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Record No. 6396

In the Supreme Court of Appeals of Virginia at Richmond

MARVIN GARLAND REDD, AN INFANT, ETC.

v.

HOWARD WILBERT INGRAM, AN INFANT, ETC.

FROM THE CIRCUIT COURT OF PATRICK COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6396

VIRGINIA:

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.

MARVIN GARLAND REDD, AN INFANT, BY HIS GUARDIAN *AD LITEM,* WILLIAM F. STONE,
Plaintiff in error,

against

HOWARD WILBERT INGRAM, AN INFANT, WHO SUES BY HIS FATHER AND NEXT FRIEND, BUREN INGRAM,
Defendant in error.

From the Circuit Court of Patrick County
John D. Hooker, Judge

Upon the petition of Marvin Garland Redd, an infant, by his guardian *ad litem,* William F. Stone, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Patrick County on the 18th day of October, 1965, in a certain motion for judgment then therein depending, wherein Howard Wilbert Ingram, an infant, etc., was plaintiff and the petitioner was defendant; no bond being required.

RECORD

* * * * *

MOTION FOR JUDGMENT

To the Honorable John D. Hooker, Judge of said Court:

Respectfully comes Howard Wilbert Ingram, an infant, who sues by his father and next friend, Buren Ingram, and moves the Court for a judgment against the defendant, Marvin Garland Redd, an infant, in the sum of Twenty Thousand Dollars ($20,000.00) for personal wrongs, injuries and damages suffered by the said Howard Wilbert Ingram as a result of the recklessness, carelessness and negligence of the defendant, Marvin Garland Redd, the particulars of which are as follows, to-wit:

1. That on the 10th day of January, 1964, at approximately 10:00 P. M., the plaintiff was riding as a guest passenger in an automobile operated by the defendant on Virginia State Highway #8 approximately two miles south of the Town of Stuart in Patrick County, Virginia.

2. That the plaintiff exercised no control or authority as to the operation of said automobile.

3. That at the time and place aforesaid, the defendant, Marvin Garland Redd, was proceeding in a northerly direction on said State Highway #8, and notwithstanding his duties owed to the plaintiff, was grossly negligent and careless in that

(a) He operated the automobile under his control without keeping a careful and proper lookout;

page 2 } (b) He operated the automobile under his control carelessly and recklessly and in a manner and at a speed so as to endanger the life, limb and property of others;

(c) He operated the automobile under his control in such a manner as to fail to keep it under control;

(d) He operated the automobile under his control in such a manner at the time and place aforesaid as to cause the same to be driven at a speed greatly in excess of the posted speed limit, over the protest of the plaintiff, and the defendant, over said protests of the plaintiff and in disregard of same, did carelessly and recklessly cause the automobile to run off the

said road on the left side, where said automobile overturned several times. The aforesaid acts of negligence being the proximate cause of the injuries suffered by the plaintiff.

4. That as a direct and proximate result of the grossly negligent, careless and reckless acts of the defendant, the plaintiff was caused serious and permanent injury to his person, was caused excruciating pain and mental anguish, was caused to expend large sums of money for medical treatment and has also been prevented from engaging in any gainful occupation for some time after the said injuries were sustained.

WHEREFORE, judgment is asked against the defendant, Marvin Garland Redd, at the hands of this Court in the sum of Twenty Thousand Dollars ($20,000.00). The Plaintiff moves the Court to appoint a Guardian *ad litem* to represent the interest of the infant defendant.

HOWARD WILBERT INGRAM,
AN INFANT, WHO SUES BY
FATHER AND NEXT FRIEND,
BUREN INGRAM
By G. WARTHEN DOWNS
Counsel.

Filed in the Clerk's Office the 1st day of May, 1965.

ETHLYNE M. GILLEY, D. C.

* * * * *

page 14 } INSTRUCTION NO. E

The Court instructs the Jury that if the defendant, Marvin Garland Redd, relies upon the defense of the assumption of risk, that is to say, that before leaving the school premises that the plaintiff, Howard Ingram, knew that it was the intention of the defendant, Garland Redd, to engage in a race and that he fully appreciated the hazard or danger involved in riding with the defendant under such circumstances and that the plaintiff, Howard Ingram, voluntarily exposed himself to such hazard or danger, then the burden is on the defendant, Marvin Garland Redd, to prove by a preponderance of the evidence that the plaintiff, Howard Ingram, knew that the defendant, Marvin Garland Redd, intended to engage in

a race and that the plaintiff, Howard Ingram, fully appreciated the hazard or danger involved in riding with the defendant under such circumstances.

Given.

J. D. H.

* * * * *

page 16 } INSTRUCTION NO. 1(a)

The Court instructs the Jury that the law places upon every person the duty to take such precautions for his own safety as a reasonably prudent person would take under like circumstances and conditions and the failure to do so constitutes negligence. Therefore, if you find from a preponderance of the evidence in this case that the defendant, Garland Redd, was the driver of the automobile on the occasion in question and if you further find from a preponderance of the evidence that the plaintiff, Howard Ingram, without protest or objection, continued to ride in the car of the defendant, Garland Redd, after he knew or by the exercise of ordinary care should have known that the defendant was taking no precautions for their safety and was driving his automobile in a careless and reckless manner and that a reasonably prudent person under these circumstances would have taken some precautions for his safety and would have objected and protested to the defendant, then the plaintiff, Howard Ingram, would be guilty of negligence and if you further find that such negligence efficiently contributed to the accident in which he was injured, then he, the plaintiff, cannot recover.

Given.

J. D. H.

page 17 } INSTRUCTION NO. 2

The Court instructs the Jury that one who voluntarily assumes the risk of injury from a known hazard or danger cannot recover for injuries received from such hazard or danger. And if you believe from a preponderance of the evidence in this case that the plaintiff, Howard Ingram, fully appreciated that there was hazard or danger involved in riding with the defendant, Garland Redd, as they left the

school premises, and that the plaintiff voluntarily exposed himself to such hazards or danger and that he was injured as a result of such hazard or danger, then he cannot recover, even though you may believe that the defendant, Garland Redd, was grossly negligent.

Given.

J. D. H.

* * * * *

page 19 } INSTRUCTION NO. 4.

The Court instructs the jury that you are the sole judges of the weight and credibility of the evidence and testimony of the witnesses.

The Court further instructs the jury that by preponderance of the evidence is meant that evidence which is most convincing and satisfactory to the minds of the jurors. Mere numbers of witnesses do not necessarily carry the preponderance of the evidence. In determining upon which side the preponderance of the evidence is, the jury may take into consideration the opportunities of the several witnesses for seeing and knowing the things to which they testify, their interest or want of interest in the result of the suit, the probability or improbability of the truth of their several statements, in view of all the evidence, and the facts and circumstances upon the trial; and from all the circumstances determine the weight or preponderance of the evidence.

Given.

J. D. H.

page 20 } DEFENDANT'S INSTRUCTION 1

The Court instructs the jury that the mere happening of the accident places no responsibility on anyone, and the burden of proof is on the plaintiff, Ingram, to prove his case in every essential particular by a preponderance of the evidence.

The Court further instructs the jury that even though Redd, was guilty of gross negligence which contributed to the accident, yet, if you believe from the evidence that the plaintiff, Ingram, was also guilty of contributory negligence

by riding with defendant Redd when he knew, or should have known, he was driving recklessly, without protesting or asking to get out of the defendant Redd's car, then the plaintiff, Ingram, cannot recover and you should find your verdict in favor of the defendant, Marvin Garland Redd.

Refused.
Exception noted.

J. D. H.

* * * * *

page 24 }

* * * * *

JUDGMENT ORDER

This day came the parties to this action, the infant plaintiff having filed his Motion for Judgment; the infant defendant having filed his Answer by counsel and also by his Guardian *ad Litem,* and the parties were at issue. Whereupon a jury was empanelled as follows:

Isam Biggs
Charlie J. Sheppard
Charles B. Smith
W. Blair Clark
Towler B. Tatum
James G. Hylton
Russell F. Turner

The evidence for the infant plaintiff was introduced, and the infant defendant, Marvin Garland Redd, moved the Court at the conclusion of the plaintiff's evidence to strike the evidence of the plaintiff and enter summary judgment for the said defendant for reasons set forth in the record, the same being argued by counsel for the defendant; whereupon the Court overruled the motion to which action of the Court the said defendant, by counsel, objected and excepted.

