive a car, Mrs. Holladay?

A. Yes, sir.

Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Mrs. William J. Holladay

Q. As your car approached the intersection, the light was what color?

A. Red.

Q. And Mr. Apperson slowed his car down and came to a stop?

A. Right.

Q. When did he put on his signal light?

A. Right now I don't remember, though I do
page 109] know they were on because I heard the clicking,
and I was on the back seat in the middle, and I could see the reflection on the dashboard.

Q. Did you see him turn the signal light on?

A. I didn't see him, I just know they were on.

Q. What were you doing in the back seat?

A. Sitting in the middle.

Q. Were you carrying on any sort of conversation?

A. No, sir.

Q. You were not?

A. I was not.

Q. Was anyone talking at the time?

A. I don't remember.

Q. Where was this other vehicle when you first saw it?

A. Coming down the overpass.

Q. Now can you be more specific, was it at the top of the overpass, half way down?

A. I don't remember.

Q. You don't remember how far away it was?

A. No, sir.

Q. When you saw it, were you able to estimate how fast it was going?

A. No, sir.

page 110] Q. Mrs. Holladay, do you recall testifying in
this case in April of this year, this past April?

A. Yes, I was here.

Q. Do you recall at that time testifying that you estimated the speed of the other vehicle to be between 35 and 40 miles per hour?

A. Maybe I did at that time, I don't remember now.

Q. Now when Mr. Apperson pulled off from his stopped position, were there any cars in sight? Was this car in sight?

A. No, sir.

Mrs. William J. Holladay

Q. And how far into the intersection did Mr. Apperson get when you saw the Hill vehicle?

A. I couldn't say.

Q. You don't know? Do you know how far he had turned to the left when you first saw this vehicle?

A. No, sir.

Q. Do you know where in the intersection you were at the time the impact occurred?

A. Do I know what?

Q. Where the car in which you were riding was positioned in the intersection at the time the impact occurred?

A. Well you mean, after that?

page 111] *A.* When the car in which you were riding struck or was struck, where was that car located in the intersection?

A. In the center of the intersection, right there in the intersection.

Q. In the center?

A. Because he had proceeded into the intersection.

Q. But you don't know how far?

A. I don't know the distance, no.

Q. Was there any traffic behind you?

A. I don't know, sir.

Q. Did anyone come up to your car after the accident occurred?

A. No more than a brother-in-law, Mr. Hickman.

Q. That is the only one?

A. That is right.

Q. When this car was coming towards you, you say you can't estimate the speed?

A. No, I can't. The only thing I could say it was a rapid speed, to my estimation.

Q. You can't be more specific?

A. I certainly cannot, no.

Q. Did this vehicle slow down at all prior to the time it struck the car?

page 112] A. No, sir.

Q. Did it deviate from its line of travel at all?

A. Well I don't know that.

Q. Well did you watch it from the time you first saw it, watch it come through the intersection and strike the car in which you were riding?

A. I just know we were hit.

Q. Now Mr. Apperson stopped the car before the impact occurred, is that correct?

A. That is right.

Q. How much time elapsed from the time he stopped his car until this collision occurred?

A. Well it seemed like seconds, I guess, I don't know.

Q. When Mr. Apperson stopped his car, could you say where Mr. Hill's vehicle was at that time? When he stopped his car, where was the Hill vehicle?

A. It was just coming, I don't know.

Q. You don't know how far away it was?

A. No, sir.

Mr. Lambiotte: Thank you, I think that is all.

Court: You may stand down.

page 113] MRS. CURTIS H. THOMAS,

called as a witness on her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:

Q. Will you state your name, please.

A. Mrs. Curtis Thomas.

Q. Where do you live, Mrs. Thomas?

A. 6936 Huntington Avenue, Newport News.

Q. Are you a widow?

A. Yes.

Q. How long have you lived there, Mrs. Thomas?

A. I would say about 25 years, 24 or 25 years.

Q. Mrs. Thomas, directing your attention to October 27, 1963, were you riding in Mr. Apperson's car when this accident happened?

A. Yes, sir.

Q. Where were you in the car, Mrs. Thomas?

A. I was on the lefthand side in the back seat.

Mrs. Curtis H. Thomas

Q. In the back seat?

A. Yes, sir.

Q. Where had you been prior to this?

page 114] A. Mr. Bob Holladay's, my brother's.

Q. Is that another Holladay?

A. Another brother.

Q. What occasioned your trip over there?

A. He is an invalid and we had lost our aunt and we wanted to go and see him.

Q. A family gathering?

A. Yes, sir, that is why we were together.

Q. Did anything unusual happen to you as you were riding back to Newport News?

A. Anything unusual?

Q. Yes, ma'am?

A. I think so.

Q. Tell the Court and Jury what happened to you after you had returned across the James River?

A. We were coming on back here, and we got to the intersection, and at the James River Bridge, and Warwick Boulevard, and the light was red.

Q. Did you see the light?

A. I did see the light was red.

Q. What did Mr. Apperson do, if anything?

A. He stopped, and we waited there. He was in the left hand lane and we waited there until the light turned green.

Q. Did you see the light turn green?

page 115] A. Yes, I did.

Q. Do you know whether or not Mr. Apperson gave any signal to turn left?

A. Yes.

Q. Of your own knowledge?

A. Yes, indeed, he did. I don't drive, but I pay attention when the other fellow drives, and I was watching that.

Q. What did Mr. Apperson do?

A. He proceeded to make his turn left to take Mr. and Mrs. Holladay home.

Q. At the time he started to make his turn, did you see any vehicle approaching you?

A. When I approached the area I never felt safer in my life, there wasn't a car in sight, but when we made the left-

hand turn, and got in the middle of the intersection, I saw this car coming down the overpass.

