211 VA 557

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

Record No. 7293

In the
Supreme Court of Appeals of Virginia
at Richmond

CHRISTIAN D. CLAUSEN

v.

VIRGINIA TRANSIT COMPANY

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7293

VIRGINIA:

In the Supreme Court of Appeals held at the City Hall in the City of Staunton on Friday the 5th day of September, 1969.

CHRISTIAN D. CLAUSEN, Plaintiff in error,

against

VIRGINIA TRANSIT COMPANY, Defendant in error.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of Christian D. Clausen a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Norfolk on the 5th day of February, 1969, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Virginia Transit Company was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300 with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

ASSIGNMENTS OF ERROR

Pursuant to the Rules of the Supreme Court of Appeals, the plaintiff assigns the following Assignments of Error:

(1) The Court erred in sustaining the defendant's motion to strike the plaintiff's evidence.

(2) The Court erred in entering summary judgment for the defendant herein.

page 2 } (3) The Court erred in entering a judgment on February 5, 1969, in favor of the defendant herein.

Christian D. Clausen

By: Augustus Anninos
Of Counsel

Filed
Apr 3 1969
D. C.

T. A. W. Gray,

* * * * *

page 3 }

* * * * *

MOTION FOR JUDGMENT

Christian D. Clausen, plaintiff herein, moves the Circuit Court of the City of Norfolk, Virginia for a judgment and award of execution against Virginia Transit Company, defendant herein, for the sum of Fifteen Thousand ($15,000.00) Dollars damages, with interest thereon from the date of judgment until paid, and the costs of this proceeding, for this, to-wit:

First: That on or about October 1, 1968, the plaintiff

was lawfully and properly operating his motor vehicle along the streets in the City of Norfolk, Virginia.

Second: That on or about October 1, 1968, the defendant, Virginia Transit Company, through its servants and agents, owned, operated and controlled a bus along the streets in the City of Norfolk, Virginia.

Third: That on or about October 1, 1968, as a result of the negligence of the defendant in the operation and control of one of its busses, the said bus was caused to come into violent contact with the motor vehicle operated by the plaintiff, causing plaintiff to receive serious and permanent injuries.

Fourth: The plaintiff was caused to suffer and will in the future be caused to suffer great pain and
page 4 } mental anguish.

Fifth: The plaintiff was caused to expend and in the future will be caused to expend large sums of money in an endeavor to be cured of said injuries.

Sixth: The plaintiff was caused to lose and will in the future be caused to lose great sums of money which he otherwise would have earned.

Seventh: The plaintiff was caused to be unable and in the future will be caused to be unable to perform his necessary and lawful affairs.

Eighth: Plaintiff demands a trial by jury.

Wherefore, plaintiff prays judgment against the defendant in the amount of Fifteen Thousand ($15,000.00) Dollars, together with interest and costs, by reason of the foregoing, demand for which is hereby made.

Christian D. Clausen

By: Augustus Anninos
Of Counsel

Filed in the Clerk's Office the 21st day of Oct., 1968

Teste:

W. R. Hanckel, Clerk
Elnora A. Gord D. C.

* * * * *

page 8 }

* * * * *

In the Circuit Court of the City of Norfolk, on the 5th day of February, in the year 1969.

This day came the parties, by counsel, and thereupon came a jury, to-wit: Simcoe Glasser, Robert E. Laird, Charles E. Midyette, Roger A. McIlveen, Oscar Y. McClannan, Jr., Tex R. Mercer and George E. Noell, Jr., who were sworn to well and truly try the issue joined, and having fully heard the evidence, upon the motion of said defendant, by counsel, it is ordered that said plaintiff's evidence be stricken out, the members of the jury discharged, and summary judgment entered thereon. Whereupon it is considered by the Court that said plaintiff take nothing by his suit herein and that said defendant go hence without day and recover against said plaintiff its costs about its defense in this behalf expended, to which action of the Court said plaintiff, by counsel, duly excepted.