Whereupon the infant defendant, Marvin Garland Redd, introduced evidence in his behalf, and at the conclusion of all the evidence, the said defendant, by counsel, renewed his Motion to strike the evidence

page 25 }

of the plaintiff and enter summary judgment for said defendant, and the same was argued by counsel, which Motion of said defendant was again overruled, and objection and exception noted on behalf of the infant defendant, Marvin Garland Redd.

The jury having heard all of the evidence for the infant plaintiff, Howard Wilbert Ingram, and for the infant defendant, Marvin Garland Redd, the instructions of the Court offered by the plaintiff and by the defendant, the arguments of counsel for the plaintiff and the defendant, and considered the same and returned the following verdict, to-wit:

"We the jury find for the plaintiff, Howard Ingram, and award him the amount of ($8500.00) Eighty-five Hundred Dollars.

Foreman—W. BLAIR CLARK"

The defendant, by counsel, moved the Court to set aside the jury verdict on the grounds stated in the record, which Motion the Court did overrule, to which action of the Court, the defendant, by counsel, excepted.

The Court having approved the jury's verdict, doth hereby sustain and confirm the same, and doth ADJUDGE and ORDER that the infant plaintiff, Howard Wilbert Ingram, recover of the infant defendant, Marvin Garland Redd, the sum of Eighty-five Hundred Dollars ($8,500.00), and his legal costs in his behalf expended, to which action of the Court the defendant objects and excepts.

page 26 } The defendant having noted his intention to apply to the Supreme Court of Appeals for a Writ of Error, it is ADJUDGED and ORDERED that within twenty-one days from the date hereof, the said defendant shall post a bond conditioned according to law in the penalty of $9000.00.

Enter this 18th day of October, 1965.

JNO. D. HOOKER, Judge.

* * * * *

page 29 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To D. G. Hanby, Clerk of the Circuit Court for the County of Patrick:

Counsel for Marvin Garland Redd, the defendant in the above-styled case, hereby gives Notice of an Appeal from a final judgment entered herein on October 18, 1965.

The said Marvin Garland Redd, the defendant in the above-styled suit, will apply to the Supreme Court of Appeals of Virginia for a Writ of Error and *Supersedeas* to said judgment, and herewith sets forth his Assignments of Error as follows:

1. That the Court erred in giving Instruction E (1) offered by the Plaintiff, for the reason that it restricted the Plaintiff's Assumption of Risk to his knowledge of a race rather than to the hazards and dangers of which a reasonably prudent man should have been aware under the circumstances presented by the evidence.

2. That the Court erred in refusing Instruction #1 offered by the defendant, for the reason that the Defendant was entitled to an instruction telling the Jury that the Plaintiff could not recover if the Jury should believe from the evidence that the Plaintiff was contributorily negligent, even if they should also believe the defendant was guilty of gross negligence.

page 30 } 3. That the Court erred in permitting character witnesses to testify as to the veracity and character of the Plaintiff merely because the defendant's testimony was in conflict with that of the Plaintiff.

4. That the verdict was contrary to the law and evidence and without evidence to support it, and, therefore, the Court erred in overruling the defendant's Motion to set aside the verdict and enter final judgment for the defendant.

Enter This 2nd day of December, 1965.

MARVIN GARLAND REDD
By W. F. STONE
Counsel.

* * * * *

State Trooper M. B. Hines

STATE TROOPER M. B. HINES,
the first witness, called on behalf of the plaintiff, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. Please state your full name.

A. M. B. Hines.

Q. Mr. Hines, what is your official capacity in Patrick County?

A. State Trooper.

Q. How long have you been a State Trooper?

A. Almost fourteen years.

Q. Did you investigate an accident, and if so, did it involve a Redd boy?

A. Yes, I did.

Q. When did that occur?

A. January 10, 1964.

Q. Where did it occur?

A. It occurred in Patrick County on Route 8 one page 3 } and fourth-tenths miles south of Stuart.

Q. At the time this occurred, were you advised what time it occurred?

A. I was advised it occurred 10:45 P.M., at night.

Q. What time did you arrive at the scene?

A. 11:02 P.M.

Q. At the time you arrived, did you make notes of the accident that was apparent to you?

A. Yes, there and later also.

Q. At the time did you investigate this accident as to what occurred there?

A. Yes. Marvin Garland Redd was at the scene when I arrived.

Q. That's the defendant over there?

A. Yes.

Q. Did you determine who was operating the vehicle?

A. Not at that time. I did later at the hospital.

Q. Why couldn't you determine then?

A. I helped load Marvin into the ambulance and also helped load Howard Wilbert Ingram into the ambulance.

Q. Did you see this boy at the accident?

A. Yes.

State Trooper M. B. Hines

Q. Where was he?

page 4 } A. I can show you on the map. (The trooper indicates a drawing on the blackboard) This represents the '57 Chevrolet and this was one of the doors off the car.

Q. The door off the car?

A. Yes, and Ingram was sitting on this door. This is a parking area of a church ground. This is an embankment that goes down four to six feet. He was on this door.

Q. You mean sitting on the door?

A. Yes, he was sitting on the door and he had mud and dirt on his head and face.

Q. Any blood?

A. Yes, blood on his head also.

Q. Was he conscious?

A. Yes, he was, he could talk.

Q. Did he make any statement there?

A. I just checked his injuries more or less at that time. I didn't question him.

Q. Why was that?

A. I was interested in getting him loaded into the ambulance at that time.

Q. Did they take him to the hospital?

A. Yes.

Q. You made a diagram. This is a church here.

page 5 } Which church is that?

A. It is almost directly across the road from R. L. Shelton's Garage south of Stuart, a road known as Shingle Road.

Mr. Clark: Is the Court and gentlemen of the jury familiar with where this road is?

The Court: The Court is. I am sure some of the jurors are.

Q. What did you find?

A. I found the car overturned on its top in this position.

Q. This was uprooted trees that this represents, the trunk of the tree with dirt still attached to the root. Marvin Redd was where the "X" is in the corner. I found him in the edge of the wooded area. I followed these tracks on back to the top of this hill in the curve. I found a pressure mark . . .

Q. What do you mean "pressure mark"?

State Trooper M. B. Hines

A. A black tire mark on the road which started three feet from the center line.

Q. Made by which wheel?

A. The right wheels.

Q. Where would that put the left wheels of the car?

A. Across the center line.

Q. Is it a double center line?

page 6 } A. Yes. This mark continued three hundred feet then at an angle across this lane of traffic for seventy-eight feet, then in front of the church area for two hundred and sixty-one feet. There was some glass in this area here, then no tracks at all from this point to the car.

Q. Did it hit the ground, or was it in the air?

A. There was indication on top of this tree something had loosened the dirt. That was the only indication of anything being touched from there to the car. This was four to six feet to this area.

Q. You say this is the tree you saw the mark on the top of it?

A. Yes, there was loose dirt on the top of it.

Q. Where did you find Redd, the driver?

A. Where the "X" is, one hundred and thirty-six feet from the car.

Q. And you found the plaintiff back here where?

A. He was sitting on the door of the car at that point.

Q. How many feet did you have in all from that car?

A. From where this pressure mark started on top of here and curved to the car was six hundred and eighty-nine feet.

Q. Did you talk with this plaintiff?

A. I talked to him at the hospital. I talked to page 7 } him at the scene there very little. I asked him his injuries and so forth, then helped load him into the ambulance, then talked to him later at the hospital.