Q. At that time can you estimate the speed?

A. I cannot, because I don't drive, but I knew that was our minutes, we were gone right then.

Q. What, if anything, did Mr. Apperson do?

A. He stopped the car immediately and of course by that time we were struck.

Q. You were struck by the other car?

A. Yes, sir.

page 116] Q. What, if anything, occurred to you?

A. First thing happened to me, my head hit the side of the window. I was dazed, not unconscious, but dazed, and then I sort of come to myself.

Q. Has that troubled you any further since then?

A. I have headaches, but I haven't said anything about that. That is not in the case. I don't know whether it has anything to do with it or not.

Q. Were you aware at that time that you hurt your leg?

A. No, sir, I didn't want to be hurt. My family was hurt and I was a well woman then.

Q. What did you do when you got home?

A. I had a bunch of nervous people there and went to doctoring them and gave them nerve medicine and immediately got them all down. And as I went looking at myself, I found out I had a bad lick.

Q. What did you find?

A. I had a terrible bruise on my shin bone and red place began to swell, and it hurt so very much, I couldn't touch it hardly, so I got some Absorbine, Jr., and started rubbing it and my sister came in at the same time.

Q. Don't tell us what she said, you did rub it with what?

page 117] A. Absorbine, Jr.

Q. At that time were you employed?

A. Yes, sir, I was employed.

Q. Where were you working?

A. Broadway-Warwick.

Q. What was your position there?

A. Buyer for the fabric department.

Q. Did you do anything else?

A. Saleslady.

Mrs. Curtis H. Thomas

Q. How long had you been employed by the Broadway-Warwick?

A. 39 years.

Q. What was your rate of pay per week?

A. The way that they paid me was every two weeks. I got $150.00 every two weeks. That is the way I got it.

Q. Now did you seek any medical attention after looking at your leg?

A. Not that night. The next day I went to work.

Q. What day of the week was that on?

A. I don't know. I forget.

Q. Go ahead, I thought maybe you could tell us what day it was. When did you seek medical attention, or how many days later?

page 118] A. I went back to work the day after the accident. They realized I couldn't stand on my leg and then I talked to Mr. Berkey, the manager of the store —

Q. Don't tell us any conversation. Did you thereafter see a doctor that day?

A. I didn't see the doctor that day.

Q. When did you first see the doctor?

A. The next day?

Q. What doctor did you see?

A. Dr. Hunnicutt.

Q. What, if anything, did he advise you to do?

A. Well he wanted me —

Mr. Lambiotte: I don't think that is proper.

Court: Yes, sir, I don't think that is proper.

Q. You saw Dr. Hunnicutt?

A. Yes, sir.

Q. Did you see any other doctor?

A. No, sir, not here.

Q. What other doctor did you see?

A. Dr. Lowenberg.

Q. Did you select Dr. Lowenberg?

A. No, sir, Dr. Hunnicutt told me to go to

page 119] him.

Q. Where is Dr. Lowenberg's office?

A. Well — it is in Norfolk.

Mrs. Curtis H. Thomas

Q. That is all I wanted to know, the city. Did you see Dr. Lowenberg?

A. Yes, sir.

Q. What if anything did he do to you, Mrs. Thomas?

A. Well I told him immediately about the accident because that caused my suffering, and then, of course, he gave me a very thorough examination, and he told me I had to go in the hospital, and I did not have any choice. I had a blood clot in it.

Q. Did you go in the hospital?

A. Yes, sir.

Q. Did you have varicose veins before this?

A. I certainly did. I did, but they were very unsightly, but they gave me no trouble. I worked every day of my life.

Q. And did Dr. Lowenberg put you in the hospital?

A. Yes, sir.

Q. What if anything happened to you while you were in the hospital?

A. What do you mean?

page 120] Q. What did they do to you?

A. I had extensive surgery. He said there was no need of me having one place, I had to have all of it done, and I was in there from the 18th, I think, until the 5th of December, I think it was.

Q. I show you this bill. Is that the bill that you received from the hospital?

A. Yes, sir.

Q. What is the total amount of that bill?

A. $598.75, is that it? Yes, $598.75. I think that was it.

Q. $598.75?

A. I believe that was correct.

Mr. Fox: I would like to offer this bill as Plaintiff's Exhibit 3.

(At this time, hospital bill in the sum of $598.75 was accepted and marked by the Clerk as Plaintiff's Exhibit 3.)

Q. You say you believe you were discharged on December 5, Mrs. Thomas?

A. Yes, sir.

Mrs. Curtis H. Thomas

Q. Where did you go from that point?
A. To my sister's, Mrs. Apperson.
Q. Where was that?
A. In Norfolk.
page 121] Q. Do you recall how long you stayed with—
A. About three weeks.
Q. Can you —

Mr. Fox: I understand she has an elastic stocking on, but could she walk down and point on her leg to the area she has described?

Court: Yes, sir.

Q. Mrs. Thomas, would you step here and point to your leg the area you describe?
A. The lick was here and the knot was right under there and it goes all the way down to my ankle.

Mr. Fox: For the record, she is pointing to the inside of her left leg above the ankle.

Q. How long did you stay at Mrs. Apperson's house after you were discharged from the hospital?
A. I stayed there about three weeks.
Q. Three weeks?
A. Yes, sir.
Q. What, if anything, happened to you while you were there? Did you give yourself any treatments of any kind?
A. Yes, I carried out the doctor's orders, I had to use medicated soap and a salve and I thought that this place was getting all right, but it didn't heal like it
page 122] should. I am still having trouble with it.
Q. Did you take any types of medicine?
A. I didn't take anything — I did take something for my nerves because I was all shook up. I still take something.
Q. Did you have any type of bandage or anything on your leg?
A. Yes, I had to wear ace bandage while at her house, and when I came home he ordered me to have these support hose. I bought two or three pairs and tried to get a pair

Mrs. Curtis H. Thomas

that was comfortable, but it seemed that they hurt worse.