Q. You talked to him later at the hospital?

A. Yes.

Q. What was his condition when you saw him?

A. He had dirt all on his face and head. He had a severe laceration of his head and blood was all on his face and head.

Q. Did he make a statement to you?

A. No sir, he did not.

Q. Was he in a condition at that time?

A. I could get very little out of him, other than his name.

Q. Was he drinking?

Howard Wilbert Ingram

A. Not to my knowledge.
Q. Did he later make a statement to you?
A. I talked to him later on several occasions.
Q. Did he make a statement?
A. Yes.
Q. At the time you talked to him, did he seem to be in his right mind at that time?

page 8 } A. Well, he was different when I talked to him later at the hospital over here. I didn't question him but more or less his name, address and age and so forth.

Q. Why?
A. His injuries and all. He wasn't in a condition to talk at that time.
Q. You mean he was really hurt?
A. Yes sir, he was.

CROSS EXAMINATION.

By Mr. Stone:
Q. Mr. Hines, both these boys were hurt pretty bad?
A. Yes. Garland Redd had severe injuries, lacerations of the head, arms, legs, severe.

Mr. Stone: No other questions.

* * * * *

page 17 } HOWARD WILBERT INGRAM, the plaintiff, taking the stand in his own behalf, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Downs:
Q. State your name and address, and age.
A. Howard Wilbert Ingram, age twenty.
Q. Where do you live?
A. Route 1, Woolwine, Virginia.
Q. Howard, it is in evidence you were injured in an accident in Patrick County on the 10th of January, 1964, do you remember that date?
A. Yes, sir.

Howard Wilbert Ingram

Q. Would you tell the jury where you were prior to the accident. Where had you been?

A. I had been to the school dance at Central School.

Q. How did you get there?

A. I was in town and saw the principal of the school, Mr. Lester. I asked him for a ride. He said it was all right. I went down. After I got to the school, I went in the dance.

Q. When did you get there?

A. Six-thirty or seven o'clock.

page 18 } Q. You went in the dance and what happened?

A. I didn't leave the dance until after the dance was closing up.

Q. What time was that?

A. Ten or fifteen minutes after.

Q. What did you do after the dance was over?

A. I went to get me a way home. I walks up to Garland.

Q. Garland who?

A. Garland Redd.

Q. The defendant?

A. Yes. I asked him would be take me home. He asked how much money did I have. I said I didn't have any. He said to go ask his brother, I might could stay with him. His brother was in his car. I asked him. He said he wasn't going home. He stayed with his grandfather or somebody. I came back and told Garland Redd. He said, "Okay." We got in the car and went up the street.

Q. Which way were you heading?

A. We was heading towards Stuart.

Q. Was anybody else in the car?

A. No, sir.

Q. Just you and the defendant, Redd?

A. Yes. We drove up the road. He parked be-

page 19 } side a little store after we got about a mile up the road.

Q. Did he make any statement?

A. No, not until after he stopped. He said Smith had something and he wanted to see what he had.

Q. Did you know what he was referring to?

A. No, I didn't question him. I figured if he wanted me to know, he would have told me.

Q. That was the statement he made after he pulled off the road?

A. Yes.

Howard Wilbert Ingram

Q. What happened?
A. G. C. Smith came by.
Q. What kind of car was he driving?
A. A Ford, a '57 or '58 Ford.
Q. Then what did the defendant Redd do?
A. Redd pulled off behind him. We went down the road a little ways and Redd passed him.
Q. How fast was he going?
A. Smith was running about sixty-five or seventy.
Q. How fast was Redd going?
A. Seventy to eighty.
Q. Did you say anything to him?
A. Yes, I told Redd to slow down and drive right.
Q. What did he say?
page 20 } A. He didn't say nothing.
Q. He didn't make any reply?
A. No.
Q. Then what happened?
A. We kept on going. He kind of slowed down a little bit after he passed him. We rode about three or four miles . . .

The Court: Do you mean on the highway?

A. Yes, sir, riding down the road.
Q. Route 8?
A. Yes sir. Smith came in behind him. They was running about ninety-five or a hundred side by side after you get past the bridge on a curve, I wasn't watching the road too well.
Q. What did you do?
A. I was scared to death. I was sitting drawed up in the seat. When Smith went around him, they drove side by side running about ninety to a hundred.
Q. How do you know?
A. I looked through the steering wheel at the speedometer and saw the hands moving back and forth between "one hundrd" and "ninety". When this car came over the hill . . .
Q. Which car?
page 21 } A. The car . . .
Q. Are you telling the jury the Redd vehicle and the Smith vehicle were side by side on the highway and another car was coming?
A. Yes.
Q. In which direction?
A. From Stuart.

Howard Wilbert Ingram

Q. From the opposite direction?
A. Yes.
Q. It came over the hill?
A. Yes.
Q. What happened then?
A. Redd had to slow down and move over so Smith could get in to keep from causing a head-on collision. I told him something was going to happen, to slow down and drive right. He said, "I got it."
Q. Those were his words when you told him to slow down? What were the very words?
A. He said, "I got it."
Q. Did he slow down?
A. No, he speeded up, and I started praying.
Q. How did you feel during this episode?
A. I was in the seat praying and scared to death. I don't remember anything else. We started turning over.
page 22 } The next I remember was in the X-ray room.
Q. You don't remember being thrown out of the car?
A. No sir, I don't remember.
Q. You say you saw the speedometer at what?
A. Between ninety and one hundred miles per hour.
Q. What were the words he used to you when you told him to slow down?
A. He said, "I got it."
Q. You said the next thing you remember you woke up in the hospital?
A. Yes.
Q. How did you feel?
A. I was feeling bad, very bad.
Q. Did you have any blood on you?
A. I don't remember. I don't think I opened my eyes.
Q. Did you have any cuts or anything when you woke up, or what was your condition?
A. I was in a bed. They had a bottle in my arm. I wanted to die.
Q. They were feeding you intravenously?
A. Yes.
Q. How did your head feel?
A. Like somebody took a wedge and knocked it.
page 23 } Q. How does it feel today?
A. The same way, sometimes I feel good, and sometimes it draws and hurts. My scalp draws.

Howard Wilbert Ingram

Q. Do you know whether or not the doctor had to sew up your head?
A. I could feel it the next day. I was patched up.
Q. Do you know how many stitches he took?
A. No, sir.
Q. Do you know approximately how many?

Mr. Stone: If the Court please, he said he didn't know.

Q. How long did you stay in the hospital?
A. Fourteen days.
Q. What hospital?
A. Patrick Memorial Hospital in Stuart.
Q. What was the bill?

Mr. Stone: We stipulated that.
The Court: I will read the stipulation later.

Q. How long did you stay in the hospital?
A. Fourteen days.
Q. At the time of the injury, what were you doing?
A. I was going to school.
Q. Where were you going to school?
A. Patrick Central.
page 24 } Q. Did you return to school that year?
A. I was out about fifty-five or sixty days, after I got out of the hospital. I returned in April, the first part. I returned then. I was behind in my school work.
Q. How were you doing before that?
A. I was doing pretty good before that, Bs and Cs. I got down to "D," in a lot of subjects I didn't make it.
Q. Did you finish?
A. No sir. I still have one subject to take.
Q. Howard, prior to this—why couldn't you finish school?
A. When I went back the following year my eyes gave me a lot of trouble. I just didn't care too much any more.
Q. Did you get glasses?
A. Yes, sir.
Q. Had you ever worn glasses before?
A. No, sir.
Q. Did you have trouble with headaches, trouble with your head, anything like that?
A. Yes sir. I still do.

Howard Wilbert Ingram

Q. You heard Dr. Clark say you were passing blood. Did you have that happen any time after the accident?
A. Yes. I was helping Mrs. Dixon fixing some steps.
Q. Who is Mrs. Dixon?
page 25 } A. A lady who teaches school at Stuart High School.
Q. What happened?
A. I was lifting up some brick and felt a sharp pain in my side.
Q. How long was this after the accident?
A. Ten or eleven months.
Q. Then what happened?
A. I went to pass water and nothing but real dark blood passed. I was scared to go back to Dr. Clark.
Q. Why were you scared to go back to Dr. Clark?
A. I owed him so much.
Q. You hadn't paid him anything on his bill?
A. No, sir.
Q. Why didn't you go to Dr. McNamee?
A. Because I owe Dr. McNamee more than I do Dr. Clark and I haven't paid him anything either.