Q. What did the support hose cost?

A. From $4.95 to $6.95.

Q. You bought how many pair?

A. I have about five pair.

Q. What do you call that that you have on?

A. I have an ace bandage, and I have a drawer full of them to tell you the truth.

Q. That is support hose you are referring to?

A. No, I don't have them on today. I can wear them a little while at a time and they get on my nerves and I have to take them off.

Q. Did the doctor put any type of medicine on your leg?

page 123] A. When I went back to him and had this knot that has come in there, and it seems to be growing to me, he advised a sort of plastic boot. It is like a cast. It was put on there wet and as it got dry, it got hard, but not as hard as a cast like a broken arm. I kept it on there the first time a week, and I went back and changed it, and I kept it on two weeks without getting in the tub the way I liked to, and then I begged off, I said, "Please let me take it off." He did, he allowed me to do it and let me put two bandages with sponge rubber in between. I have only one bandage on today because I knew I would be here all day.

Q. Have you been able to return to work?

A. No, sir.

Q. What happens, if anything to your leg?

A. It swells when I am on it a whole lot and I can't stay on it a whole lot, and the doctor ordered her to have my bed elevated, a wooden block on the bed on my side and have to sleep with my leg on a pillow every night. That seems to help it, to lay down about every hour and elevate it.

Q. Would you like to return to work?

A. Would I? I would that.

Q. Have you been told your job is available?

A. I could go back to work right this minute if I was able.

page 124] Mr. Fox: Answer Mr. Lambiotte.

Mrs. Curtis H. Thomas

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Now you were seated in the back seat?

A. Yes, sir.

Q. And you were seated left in the car?

A. Yes, sir.

Q. And stopped there for a red light?

A. Yes, sir.

Q. And the light turned green and you say you saw the light turn green?

A. Yes, sir, I did.

Q. Was the signal light blinking? Mr. Apperson's signal light blinking?

A. I am not going to say I saw that, but I was watching the light, so I wasn't watching the signal light. I can't tell you I saw the signal light.

Q. When the light turned from red to green, did you see Mr. Hill's vehicle?

A. I did.

Q. Where was it?

A. When I saw it, it wasn't on top of the overpass, it was coming down.

Q. This is when you were stopped at the intersection?

page 125] A. Yes, sir.

Q. What happened? Mr. Apperson then —

A. He had stopped his car, he realized, he saw the car too, and stopped.

Q. Mr. Apperson did move into the intersection when the light turned green?

A. Yes, sir.

Q. And did he move straight out?

A. No, he made his curve to the left, going toward Hilton.

Q. How far through the intersection did he get? More than half way? Half way?

A. I think he got — I would say half way. I don't drive, but I would say he got there.

Q. Now could you estimate the speed of this car?

A. No, sir, I don't drive, and I don't want to ever see that car coming again.

Mrs. Curtis H. Thomas

Q. Now Mr. Apperson, as he has testified, he stopped his car in the intersection?

A. That is right.

Q. At that time how far away was this other car?

A. Well I don't know exactly how far it was, but it was a little off.

page 126] Q. Was it still coming down the incline?

A. He was, it was coming.

Q. You are not able to estimate the speed of it?

A. No, sir.

Q. How long have you had varicose veins?

A. Well I don't know exactly how long to tell you age. I have been stout all my life, and a lot of stout people don't have them to tell the truth.

Court: Let me caution you. You merely answer his questions. Kindly leave off the side remarks.

A. All right. Thank you.

Q. Did you wear any support for your varicose veins?

A. Before the accident?

Q. Yes?

A. No, sir.

Q. What bothers you now? Is it that area on your calf that is bothering you now?

A. Yes, sir.

Q. Your varicose veins don't bother you?

A. No, sir.

Q. And you have not returned to work?

A. No, sir.

page 127] Q. Do you have any trouble with your right leg?

A. No, sir.

Q. None at all?

A. No, sir.

Mr. Lambiotte: I think that is all.

Court: You may stand down.

Mrs. Esther Harton
Mr. William J. Holladay

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

DIRECT EXAMINATION

By Mr. Fox:

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Q. Did you work at Broadway?
A. Broadway Department Store downtown.
Q. How long did you work there?
A. 37 years.
Q. During that period of time were you acquainted with Mrs. Thomas?
A. I worked with her.
Q. Was she working in the same store?
A. Same store and same department.
Q. Can you tell the Court and Jury her attendance record while she was working there?
A. It was wonderful.

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page 129] MR. WILLIAM J. HOLLADAY,
called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fox:
Q. State your name, please.
A. William J. Holladay.
Q. Where do you live, Mr. Holladay?
A. I live across the James River Bridge in Carrollton, Virginia.

Mr. William J. Holladay

Q. Are you employed?
A. Yes, sir.
Q. Where abouts?
A. Newport News Shipyard.
Q. How long have you been working in the shipyard?
A. Thirty years.
Q. What do you do?
A. I am a burner in the welding department.
Q. Mr. Holladay, do you know Mrs. Thomas seated here?
A. Yes, sir, she is my sister.
Q. Directing your attention to October 27, 1963, were you riding in an automobile with her, being driven by Mr. Apperson, when you were in an accident?
page 130] A. Yes, sir.
Q. Where had you been before this accident happened?
A. We had been across the river over to my brother's in Carrollton.
Q. Where were you living at that time?
A. 506 Hamlin Street, Newport News.
Q. Will you state to the Court and Jury what you remember about how this accident happened? Who was driving the car you were in?
A. Mr. Apperson.
Q. Where were you seated?
A. On the front seat with him.
Q. Tell the Court and Jury what you recall about how the accident happened?
A. As we come over the bridge we come to our lefthand side, and we stopped at the red light.
Q. Did you see the light at the intersection?
A. Yes, sir.
Q. What color was it when you got there?
A. Red.
Q. What did Mr. Apperson do?
A. Mr. Apperson stopped. He had his signal light on and was blinking. I know it was because I saw it myself.
page 131] Q. All right, sir.
A. And he come to a dead stop. On the other side was two automobiles parked —

Mr. William J. Holladay

Q. By other side what do you mean by other side?
A. Other side over to the left.
Q. Where is that, sir?
A. That was to the left.
Q. Left of whom?
A. On the — across the road, they were parked to make their left hand turn to go to Newport News.
Q. Were they headed toward you, is that what you are saying?
A. No, not directly in front of us.
Q. But headed in that direction?
A. They was headed over to the left, to their left, and there was another car right to their left.
Q. All right, sir, what, if anything, did those cars do?
A. Those cars were stopped too.
Q. Then what happened?
A. The light came on for them to go, and they made their lefthand turn and went on.
Q. What direction did they go?
A. Coming toward Newport News, going south.
page 132] Q. Going south toward Newport News?
A. Yes, sir.
Q. Then what happened?
A. Then the green light came on for Mr. Apperson.
Q. For whom was the green light on?
A. Mr. Apperson, for us.
Q. What did Mr. Apperson do?
A. Andrew pulled off at a slow rate of speed. There wasn't another car in sight coming.
Q. No other car?
A. Coming from the overpass, there was no car in sight. Mr. Apperson, he always drives slowly, he pulled off and at an angle, and about that time, I saw these headlights coming down this bridge.
Q. Yes, sir?
A. And I say a high rate of speed.
Q. What do you estimate that speed to be, Mr. Holladay?
A. Well to an intersection, I would estimate around 40 to 45 miles.
Q. What if anything did Mr. Apperson do? What happened to the car you were in at that time?

Mr. William J. Holladay

A. He made a dead stop. Come out at an angle and made a dead stop.

page 133] Q. What happened to the other car?

A. This other car kept right on coming, come right on getting closer and closer. Thanks to Mr. Apperson that he did stop, because if he pulled any further it would have hit us broadside.

Mr. Lambiotte: I don't think that is proper.

Court: It is not proper, and Gentlemen of the Jury, disregard that.

Q. Mr. Apperson did stop?
A. Did stop, yes, sir.
Q. The other continued on?
A. Yes, sir.
Q. Did it strike the car in which you were in?
A. Yes, sir.

Mr. Fox: Answer Mr. Lambiotte.

CROSS EXAMINATION

By Mr. Lambiotte:

Q. Now Mr. Holladay, when Mr. Apperson started into the intersection as the light turned green, you say there was no cars in sight?

A. No, sir.

Q. And you went into the intersection and turned his car at an angle to make a left turn, and that is when you saw the Hill vehicle, is that right?

page 134] A. When he came, when he come into the intersection to make his turn on an angle, I saw the two lights.

Q. Where were the two lights, at the top?
A. Right at the overpass coming straight on down.
Q. Did he stop his car immediately?
A. He stopped his car because he didn't —
Q. I asked you, did he stop his car immediately?
A. Yes, sir.
Q. You said he had his signal lights blinking?
A. Yes, sir.

Mr. William J. Holladay

Q. When did he turn his signal lights on, before he stopped at the intersection, while he was stopped at the intersection —

A. Before he got to the red light.

Q. Before?

A. Yes, sir.

Q. How long did you remain stopped for the red light?

A. Well I don't know exactly how long it was, but my other — I say around a minute maybe, I don't know exactly. I didn't time it.

Q. Do you recall testifying in this case last April 15?

page 135-6] A. I said five minutes, but as a rule I doubt the red light would stay on no five minutes at a time.

Q. You reconsidered that?

A. I reconsider that.

Q. How far had Mr. Apperson gotten into this intersection when you saw this car coming over the overpass?

A. He had gone about the middle way, come all the way out, about middle way of his turn, he was of his turn, he was turning on an angle.

Q. You estimate the speed of this other vehicle to be about 45 miles an hour?

A. He was coming at a high rate of speed.

Q. Didn't you first estimate his speed to be between 40 and 45 miles an hour?

A. Yes, sir.

Q. Was there any traffic behind you, any cars behind you?

A. Yes, sir, there was another car behind Mr. Apperson?

A. After the impact occurred, did anyone come up to your car?

A. I don't know.

Q. You don't know?

A. No, sir, I can't recall that.

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Mr. Lambiotte: At this time I am going to make a motion that the Court strike the evidence on behalf of the plain-