Mr. Downs: Your witness.

CROSS EXAMINATION.

By Mr. Stone:
Q. You were scared to go back to Dr. Clark because you owed him?
A. Yes.
page 26 } Q. You went back last week, didn't you?
A. Yes. He asked me to come back.
Q. How old were you at the time?
A. I was eighteen, Sir.
Q. How long had you known Garland Redd?
A. I had known him ever since school days.
Q. You had known him a long time?
A. Yes, sir.
Q. You went down to a dance at Patrick Central?
A. Yes, sir.
Q. You were all there?
A. Yes, sir.
Q. After the dance you all came out and were talking around there?

Howard Wilbert Ingram

A. No, sir.
Q. Weren't you all out there talking?
A. I didn't leave the building until the dance was over. When I came out, there wasn't any people in there.
Q. You didn't hear some girls out there arguing and fighting?
A. No, sir.
Q. You say you went up to Gary Redd and asked him to take you home?
page 27 } A. Yes.
Q. You remember seeing him there?
A. Yes.
Q. Where was he?
A. At his car.
Q. Garland's was right next to his?
A. No.
Q. How far was it away?
A. Garland's car was parked on one side, Gary's was parked this way.
Q. How far?
A. Fifty to seventy-five feet.
Q. You say Gary's car and Garland's car were not close to each other?
A. No.
Q. You asked Gary to take you home?
A. Yes.
Q. He said he couldn't take you, to go see his brother?
A. Yes.
Q. He went with you to see his brother?
A. No.
Q. When you were talking to Gary Redd, I will ask if you didn't hear Garland say, "You all stop that fight-
page 28 } ing, anybody who wants to race, follow this Chevy".
A. No, sir.
Q. You went from Gary Redd's car to Garland Redd's car?
A. Yes.
Q. Was Garland there?
A. Yes.
Q. Who was with him?
A. Nobody.
Q. He was sitting in the car by himself?
A. Yes.
Q. Was he in the car?

Howard Wilbert Ingram

A. Yes.
Q. Where did you first ask him to take you?
A. I first asked him to take me home.
Q. What did he say?
A. He asked me how much money did I have. I said I didn't have any. He said I could go with him.
Q. To his home?
A. Yes.
Q. While you were there talking to Garland, didn't Gary Redd come up and talk to Garland?
A. No. The only time I saw Gary was when I
page 29 } talked to him at his car, not at Garland's car.
Q. Garland didn't go over there?
A. No.
Q. After you went to Garland's car and got in, he didn't drive around the building in a very reckless manner?
A. No, sir.
Q. He didn't go around the building?
A. No, he went straight up the road. He didn't go around the building.
Q. I will ask if when he went around the building, Gary didn't come up to him and say, "Don't be so reckless"?
A. No sir. He didn't go around the building, not with me in the car.
Q. You never did hear Garland say anything about racing?
A. No, he didn't say anything to me about racing. He said Smith had something he wanted to see. He didn't mention anything to me about racing.
Q. When you left Patrick Central School, as he drove off, didn't he say to everybody, "Let's race"?
A. No, sir.
Q. How did he take off?
A. Well, he took off casually. He was driving right when we first took off.
page 30 } Q. He took off in a nice manner?
A. Yes.
Q. How far is it from there to Deatherage's store?
A. To the store we stopped at?
Q. Yes. That's Deatherage's Store, isn't it? How far is it?
A. It is about two or two and a half miles.
Q. He stopped there?
A. Yes.
Q. You asked him why he stopped?

Howard Wilbert Ingram

A. No, I didn't ask him why he stopped. He volunteered and told me Smith had something he wanted to see.

Q. Didn't he say, "G. C. has got a hot car and I want to try it out"?

A. No, he said Smith had something he wanted to see. I didn't question him.

Q. You didn't ask what he was talking about?

A. I thought if he wanted me to know, he would tell me. I thought it was something he was trying to hide.

Q. You thought Garland was trying to hide something from you?

A. Yes.

Q. You had known him a long time.

page 31 } A. Yes.

Q. You knew him well, you had gone to school with him?

A. Yes.

Q. Did you see G. C. Smith come by?

A. Yes.

Q. How fast was G. C. going when you passed G. C.?

A. About sixty-five to seventy.

Q. What is the speed limit along there?

A. I don't know.

Q. You know it is not over fifty-five?

A. I don't know. It could be over fifty-five.

Q. What did you say when you passed him?

A. I told Garland to slow down and drive right.

Q. What did he do?

A. He didn't say anything.

Q. Did he slow down?

A. After we got up the road some, he slowed down.

Q. G. C. passed you again?

A. Yes.

Q. How fast were you going when G. C. passed you the second time?

A. Ninety-five to a hundred miles per hour.

Q. G. C. passed you while you were going that fast?

A. Yes sir, they was running side by side.

page 32 } Q. I will ask you again, after G. C. passed you, if Garland Redd didn't say to you, "I believe I can catch old G. C.," and you told him, "No, I don't believe you can"? Do you deny that?

A. I deny that. I was trying to prevent the wreck. I wasn't egging him on.

Howard Wilbert Ingram

Q. You were trying to prevent the wreck?
A. Yes, sir.
Q. You didn't hear any of this stuff down at Patrick County School?
A. No sir, I did not.
Q. I believe all the doctors you went to say you are all right now?
A. They say I am better.
Q. What do you mean "better"?
A. Better than I was when I was in the wreck.
Q. Didn't you hear Dr. Clark testify he couldn't find anything in the X-rays . . .

Mr. Clark: Objection.
The Court: It is a matter of argument to the jury.

Q. I will ask you again, Howard, you say you were with Gary Redd down there next to his car . . .
page 33 } A. I wasn't with him in the dance.
Q. After the dance.
A. Yes.
Q. You were standing beside his car when you asked him to take you home?
A. Yes, sir.
Q. He told you to go to his brother?
A. Yes.
Q. You deny you heard Garland Redd while standing next to Gary Redd's car say anybody want to race, follow this Chevy?
A. Yes.
Q. You deny you went around the building in a reckless manner and Gary cautioned him?
A. Yes.
Q. Who did you see besides you and Gary and Garland?
A. Two or three cars.
Q. You didn't know any of them?
A. I know Gary's car and Garland's car. That's why I asked them to take me home.
Q. Do they live close to you?
A. No.
Q. How do you know their cars?
page 34 } A. He used to come to the school and sometimes he drove his car, that's how I knew.

Howard Wilbert Ingram

RE-DIRECT EXAMINATION.

By Mr. Downs:

Q. Mr. Stone asked about statements made at the parking lot. Who was the last one to leave the dance?

A. Out of the building?

Q. Yes.

A. I was the last one out of the building.

Q. Why was that?

A. I had to use the bathroom.

Q. Everybody had gone?

A. Yes.

RE-CROSS EXAMINATION.

By Mr. Stone:

Q. Everybody had gone except you and Gary and Garland?

A. I was talking about in the building. I was the last one to leave the building, because I had to use the bathroom.

Q. You and this boy have been good friends, you have stayed at his home many times?

A. I stayed one time.

Q. You have ridden with him before?

page 35 } A. No sir.

Q. You never rode with him before?

A. One time.

Mr. Clark: I object.

The Court: He said he had ridden with the defendants one time before.

The Court: You said you were praying traveling down the highway. Were you praying out loud or to yourself?

A. To myself.

RE-DIRECT EXAMINATION.