tiff on the grounds that the evidence as we now have it, does not show any negligence on the part of this defendant in the least bit. We have testimony from the passengers of the automobile in which the Plaintiff was riding. This testimony would tend to show that the Defendant was travelling at a high rate of speed, a reckless rate of speed. I know on a motion to strike, all inferences are to be construed in favor of the plaintiff. However I do not think the Court is bound by evidence which is so incredible and so contrary to the physical facts, to me it is just unbelievable. Under the evidence as we have it now, I think that reason-
page 138] able men could not differ as to what happened. You have an accident in which two cars came together at an intersectiton and they remained together. Testimony of Mr. Hill, he testified he saw the Apperson vehicle as it was stopped on the other side of the intersection, he saw it come into the intersection, he saw it turn and he applied his brakes and there was nothing he could do. He has exonerated himself of failure to keep a proper lookout. There is no other evidence as to his failure to keep a proper lookout. His testimony is uncontradicted, so the only other basis that I can see that this case can be maintained upon, is excessive speed. Can the Court believe that a vehicle travelling somewhere between 35 to 45 miles per hour came off of the overpass and hit another vehicle and they left 8 feet of skid marks and yet they remained there together. I submit, if your Honor please, that the physical evidence is just too much to be overcome by the testimony of these witnesses, and we just can't get around that fact, and I believe that on that basis that you certainly shouldn't let the Jury consider this case. Is it a jury question? Is it a question for the jury to decide whether or not an automobile going
page 139] 35 miles an hour and hitting another car will remain still, remain together, or the two automobiles remain together? I don't think reasonable men can differ. Mr Hill testified when he was going down this intersection, he travelled at a speed of approximately 15 miles per hour. Isn't that more in line, in fact in line with the physical facts found by the police officer, Mr. Parrott, when he arrived on the scene? Based on what I just said, I move the Court to strike the evidence.

Court: This Court doesn't undertake to weigh the evidence. That is not the trial judge's prerogative in matters

such as this. You may believe one thing, I may believe another, and someone else may believe another concerning this evidence, but the fact remains that however incredible this may seem, the evidence is about speed. There are other factors in the evidence. The evidence is from the plaintiff that this car came off the bridge, down the overpass, didn't veer right or left, came right straight into it. Now this I think can go to the Jury as to whether or not Hill was keeping a proper lookout. I think there is ample evidence to go to the jury. Overrule.

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MR. DIAMOND TRIPOLITES,

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

DIRECT EXAMINATION

By Mr. Lambiotte:

Q. State your name.

A. Diamond Tripolites.

Q. Where do you live?

A. 105 Wedgewood Drive, Newport News.

Q. I see by your uniform you are in the Service, is that correct?

A. Yes, sir.

Q. What branch?

A. Air Force.

Q. How long have you been in the Air Force?

A. Fourteen years.

Q. What is your rank?

A. Staff Sergeant.

Q. All right, sir, on October 27, 1963, do you recall observing an accident at the intersection of Mercury

page 176] Boulevard and Warwick Boulevard?

A. Yes, I do.

Mr. Diamond Tripolites

Q. Would you please tell what occurred?

A. Well the best of my knowledge I was coming from the direction of James River Bridge, and in the left lane, when the plaintiff's car was in front of me. We had both stopped for the light. The light had turned green. The plaintiff car in front of me moved and went out at such an angle that I noticed it looked odd. At the same precise time I looked up.

Q. You said it went out at such an angle it looked odd. Can you give us a little better idea of just how it went out?

A. Well in my estimation, my own driving experience —

Mr. Fox: I object to this statement, I think —

Court: Sustained. You will just testify as to what you saw, not your impression or your opinion or whether it was right or wrong in your driving experience. You just tell what you saw.

Q. All right, in what lane did the —

Mr. Fox: I object to Mr. Lambiotte's leading the witness.

page 177] Court: He said he went at an angle. He now asked in what lane he went.

A. The plaintiff proceeded straight out from the left cutoff on such an angle that he had to make a fairly sharp lefthand turn, but I thought at first he was going straight.

Mr. Fox: Objection to what he thought.

Court: I overrule you on that. He was of the impression he was going forward. That helps describe the manner in which he was going out.

Mr. Fox: I except to the Court's ruling on what this witness thought.

Q. You say the car in front of you went out as if it was going straight?

A. This got my attention and my attention was taken to the intersection at this precise time. I looked up and saw the Hill vehicle coming down to the center lane on the opposite side, and I remarked to my wife —

Mr. Fox: Your Honor —

A. Excuse me. I stopped my own vehicle at the intersection at the lefthand cutoff at about this time.

Q. Why did you stop your vehicle at that time?

A. Because I anticipated the crash.

page 178] Q. Go ahead.

A. At that precise time then the both cars collided and I jumped out of my car, and my wife took mine and drove it across the street later on, but I went to both cars to see if anybody was hurt.

Q. Could you estimate the speed of the Hill vehicle?

A. I wouldn't say I could estimate the speed because there was no indication of speed as far as speeding is concerned. He was normally coming down the hill and that was it.

Q. Can you give us any estimation as to approximately how fast he was going?

Mr. Fox: I think that is what the witness should do. If he can say the speed, he should.

A. I would say the Hill vehicle was not in excess, or excessive speed. I would say 15 miles per hour, around there.

Q. You testified the Apperson vehicle went straight out and then made the turn?

A. Right.

Q. Can you describe the manner in which the turn was made?

A. Yes, the vehicle went straight out on a

page 179] straight angle and made a sharp left.

Q. When this vehicle made this left hand turn, could you place the position of the Hill vehicle at that time?

A. Yes, the Hill vehicle was — there was a little concrete abutment or a centerpiece between the opposite lanes, coming off the overpass, and the Hill vehicle was, I would say, just approximately on that concrete divider.

Q. In which lane was the Hill vehicle at that time?

A. In the center lane.

Q. What occurred then? The vehicle in front of you made this turn, and then what happened?

A. Then after the vehicle made the turn and the Hill vehicle came straight through at the same precise second just about, but the Apperson vehicle collided with the right front quarter panel of his car against the left quarter panel and front of the Hill vehicle, and there was, I would imagine about two feet distance between both vehicles.

Q. Were either of the vehicles stopped before the accident?

A. No there wasn't.

Mr. Diamond Tripolites

Q. Both were moving?

page 180] A. Right.

Q. Did either of the vehicles apply brakes prior to the accident?

A. From what I could see, no.

Q. You say that you stopped your vehicle in the intersection?

A. Yes, sir.

Q. What did you do?

A. I jumped out of the vehicle and went to the scene of the accident.

Q. Whose car did you arrive at first?

A. The Apperson vehicle. I looked inside and everyone was fairly well straightened up, there wasn't that much disarrangement as far as the accident went inside the car.

Q. Did any of the people have hats on?

A. Yes, a few people had hats on and I asked if everybody was all right, and everyone was seated up, and said they were all right, at which time I went to the other vehicle, the Hill vehicle.

Q. Did the police officer arrive on the scene?

A. Yes, after a short period of time, after some people had congregated, at which time I took and presented myself to the policeman and told him who I was and if he

page 181] wanted any information, I was a witness, and left it at that.

Q. Sergeant, do you know the plaintiff here, Mrs. Curtis Thomas?

A. No, not personally, just from the accident

Q. Is that the first time you had seen her or known her?

A. That is right.

Q. Sergeant, do you know Percy Hill?

A. No, not until the accident.

Q. You did not know him at all before the accident occurred?

A. No, I did not.

Mr. Lambiotte: Answer Mr. Fox.

CROSS EXAMINATION

By Mr. Fox:

Q. Sergeant, as I understand it, when you came to the intersection of Warwick Boulevard, Mercury Boulevard, you

were in the left lane and you stopped behind the vehicle, I believe you referred to it as plaintiff's car?

A. That is right. Excuse me, the car plaintiff was in.

Q. Mrs. Thomas wasn't driving the car?

A. No, she wasn't.

Q. Why did you stop behind that car?

page 182] A. We both had a red light in the left lane.

Q. Did you see the light turn green for your direction of travel?

A. Yes, I did.

Q. Did you see Mr. Apperson's car start off when the light turned green?

A. Yes.

Q. You also saw the blinker light for left turn?

A. Yes, I did.

Q. You started off behind him, did you?

A. Right.

Q. Do you recall, prior to the light turning green for you, any cars turning left going south toward Newport News?

A. I can't positively, but I do recall a vehicle in similar direction, but positively, I wouldn't swear to it.

Q. You know on the other side of the intersection, there is a left turn advanced arrow and advanced green?

A. Yes.

Q. Sergeant, as I understand, when it turned green, you started forward and so did Mr. Apperson?

A. Right.

page 183] Q. And he continued in a straight line and then made an abrupt turn to the left?

A. A sharp left turn.

Q. Would you say he was about parallel with Warwick Boulevard when he finished making the left turn?

A. I would say pretty much.

Q. Parallel, and it is your opinion that his car was moving when the impact occurred?

A. Right.

Q. It is also your opinion that Percy Lee Hill's car was moving when the impact occurred?

Mr. Lambiotte: That is not his opinion. He has just testified that is what he saw. I don't know how Mr. Fox got that it is his opinion.

Mr. Fox: I think that is the only thing he can say.

Mr. Diamond Tripolites

Q. Now, Sergeant, when the light turned green for you and Mr. Apperson, there was no traffic approaching you on Mercury Boulevard, was there?

A. In which direction?

Q. Coming from the east, going west. When the light turned green for you and you started off, you did not see another vehicle approaching you?

page 184] A. No, not that precise second, no.

Q. And Sergeant, you saw the Hill vehicle in the center lane, I believe you said it never veered in its lane, but continued in its same lane up until the point of impact?

A. In the short period I saw him, yes.

Mr. Fox: No further questions.

RE-DIRECT EXAMINATION

By Mr. Lambiotte:

Q. When the light turned from red to green and you and the car in front of you started to proceed forward into the intersection, you just stated that you did not see any other approaching vehicles, is that correct?

A. No, that I couldn't swear to, at that point, recall seeing any.

Q. Did you look at that time?

A. I had looked up from the light when it changed green and this, like I said, was when I proceeded forward. Just the time it took me one car length to get to the corner was the time it took for me to notice the irregularity of the vehicle in front of me —

Mr. Fox: I don't think that is responsive to the question.

Court: Don't think about irregularity, you dis-

page 185] regard that. What this gentleman may feel is irregular, may not be irregular.

Q. Go ahead, and leaving out that portion of it, go ahead with what you were saying.

Mr. Fox: I again object, it is not responsive to Mr. Lambiotte's question.

Mr. Lambiotte: He is still explaining —

Court: Overruled. Answer the question.

A. I had looked at that time when the car in front of me proceeded forward, and the way he had made his turn was what caught my attention, and at this time I had seen the Hill vehicle approximately, I would say, within three car lengths from the intersection.

Mr. Lambiotte: No further questions.

RE-CROSS EXAMINATION

By Mr. Fox:

Q. Sergeant, how long would you estimate a car to be?

A. I am not too good judge of distance, but I would say eighteen feet approximately.

RE-DIRECT EXAMINATION

By Mr. Lambiotte:

Q. Where was the Apperson vehicle when — page 186] you said the Hill vehicle was how far from the intersection?

A. I said approximately three car lengths.

Q. Where was the Apperson vehicle at that time?

A. Within the center, approximately center of the island parallel with Warwick Boulevard and approximately the same as far as the small viaduct was concerned coming over the overpass.

Q. Previously you made a reference to the island separating east and west traffic lanes on Mercury Boulevard?

A. Right.

Mr. Fox: I hate to keep interrupting, but is this proper indirect?

Court: Are you asking the question or are you objecting?

Mr. Fox: I am objecting.

Court: Sustained.

Q. Where was the Hill vehicle with reference to the island separating the east and westbound traffic lanes of Mercury Boulevard when Mr. Apperson made his left turn?