By Mr. Downs:

Q. Where were you?

A. In the seat.

Q. How?

A. I had my knees on the floor and one of my arms beside the door.

Gary Redd

Q. Your knees were in the floorboard?
A. Yes, sir.

* * * * *

page 41 }

* * * * *

GARY REDD,
the first witness called on behalf of the defendant, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Stone:
Q. Are you Gary Redd?
A. Yes.
page 42 } Q. How old are you
A. Twenty-two.
Q. You are a brother of Garland Redd?
A. Yes, sir.
Q. Were you down there at Partick Central School January 10, 1964?
A. Yes.
Q. When this thing started out?
A. Yes.
Q. Tell his Honor and the jury what conversation took place between your borther and who was there.
A. Yes, we were in the dance that night. After we came outside, there was a group of girls outside fighting. We stood around waiting for a few minutes. My brother, Garland and we was all listening. After we were there, Howard Ingram came up and asked me . . .
Q. Where were you?
A. Standing by my car.
Q. With reference to your car, where was Garland's car?
A. Parked beside mine.
Q. How close?
A. About three feet apart.
Q. Go ahead.
page 43 } A. He asked would I take him home. I said I wasn't staying at home. I was staying with my

Gary Redd

grandparents, maybe Garland would take him home. Everything kept getting bad. Garland hollers out and says, "Anybody wants to race, come on follow this Chevy. Stop this fighting.

Q. Where was Garland?

A. Standing beside his car.

Q. You heard it?

A. Yes.

Q. Howard Ingram was standing beside you?

A. Yes.

Q. Tell the tone of voice he used.

A. Do you want me to holler as loud as he did?

The Court: The question was whether this statement was made so Howard Ingram could hear it.

A. I am positive, Afterwards, I told Howard to ask my brother, Garland, he could probably take him home. I didn't have enough gas. He and I went up to my brother, Garland and asked him. I cautioned Garland then not to be showing off on my father's car. I knew the expense of an accident.

Q. What did you tell Garland, if anything?

A. I says, "Garland, now listen, you know if
page 44 } you get caught for racing what it will be. You
know the debt my father is in, what the expense
will be." Howard was standing along with me then. I cautioned him. Evidently, Garland didn't pay any attention to me much. I asked Garland would he take Howard home for me. Garland said he didn't know whether he could take him home or not. He didn't have very much gas. He could probably go home with him and spend the night. Afterward, Garland got back in, and Howard got in with him. Then he was racing the motor and everything. I said, "Don't be showing off, Garland." Garland turned around and hardheaded, went around the school in a reckless way, tailspinning and everything, came back in front of the school, and parked. I went back again and told him not to be showing off.

Q. Was Howard Ingram in the car at that time?

A. Yes.

Q. Did he say anything?

A. No, he smiled at me was all. I cautioned Garland and told him how pull out. Garland pulled off spinning again. Afterwards, when he drove off, Garland took off spinning

Gary Redd

and said, "Come on, let's race." All the cars took off behind him.

Q. Who took off behind him?

page 45 } A. G. C. Smith and Junior King.

Q. Do you know anything else about it?

A. No, sir.

Q. Howard Ingram was in your presence when all these statements were made?

A. Yes.

Q. You said he went around the building in a reckless manner and came back and stopped?

A. Yes.

Q. You came up to Garland's car again?

A. Yes.

Q. Howard Ingram heard that conversation, too?

A. Yes.

CROSS EXAMINATION.

By Mr. Clark:

Q. What is your first name?

A. Gary.

Q. Where do you work?

A. Pine Hall Brick and Pine Company.

Q. I take it you agree your brother was behaving very badly, is that correct?

A. Yes sir, in a way.

Q. The last thing you said was not any different

page 46 } from your statement. You told him not to show off and to drive right. You had no more reason to believe he wouldn't heed your advice than this boy did, is that correct?

A. Then he acted like he wanted to listen to me. He was still bull-headed.

Q. Did this boy do anything to encourage him?

A. No.

Q. He didn't say a word to encourage him? The last statement you made when this boy was sitting in the car with him, he was not going to do anything wrong.

A. My brother?

Q. Yes.

A. He didn't say anything.

Q. He didn't say he was going to do anything?

Gary Redd

A. I advised him to not do wrong.
Q. As far as this boy knew . . .

Mr. Stone: I object. He wouldn't know what that boy had in his mind.

Q. He had no reason to believe your brother wouldn't heed your advice?
A. No.
Q. You had no reason to think this boy sitting in the car with him didn't think he wouldn't heed your advice?
A. How is that?
page 47 } Q. The only conversation you had with your brother, you told him to "behave yourself"?
A. Yes.
Q. You expected him to?
A. Yes.
Q. Do you know any reason why this man shouldn't expect him to?
A. He could have gotten out of the car.
Q. You didn't know anything was wrong before he took off?
A. I cautioned him twice.
Q. You cautioned your own brother twice. You know this boy didn't have a ride home. He asked you for a ride home?
A. Yes.
Q. He was trying to get home?
A. Yes, he was. He asked me to carry him home.
Q. That's the only thing he had in mind as far as you know? He never opened his mouth about the question of racing, or let's do anything?
A. Did he?
Q. Yes.
page 48 } A. No, he didn't.
Q. You are putting the finger on this boy and your own brother, he was behaving so bad, you cautioned him.
A. Sure, I cautioned him.
Q. This boy was in the car?
A. The first time I cautioned him he and I was standing outside the car.
Q. This little kid was trying to find a way home?
A. Yes.
Q. He had no way home?

Gary Redd

A. He asked me. I don't know if he had a way home and didn't take it or not.

Q. Then you told him to go see your brother?

A. Yes.

Q. If he was cutting up like that, why did you subject him to it?

A. I didn't say he was cutting up then.

Q. You said you cautioned him twice.

A. He was.

Q. You put this boy in that car yourself?

A. I cautioned him. He said he would do all right.

Q. Was that before you put this boy in the car?

A. Yes.

page 49 } Q. Even though he was acting up?

A. He wasn't acting up at the time.

Q. When?

A. After he went around the school.

Q. You told him to get in the car with your brother?

A. I didn't tell him. I asked my brother would be take him.

Q. This boy wanted a ride home, you saw your brother cutting up, you put this boy in the car with your brother?

A. They went around the school after he got in the car.

Q. You mean your brother made the statement he wanted to race and you put this boy in this car?

A. Sure, he made the statement.

Q. Before or after you put him in the car?

A. Before and after. I didn't put him in there. He was on his own.

Q. You told him to get in the car with your brother?

A. No, I asked my brother.

Q. And he had been cutting up like that and you put him in there?

Mr. Stone: He has been over that three times.

Q. Even after that you cautioned your brother?

page 50 } A. Sure, I cautioned him.

Q. What did you tell him?

A. I says, "Now, Garland, don't be showing off. You know my father's in a lot of debt, and you are driving his car."

Q. You refused to take this boy home?

A. Sure, because I didn't have enough gas.

Gary Redd

Q. You let your brother take him?
A. I told him if he would ask my brother.
Q. At that time, when was the talk about the racing going on?
A. As we were standing outside. When we first came up, all of us were standing there listening.
Q. Were you a party of that race?
A. No.
Q. Where were you?
A. At the school when they drove off.
Q. Where was this boy? You saw he was hurt in this car?
A. No.
Q. Do you know how he got over there?
A. No.
Q. Has he ever spent the night with you?
page 51 } A. No.
Q. He spent it in your home?
A. If he did, I don't remember.
Q. Who were you with?
A. Alone.
Q. Did you ask this boy did he have enough money to buy you gas to take him home?
A. No.
Q. Did you hear your brother ask that?
A. I don't remember.
Q. You remember all these other things.
A. I didn't hear him.
Q. It didn't happen . . .

The Court: He just said he didn't remember.

Q. You were by yourself?
A. Yes.
Q. Was he by himself?
A. In other words, do I remember who was standing beside me?
Q. Yes.
A. Yes. Howard was standing beside me. I was alone that night when I went to the school.
Q. You said some girls were fighting?
page 52 } A. Yes.
Q. Were you involved in it?
A. No.

Gary Redd

Q. Do you know this boy was inside?
A. Was he inside?
Q. When the fight started.
A. No, he wasn't.
Q. Was he involved in it?
A. No.
Q. As far as you know, this boy was behaving himself. Was he drinking anything?
A. I don't know whether he was drinking anything or not.
Q. You said you were within three feet of him?
A. How would I know what he had to drink?
Q. Did you smell anything on him?
A. I didn't get that close to him. I wouldn't have any business to smell his breath.
Q. You said this boy did nothing to encourage your brother, you had cautioned him, and this boy hadn't done a thing in the world to make your brother do like that?
A. He said, "Come on Redd, let's go."
Q. He wanted to go home?
page 53 } A. I don't know where.
Q. Is that all he said?
A. That's not all.

The Court: Do you want him to repeat what this boy said? At what point do you want this witness to repeat what the plaintiff said to him?

Q. At the time they left there after he had cautioned him twice.
A. At the time they went around the school?
Q. Yes.
A. What did Howard say to my brother?
Q. Yes.
A. I didn't know what he said in the car, but before he got in the car, he asked my brother would he take him home. He said he didn't know if he had enough gas.
Q. Did he ask him how much money he had?
A. I don't know about that. He told him he didn't have enough gas, but he could probably spend the night with him. They got in the car. When they got in the car, my brother went around the school spinning in a reckless way.
Q. Did you stop him?

Gary Redd

A. No, but he stopped out front. I cautioned him not to drive reckless.

page 54 } Q. What was your brother's answer?

A. He didn't say anything.

Q. You felt he would heed your advice?

A. I really didn't know.

Q. This boy had no more reason than you did to think he wouldn't heed your advice?

A. I don't know about that. I cautioned him.

Q. Did you come over to the accident?

A. No.

Q. Was G. C. Smith there at the time this conversation was going on?

A. I don't know where G. C. was. I think he was over there with those girls.

Q. What kin are you to G. C.?

A. No relation.

Q. You didn't go over to the accident?

A. No, I went home.

Q. Have you talked to anybody about this case?

A. Have I talked to anybody? For instance whom?

Q. Anybody?

A. No.

Q. You haven't discussed it with a soul?

A. You mean other than someone in the courtroom?

Q. Anyone.

page 55 } A. With the lawyer is all I talked about it with.

Q. You have talked with him?

The Court: Certainly no inference is to be drawn. This witness has a perfect right to talk to his lawyer.

RE-DIRECT EXAMINATION.

By Mr. Stone:

Q. I believe your testimony was, both on direct and cross examination, after Garland took off around the school building in a reckless manner and stopped, you went up to him to caution him?

A. Yes.

Q. What was Howard Ingram's attitude, did he say anything, smile, or grin?

A. The only thing he did was smile.

Garland Redd

Q. He didn't make any protest whatsoever?
A. No.

RE-CROSS EXAMINATION.

By Mr. Clark:
Q. At that time, he didn't have any reason to make any protest?

The Court: This question has been asked on direct examination, repeatedly asked on cross examination, page 56 } and is now being asked again. You may stand aside.

* * * * *

GARLAND REDD,
the defendant, taking the stand on his own behalf, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Stone:
Q. Your name is Garland Redd?
A. Yes.
Q. How old are you now?
A. Twenty.
Q. How old were you at the time of this accident January 10, 1964?
A. Eighteen.
Q. Were you going to school or working?
A. I had been out of work. I just had finished helping my father farm.
Q. Are you working now?
A. Yes.
Q. Where?
A. American Furniture in Martinsville.
Q. You were down there at Patrick Central page 57 } School on the night of January 10th?
A. Yes.
Q. Tell His Honor what happened down there.
A. I didn't get to the school until about nine o'clock. We were talking. Howard said something about he didn't have

any way home and wanted to know could I carry him home. I told him I didn't know, he could ask my brother. My brother was there. My father bought me gas and told me if I drove it out I couldn't get any more. He went over and asked him. Some girls were fighting and throwing wine bottles, so I moved my car beside Gary's. Somebody hit it with a wine bottle. I said, "Quit that fighting. You want to race? Follow this Chevy." Nobody paid any attention. Gary came over . . .

Q. Where was Ingram?

A. He came over with Gary. After Gary cautioned me, Howard asked could I carry him home. I said, "No, I don't have that much gas," but I told him he could spend the night with me. I got in the car and went around the school, did two or three tail spins, cutting up, pulled back and stopped. Gary came back again and got after me. I didn't pay any attention to him. I pulled up, spinning, backed back spinning, and stopped again.

page 58 } Q. During that time did Howard Ingram make any protest to you?

A. No. I got back out beside the car. Howard said, "Come on, Redd, let's go." I said, "Come on boys, let's race." I went up the hill driving fast, reckless. I thought I would meet G. C. at Deatherage's Store. I pulled in. Some cars were coming. I couldn't pull out. Howard said, "What do you want to see G. C. for?" I said, "I heard he got a hot car. I went to see what he's got." He still didn't make any protest. Cars were still pulling out from the school. King and G. C. came along. I passed him at Bigg's Store. I was running seventy-five or eighty. I got in the curve. Some lights were behind me. I thought it was the law. I slowed down. G. C. started around me. I mashed the gas. I saw a car coming and threw on the brakes. I said, "I bet I can catch G. C." He said, "No, you can't." I mashed on the gas and started trying to catch him. I ran up behind him so fast right above Creasey's Garage I wrecked.

Q. At any time from the time Howard Ingram got in your car until the accident, did he ever ask you to slow down, protest in any way?

A. Not to my knowledge.

Q. Couldn't you hear him?

page 59 } A. He never said it to me.

Q. Did he ask you to stop and let him out?

Garland Redd

A. No.

Q. He was sitting in the car with you after you got around the schoolhouse and stopped?

A. Yes.

Q. And sitting there when your brother cautioned you again?

A. Yes.

Q. He never at any time protested about the way you drove?

A. Not to me.

CROSS EXAMINATION.

By Mr. Downs:

Q. Was he inside the building when he first asked you for a ride?

A. Yes.

Q. Gary wasn't anywhere around?

A. I hadn't seen Gary.

Q. Did you know where he was?

A. No, I didn't know where Gary was.

Q. At that time, what did you say to him?

A. I told him I didn't know. I would look around page 60 } and see if somebody could carry him.

Q. You didn't plan on carrying him?

A. No.

Q. When was that?

A. The dance lasted another half hour or so.

Q. Wasn't he the last one to leave, and he cut the lights off?

A. The principal cut the lights off.

Q. You didn't pay any attention to that?

A. No.

Q. Where were you?

A. Some boys were turned around talking.

Q. Watching girls fight?

A. They got reckless, throwing wine bottles.

Q. You moved your car?

A. Yes.

Q. This boy asked you again as a friend he wanted a ride home?

A. Yes.

Q. What did you tell him?

Garland Redd

A. I told him I couldn't carry him, my father bought me some gas and wouldn't give me any more if I drove it out.

Q. You told him if he would give you some
page 61 } money to buy gas, you would take him home?

A. No.

Q. You didn't mention money?

A. No.

Q. He got in the car?

A. Yes.

Q. You heard him testify you were going ninety to a hundred miles per hour down that stretch, do you admit that?

A. No.

Q. You deny it?

A. I deny it.

Q. How fast were you going just before you ran off the road in the straight stretch?

A. He said me and G. C. were running side by side.

Q. Did you look at your speedometer?

A. Yes.

Q. How fast were you going?

A. I never did get over eighty.

Q. You knew he was in your car?

A. Yes.

Q. He had no control over your car, you were the driver, and you had complete control?

A. I wouldn't say complete control. If he
page 62 } wanted to get out, I would have let him out.

Q. You didn't care what happened to this boy?

A. Yes.

Q. You ran off the road and went seven hundred feet. You weren't thinking about that.

A. He hadn't made any protest. I was just driving.

Q. He told you down the road to slow down.

A. No. I told him I could catch G. C. He told me I couldn't.

Q. He told you not to race.

A. No.

Q. He told you to slow that car down?

A. No.

Q. You deny he made that statment?

A. Yes, I deny he made that statement.

Q. You got up to eighty?

A. Yes, I got up to eighty.

Garland Redd

Q. You heard the doctor describe the injury this boy sustained?

A. Yes.
Q. You are the cause of it, you don't deny that?

Mr. Stone: That is an unfair question.