Mr. Fox: I object to that question.

Mr. Diamond Tripolites

Court: I think it is repetitious. I think he al-
page 187] ready answered that.

Mr. Lambiotte: That is all the questions I have. Defense rests.

Court: Any rebuttal?

Mr. Fox: No, sir.

Court: All right, sir, retire the Jury.

(The Jury was then excused while the Counsel and Court reviewed the instructions).

Mr. Lambiotte: I would renew my motion.

Court: Do you gentlemen feel we will be able to finish tonight?

Mr. Fox: I would like to look at the instructions that we had before.

Court: I think they are still perfect. I don't think the evidence is any different at all.

(At this point there was an off-the-record discussion relative to the instructions).

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page 188]

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Mr. Fox: On the instructions, we can and will state our arguments for the record while the Jury is out. I have some objections which we made and Mr. Lambiotte had some he made before. They were admitted over what we said to begin with, but we still had some objection to them.

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page 194]

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Clerk: "We, the jury, on the issues joined, believe that the accident in question was proximately caused by the concurring negligence of both the defendant, Percy Lee Hill, and the

driver of the vehicle, Andrew Apperson, in which the plaintiff Curtis Thomas was riding, and fix her damages in the sum of Eighty-five hundred dollars. /s/ A. E. Lenhart, Sr., Foreman."

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page 198] Court: All right, Gentlemen.

Mr. Lambiotte: If the Court please, on page 187, I have, "I would renew my motion," after which there is nothing.

Mr. Topping: You can't renew it now.

Court: You sure can't renew your motion. I must not have heard you. — I didn't understand that you were undertaking to renew the motion. Is that what you are trying to do?

Mr. Lambiotte: I am not trying to undertake to do that now. My point is, page 187, it has me stating that I would like to re-renew my motion, and there has been no ruling on that in the record. I was wondering what the status of the record should be relative to that, whether anything should be in the record as to a ruling on that.

Court: I didn't rule on your motion, if I heard it, and it would be incumbent upon you, I think, to have brought it to my attention and insisted upon a ruling. It not having come to my attention, it is as though the motion was not made. However, that is up to the gentlemen in Richmond to consider whether or not you made your motion. Of course we all know what motion you would be referring to.

Mr. Topping: Counsel for the plaintiff believes
page 199] that the record and the transcript as to this question speaks for itself.

Mr. Lambiotte: Does the Court have any preliminary remarks to put into the record relative to the notation of the objections and exceptions to the instructions we are about to get to?

Mr. Topping: So that this could be titled, I think this hearing today is Presentation of the Record to be Certified by the Court.

Court: Right.

Mr. Topping: Now on behalf of the Plaintiff, we have read this transcript of the record by Nancy F. Read, Court Reporter, and we take exception to Page 187, at the bottom of the page, "(By agreement, the instructions previously offered, together with the objections and exceptions on the part of the respective parties, and action of the Court in respect there-

to, are set forth as follows, Pages A through W.)" Thereafter we take exception to pages A through W, as there was no such agreement, and I believe that the words as contained in the parentheses on Page 187 were not in the court reporter's notes. We have the Court Reporter present, and I would ask her at this time if she would so state.

page 200] Court: Mrs. Read, do your notes reflect any such agreement as is set out on Page 187 of the record and referred to by Mr. Topping?

Mrs. Read: No, sir.

Mr. Topping: We believe, if your Honor please, that any such agreement was as set out on Page 188 of the transcript, in which Mr. Fox stated, "On the instructions, we can and will state our arguments for the record while the Jury is out." And he continues with that statement, but in substance, it is our understanding that the instructions as granted in the previous trial of this case could be used, but that the objections would be stated and the reasons while the Jury was out, when the second trial was being held. Was that the Court's remembrance of the understanding?

Court: I will state mine when you get through with your various and sundry motions.

Mr. Topping: Well in short, we object to, as stated, beginning on Page 187, through Page W, being a part of the record in this case as at the time of trial the objections were not made by counsel for the defendant to these instructions, that pages A through W were objections made to the instructions on a prior trial.

page 201] Mr. Lambiotte: Counsel for the defendant's position is that it was his understanding that the instructions of the prior trial would be submitted to the jury in this case, and that any objections or exceptions which were made in the prior case to the instructions so granted, would apply to the case at bar. It was not defense counsel's intention to allow the instructions to be presented without any objection or exception to be noted, and for those reasons feel that the record as presented by Nancy F. Read is correct.

Court: I feel that the situation that has arisen here in regard to this record is the responsibility of the court, and due, I think, primarily to the fact that it was getting late in the evening, as I recall, and this was an effort on the court's part to save everybody time and trouble, and I recognize that I should have handled it differently and had everything that was said put into the record.

Now, as I recall, this matter, when the discussion reached the point as set out on Page 187 of the record, when Mr. Fox requested to look at the instructions we had had in the previous trial, that at my suggestion, we then had an off-the-record discussion of the matter, and it was my opinion then, and is now, that the evidence as presented in this trial was substantially the same with no material differences from the evidence presented at the previous trial and therefore, and I think I stated, that I would instruct the Jury in the same manner as I had instructed them in the first trial.