Q. You admit this accident caused the injuries
page 63 } this boy had and you were the one driving the car?
A. Yes, I was the one driving the car.
Q. Had you planned on this race before you left the school?
A. No.
Q. What was your brother testifying to you were making statements anybody wanted to race?
A. I was just saying that. The girls were fighting, throwing wine bottles. After I went up the road, I met G. C., and I was thinking about him bragging on his car.
Q. You mentioned racing and you had no idea about racing?
A. Not then.
Q. This boy had no reason to think about racing when he got in your car?
A. When I went around the school, I was driving reckless. He was sitting there with me and he made no protest.
Q. Did you give him any reason to make him think you would race?
A. I said G. C. had a hot car.
Q. I am talking about at the school. Did you give him any reason when he got in that car to make him think you were going to race?
A. When I stopped up there, he should have gotten off.
Q. Did you offer to let him out?
page 64 } A. He didn't ask me.
Q. How old are you?
A. Twenty.
Q. How old was this boy at the time?
A. Eighteen. Me and him are the same age. He is April to June more than I am.
Q. Let me ask this. You said you and G. C. were side by side when you were passing him, right? The first time you passed him.

Garland Redd

A. I passed him and King the first time.
Q. You were three abreast in the road?
A. Yes.
Q. Isnt it a fact you just testified after you passed him you mashed down on it?
A. When?
Q. Isn't that what you just testified to?
A. Yes.
Q. So, if you were going eighty and mashed down on the gas, you were bound to have been going about a hundred.
A. No, because I was running in curves.
Q. Oh, so you were running in curves eighty?
A. No, that was in the straightaway.
page 65 } Q. This boy didn't have a chance to get out of the car going down the highway eighty or ninety miles per hour.
A. You expect somebody to get out going down the highway?
Q. He didn't have a chance?
A. If he wanted to get out, I would have stopped and let him out.
Q. These statements that were made down there at the school, where was Gary's car in relation to your car at the time this boy was talking to Gary?
A. Gary's car was parked almost in front of the school. Mine was beside the water fountain.
Q. How far is that?
A. Fifteen or twenty feet.
Q. You couldn't hear anything over there?
A. No.
Q. He didn't hear what you said?
A. I was hollering.
Q. There was a lot of noise?
A. I got out and moved my car beside Gary's. I got out and said, "Anybody want to race, follow this Chevy."
Q. There was a lot of screaming going on?
A. No.
Q. Everything was dead silent?
page 66 } A. No, everything wasn't dead silent.
Q. Where was this boy standing when you made that statement?
A. Standing with Gary, I guess.
Q. You guess, but you don't know. He could have been in the schoolhouse.

Garland Redd

A. He came right on and asked could I carry him home. I can't rightly say.

Mr. Clark: Step down.

RE-DIRECT EXAMINATION.

By Mr. Stone:

Q. How long have you known Howard Ingram?

A. Ever since we entered Patrick Central School, and before.

Q. You have been good friends?

A. Yes.

Examination by the Court:

Q. Before you left the school, were there any arrangements made between you and G. C. Smith to engage in an automobile race?

A. No.

page 67 } Q. When you left the school, was there any intention or any plan in your mind to engage in an automobile race?

A. I had thought something about it. I hadn't mentioned it. After I pulled off at the store, I thought I would meet G. C. Howard asked what I wanted to see G. C. for. I said he had a hot car and I wanted to see what he had. We waited at Deatherage's Store three or four minutes, then pulled out behind him.

Q. For what purpose did you pull out behind him?

A. To catch him.

* * * * *

IN CHAMBERS

The Court: Let the record show after the completion of plaintiff's evidence Mr. Stone made the following motion.

Mr. Stone: The plaintiff now having rested, introduced all its evidence in chief, the defendant by counsel now makes the motion to strike plaintiff's evidence on the basis that his testimony is incredible. All the strong inferences are he did know there was going to be a venturesome situation. He had known Garland Redd and had stayed in his home. Therefore, the defendant by counsel moves plaintiff's evidence be

stricken, and a summary judgment be entered for the defendant.

page 68 } The Court: Any comment, Gentlemen?

Mr. Clark: Not on that motion. That is a jury question.

The Court: The motion will be overruled.

Mr. Clark: There is a motion on the part of the plaintiff in this case that the responsive pleadings going to assumption of risk and not to contributory negligence should be stricken.

The Court: I think the motion is premature. The approach to the issues involved will be handled by the instructions.

The Court: I think you should go ahead for the record and state what evidence you want to offer, the nature of this evidence, and then Senator Stone will object and we will get his objections in the record, and the Court will rule on the admissibility.

Mr. Downs: We intend to show the plaintiff enjoys a good reputation in his community for truth and veracity.

The Court: And why do you feel it is necessary to do that?

Mr. Downs: For the reason the defendant through his witnesses, Garland Redd and Gary Redd, has attempted to impeach the veracity of the plaintiff, a specific example being where the plaintiff was situated at the time that the defendant allegedly stated that "anybody want to race, follow this Chevy". The plaintiff takes the position that by the introduction of this evidence by the defendant, he has

page 69 } made a direct attack on the veracity of the plaintiff, who testified that no such statement was made in his presence. Other areas of conflict in the testimony we contend would also entitle us to present evidence as to the plaintiff's good reputation for truth and veracity in his community.

Mr. Stone: If the Court please, defendant by counsel seriously objects to this. This is an attempt by plaintiff to bolster his own evidence proving truth and veracity, which hasn't been attacked. In any civil case there is always a conflict, one man says one thing, the other something else. We haven't put his character under attack. All we said he was in hearing distance of certain statements which were made, which he denies. We do not think this is a proper case at all for a character witness. I can't recall this situation ever being attempted before in your Honor's Court. If that's the case, then every case we try, both sides would bring in a bunch

of character witnesses. Therefore, we object to putting on evidence as to the character of the plaintiff. We have not, in any way, attacked plaintiffs character. The plaintiff has sworn to tell the truth, and the defendant has sworn to tell the truth. Therefore, it goes to the jury, it is up to the jury, as in all other civil cases, to establish by a preponderance of the evidence and the credibility of the witnesses.

page 70 } The Court: The law as I understand it is this. This is set forth in *Miller* v. *Harless,* 153 Va., Page 241. This same principle was later followed in 163 Va. Page 1087 and 165 Va.—I don't have the citation. (The court reads from *Miller* v. *Harless,* 153 Va. Page 241.) I say that if the plaintiff is in a position to offer evidence as to the reputation of the plaintiff for truth and veracity, that under the facts of this case, it is permissible so to do by reason of the fact that the testimony of the plaintiff and the testimony of the witness, Gary Redd, and the witness, Garland Redd, are directly in conflict and that there has been an effort on the part of the defendant to disprove by other witnesses the material facts stated by the plaintiff in his examination, to-wit, the two witnesses called on behalf of the defendant, Garland Redd and Gary Redd.

Mr. Stone: Note our exceptions.

Mr. Stone: If he puts that on, I want to come forward in rebuttal and call as an adverse witness the first cousin of the plaintiff to testify he heard the statement.

The Court: You can call him now. You don't have to wait until they do that. You can call him now to contradict the plaintiff.

page 71 } JOE SPENCER,

the next witness, called on behalf of the defendant, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Stone:

Q. Please state your name.

A. Joe Spencer.

Q. How old are you?

A. Eighteen.

Q. How old were you January 10, 1964?

A. Seventeen.

Q. Were you going to school at Patrick Central?

Joe Atkins

A. Thats right.
Q. I believe you are a first cousin to Howard Ingram?
A. Yes.
Q. Did you see those girls down there at Patrick Central fighting?
A. Yes.
Q. During that time, did you hear a statement made?
A. Yes.
Q. Go ahead and say what you heard?
A. Somebody said, "Whoever wants to race, follow the Chevy." It sounded like Garland.
page 72 } Q. It sounded like Garland?
A. Yes.
Q. Do you know this boy, your first cousin?
A. Yes.
Q. Where was he at that time?
A. He was in the school at that time.
Q. He wasn't out there at that time?
A. No, I don't think he was.
Q. Do you know he was in the school?
A. After I left and went back in the school, he was still in there.