page 202] I thought those instructions were correct. And then in order to save time, we agreed, as I recall the agreement, that the parties would object to the instructions in the same manner that they had objected on the previous trial, but that at some time later in the proceeding, and it must be necessarily have been agreed upon when the jury was out, because that would be the only available time, whatever objections or exceptions to be noted would be dictated in the record. Now this would include, I think, any objections to any amendments to any instruction which objection, of course, would be registered on behalf of the party offering the instructions, or to any instructions granted over the objection of the adverse party in the same manner as was done in the first trial. I never understood, it was not my understanding that any of these instructions were at this stage of the record, Page 187, were to be submitted to the jury without any objections or exceptions noted. On the contrary, it was my understanding that the objections would be noted and then exceptions dictated in the record. Now, of course I understand this has no real bearing on the matter, except when the matter did go to the jury, I wondered why this step was not taken and started to bring it to counsel's attention, and this is perhaps where I committed my second oversight, but I felt that it was not incumbent upon me to bring this to the attention of counsel, if they wanted to dictate the exceptions, they would do it.

page 203] Now, apparently there has been a misunderstanding on the part of Mr. Lambiotte as to what went on. I feel that perhaps we are maybe stepping outside the rules to do this, but I have no precedent here to follow except the rules to do this, but I have no precedent here to follow except the cold rule that you cannot make objection and take exceptions to matters after the trial is over. I feel in this case, as I stated to you gentlemen yesterday, that this is a different situation from that in which evidence is offered and admitted, or instruction is amended or

granted and no objection is made at the time, and then after the matter is concluded, an exception is undertaken to be made, which exception, of course, under our rules would not be seasonable. In this case I deem the objections to have been made in the informal discussions we had off the record, and that either through oversight or through misunderstanding, counsel has neglected to dictate these objections in the record. Now I think the objection having been made, and we understood, at least I understood the exceptions were taken to the ruling of the court, I feel it would be a miscarriage of justice not to allow the defendant to have his objections dictated in the record. If the instructions granted by the court are wrong, and the objections seasonably noted as they were, then I think he should have his opportunity to apply for a writ to have these instructions ruled upon by the Court of Ap-
page 204] peals. If I were to eliminate these pages from the record, and not allow him to dictate his objections, then he would have nothing to appeal from as I see it. I feel that would be a gross injustice.

Now what I took a long time to get to, what I am going to do is delete from the record, and I am not going to certify as part of the record, Page A through W, because it was never my understanding that we would adopt the record of the prior trial, and I am going to delete that and refuse to certify it. I am, however, going to allow Mr. Lambiotte to take those instructions one by one and dictate his exceptions into the record, and objections into the record.

Mr. Topping: We object to the Court's ruling and note our exception please. May I ask a question so that I might understand what the court's understanding of the transaction at the time of trial was, is it the Court's understanding that counsel for the defendant was going to dictate his reasons and his objections and exceptions while the jury was out?

Court: That was my understanding. In other words, I treat this, Mr. Topping, as though his objections and exceptions were timely made, and his reasons, he was going to cite in the record, while the jury was out. Now as I say through over-
sight or misunderstanding this was not done. Now
page 205] he has taken his objection and exception, and I see where no harm is to be done, I think justice would be met as a matter of fact, to allow him to put his reasons for his objections in the record.

Mr. Topping: I could not find in the transcript where he was going to, or where he objected or excepted to the instructions.

Court: No, sir, it was done in the off-the-record discussion as corroborated, I think, by Mr. Fox's statement on Page 188, "I have some objections which we made and Mr. Lambiotte had some he made before. They were admitted over what we said to begin with, but we still had some objection to them." Now there was another instruction, I believe. We had some discussion about some other instructions. As to those we are not concerned because that is part of this record.

Mr. Topping: I say again I object to the Court's ruling and allowing reasons and objections and exceptions now being dictated into the record on the instructions, and take exception to the Court's ruling.

Mr. Lambiotte: I would like to object and except to the ruling of the Court in refusing to certify Pages A through W as part of the record.

Court: This puts us in a situation too, and I am not going to certify it. The thing we are going to have to do,
page 206] it seems like to me, was delete this from the record, and then I will certify that this is it, this comprises the deletion because he will want this to go up too as part of the record.

Mr. Topping: It would appear to me that this transcript, plus what she is now taking, would all have to go so that we could see what we are talking about, the whole shooting match.

Court: But this isn't going with it. This is going to have to come out of this record, but I will certify that part as those pages which were deleted from the record, and send it along as you would an exhibit or anything else. I will have to do that, but I am not going to certify it as part of the record, because it isn't part of the record. I never intended and I don't want anybody to think I intended to agree that the record from one trial would be applied to the record of another trial, nothing could have been further from my mind. I would never have done such a thing.

Mr. Topping: I would like for it to go as an exhibit.

Court: All right, Mr. Lambiotte.

Mr. Lambiotte: Defendant objects and excepts to the action of the Court in granting Instruction Two as
page 207] offered by the plaintiff on the ground that it is repetitious of the duties set out in Paragraph One, Two, and Three, in Instruction One, as offered by the plaintiff.

The Defendant objects and excepts to the action of the Court in granting Instruction Six as offered by the Plaintiff

on the ground that it is repetitious of Instrucions One and Two, with respect to the duties placed upon a driver to keep a proper lookout.

The Defendant would object and except to the action of the Court in granting of Instruction Seven on the ground that the evidence is not sufficient to sustain the instruction of aggravation of a preexisting condition. That the evidence in this case was the plaintiff suffered from thrombophlebitis and a contusion to her left leg, and there was no evidence to support the fact that her prior condition of varicose veins was aggravated.

Defendant objects and excepts to the action of the Court in refusing to grant Instruction "E" as originally offered by the defendant, especially with reference to the next to last paragraph which was altered by the Court. Defendant feels that that paragraph as originally offered properly states the law.

Mr. Topping: Counsel for the plaintiff feels that the instructions as given by the Court were well warranted on the facts, supported by the evidence, and clearly stated the law applicable.

(The hearing was then adjourned).

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A Copy — Teste:

H. G. TURNER, Clerk.

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