Mr. Stone: I am calling this man as an adverse witness.

Q. Didn't you tell me at school, last Spring, you heard Garland make that statement?
A. No, I didn't. I said just what I said then. I thought it was Garland.

CROSS EXAMINATION.

By Mr. Clark:
Q. But this boy was in the school?
A. Yes.

The witness stands aside.

* * * * *

page 73 } JOE ATKINS,
the next witness, called as a rebuttal witness on behalf of the plaintiff, after being duly sworn, testified as follows:

Clifford Wood

DIRECT EXAMINATION.

By Mr. Clark:
Q. State your name.
A. Joe Atkins.
Q. Mr. Atkins, where do you live?
A. At Woolwine.
Q. Do you know this boy here?
A. Yes.
Q. Is he from Woolwine?
A. Yes, sir.

The Court: I think for the record's sake, you should identify the boy you are talking about.

Q. Do you know Howard Wilbert Ingram here?
A. Yes.
Q. You say he is from Woolwine?
A. Yes.
Q. Do you know him in that community?
A. Yes, he was born there and has been there all his life.
Q. Please state to the jury what is his reputa-
page 74 } tion in Woolwine area is for truth and veracity.
A. I think it is good. I have known him, he has been around the store and worked around the church. So far as I know he is a good boy, and tells the truth.

CROSS EXAMINATION.

By Mr. Stone:
Q. Have you ever heard anybody discuss whether he would tell the truth or not? It has never been brought up, has it?
A. No.

* * * * *

CLIFFORD WOOD,
the next witness, called as a rebuttal witness on behalf of the plaintiff, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Downs:
Q. State your name and address.

A. Clifford Wood, Woolwine, Virginia.
Q. How long have you lived there?
A. Thirty years.
Q. Do you know this boy, Howard Wilbert Ingram, the plaintiff in this case?
page 75 } A. Yes.
Q. How long have you known him?
A. All his life.
Q. He lives in the Woolwine Community?
A. About two miles from me.
Q. State if you know what his general reputation in that community is for being a person of truth and veracity?
A. I have never heard anything against him.
Q. What would you say his reputation up there is?
A. I would say it is good.

CROSS EXAMINATION.

By Mr. Stone:
Q. You never heard any discussions whether it was good or bad?
A. No.

* * * * *

SHERIFF POSEY L. BALILES,
the next witness, called as a rebuttal witness on behalf of the plaintiff, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:
Q. I believe you are the Sheriff of this county?
page 76 } A. Yes.
Q. I believe you are originally from the Smith River District near Woolwine?
A. Yes.
Q. Do you know this boy?
A. Yes.
Q. Please state whether his reputation in the Woolwine Community is good or bad for truth and veracity.
A. Good as far as I know.

The witness stands aside.

Mr. Clark: We rest.

* * * * *

IN CHAMBERS

Mr. Stone: At the conclusion of the plaintiff's evidence, counsel for defendant moved to strike the evidence of plaintiff and enter summary judgment for the defendant, which the Court overruled. Now the defendant renews his motion for the reason at the conclusion of all the evidence, the plaintiff has failed to preponderate he was not guilty of contributory negligence or did not assume the risk, and from the evidence of the defendant's witnesses, it is clear the plaintiff was guilty of contributory negligence and assumed the risk by entering the car at the time this ride began.

page 77 } (Recess for Lunch).

The Court: Instructions No. A, B, C, D as amended, E. E-1 and F-1 will be given. Instruction E-1 and F-1 are being given by the Court in lieu of Instructions E and F offered by the plaintiff, on the theory that these two instructions express themselves just a trifle better.

Mr. Clark: Would the Court permit us to have the damage instruction retyped?

Mr. Stone: If the Court please, defendant, by counsel, objects to the giving of Instruction E-1 on assumption of risk which pins down the fact in order for the plaintiff, Howard Ingram, to assume the risk it had to be racing. If Howard Ingram knew there was hazard in riding with the defendant, whether racing or otherwise, he still assumes the risk. "To engage in a race, fully appreciating the hazards involved" The counsel for defendant thinks it should be "anyone of reasonable prudence should have realized the danger involved." The same applies where it says "knew the defendant, Marvin Garland Redd, intended to engage in a race and that the plaintiff fully appreciated the hazards involved". The defendant thinks it should read "knew that the defendant, Marvin Garland Redd, or in the exercise of reasonable prudence, knew he intended to engage in a race", and
page 78 } the same objection goes to it as previously stated, in order to assume the risk he would not have to engage in a race. If he knew or should have known there was hazard in riding with the defendant, then he assumed the risk. As to F-1, defendant's counsel admitted in his open-

ing statement that the defendant was guilty of gross negligence and we think it is wrong at this time, as a matter of law, after we admitted it, to further instruct the jury. It is a matter of counsel, not for the Court to instruct on.

Mr. Clark: If it please the Court, the only objection that has been heretofore put in the record were E and F on the part of the plaintiff. The plaintiff further objects to giving any instructions on the issue of assumption of risk, because we feel the evidence does not warrant that. We object to the giving of any instruction by the Court dealing with anythig but damages. This boy cannot be guilty of both, it is either contributory negligence or assumption of risk. They are not entitled to both by the evidence. By the evidence of the defendant himself, this boy didn't know anything and had no right to believe there was a race involved. We object to giving any instruction on that basis. There is a possibility of giving an instruction on contributory negligence. It comes down to whether this man did what he should do.

page 79 } The Court: Instruction No. 1-A, 2, 3, and 4 offered on behalf of the defendant will be given. Instruction No. 1 offered on behalf of the defendant is being refused.

Mr. Clark: Counsel for plaintiff objects to this Instruction 1-A given in lieu of 1 for plaintiff. He feels that there is no evidence before this jury to determine other than the damages involved, that no instruction should be given on contributory negligence or assumption of risk. The same objection is made to No. 2 as to No. 1 that is, there is no evidence at the time he left the premises, he left the school, he had no knowledge of any preconceived race. He must have known, therefore, we object to giving any instruction on that basis. There is no objection to No. 3. There is no objection to No. 4, but the Court is aware Plaintiff objects to giving any instructions except on the question of damages.

Mr. Stone: Defendant, by counsel, objects to the Court's refusal to give 1 as amended. This is a time honored stock instruction, and has been given many times. It tells the jury the mere happening of the accident places no burden on anyone, and says even though the defendant was grossly negligent, if the plaintiff was also guilty of negligence, he cannot recover.

* * * * *

page 80 }

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(The jury retired to deliberate at 3:43 P.M. and returned at 4:40 P.M. with the following verdict: We, the jury, find for the plaintiff, Howard Ingram, and award him the amount of $8,500.00''. W. Blair Clark, Foreman.

* * * * *

Mr. Stone: If the Court please, counsel for de-
page 81 } fendant moves that the verdict of the jury be set aside as being contrary to the law and evidence set forth in the record.

The Court: Any comment by counsel for the plaintiff?

Mr. Clark: No comment. This jury has heard this evidence and has been adequately instructed.

The Court: The motion will be overruled. The appeal bond will be set at $9,000.00 to be given twenty-one days after judgment.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

Page

Writ of Error and *Supersedeas* Awarded 1
Record 2
Motion for Judgment 2
Instructions 3, 43
Judgment—October 18, 1965 6
Notice of Appeal and Assignments of Error 8
Witnesses:
State Trooper M. B. Hines 9
Howard Wilbert Ingram 12
Gary Redd 23
Garland Redd 31
Joe Spencer 39
Joe Atkins 40
Clifford Wood 41
Sheriff Posey L. Baliles 42
Proceedings 37, 43, 45
Verdict of the Jury 45