* * * * *

page 3 }

* * * * *

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled cause in said Court on February 5, 1969, before the Honorable Clyde H. Jacob, Judge of said Court, and jury.

APPEARANCES:

Messrs. Howell, Anninos
and Daugherty
(Mr. Augustus Anninos),
attorneys for the plaintiff.

Messrs. Williams, Worrell,
Kelly and Worthington
(Mr. William T. Prince),
attorneys for the defendant.

* * * * *

page 5 }

* * * * *

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

DIRECT EXAMINATION

By Mr. Anninos:

Q. Will you state your name, please.

A. Daniel M. Hall.

Q. And what is your occupation?

A. Police officer.

* * * * *

page 6 }

* * * * *

Q. All right, sir. And I ask you if you had occasion to go to near the intersection of Taussig Boulevard and Granby Street sometime about three-thirty or three-forty-five in the afternoon?

A. Yes, sir, I did.

Q. And what did you see on your arrival near this intersection, Officer Hall?

A. Well, I saw—In regards to the accident?

Q, Yes, sir.

A. I saw a Virginia Transit Company bus stopped in the left lane of traffic, and a Chevrolet '67 model stopped behind this bus.

Q. In the left lane? Would this be the left southbound lane?

A. It would be the southbound lane.

Q. How many lanes are there at this point for
page 7 } southbound traffic?

A. There are three lanes of traffic.

Q. And they are clearly marked separating one from the other with a broken white line?

A. Yes.

Daniel M. Hall

Q. All right, sir. And where was the Chevrolet that you saw? Was that entirely in the left lane? Was the whole car in the left lane heading south?

A. Yes, if I am correct it was.

Q. All right, sir. And the bus would be in front of it; is that correct?

A. That's correct.

Q. Then the bus would be south of the Chevrolet?

A. That's correct.

Q. All right, sir. Now, did you determine if there were any skid marks from either of these vehicles?

A. Yes, I did.

Q. And what did you determine?

A. I found that the Chevrolet had left approximately three feet of skid marks.

Q. All right, sir. Were these skid marks in the left southbound lane?

page 8 } A. Yes, they were.

Q. And were you able to determine anything with reference to where this Chevrolet went to? I am referring to the island that is adjacent to the left southbound lane.

A. Yes, it was indicated to me and also there was evidence at the scene that the Chevrolet had struck the middle island.

Q. All right. What damage if any did you observe on either vehicle?

A. The Chevrolet had damage to the right front fender and bumper on the right side, and the bus on the left rear side there is a radiator grill that was damaged slightly.

Q. All right, sir. The island that you spoke about, is this the island that separates the north from the southbound traffic on Granby Street?

A. That's correct.

Q. Is there an opening at the island where Granby Street traffic choosing to use the cutoff can go through the opening and into the northbound Granby Street lanes?

A. There is an opening there, but I don't believe that's the purpose of it. But there is an opening at the cutoff you mentioned, correct.

Daniel M. Hall

page 9 }

* * * * *

Q. How far south of the northern curvature of the opening of that island was it? You may use feet or car lengths in any way you want to refer to it.

A. The burn marks from the Chevrolet where it struck the island were approximately if I recall correctly forty or fifty feet south of the—that would be the south curb of this opening.

Q. South of the south curb of the opening?

A. That's correct.

Q. And was the car found by you south of these burn marks?

page 10 } A. Yes, sir.

Q. About how far south of the burn marks approximately?

A. Approximately thirty feet.

* * * * *

page 11 }

* * * * *

Q. All right, sir. Did you have occasion to talk to the operator of the bus concerning whether or not he saw the automobile that was operated by Mr. Clausen?

A. He stated that he did not see the automobile.

Q. From your investigation and from the physical findings at the scene, in which lane of the three southbound Granby Street lanes did the impact occur in?

A. All indications showed in the left lane.

Q. All right, sir.

* * * * *

Q. From your investigation was there anything to obstruct the view of any of these two parties as

page 12 } they entered Granby Street? Was there anything there to obstruct either party's view?

A. No.

Daniel M. Hall

* * * * *

Q. How far would you say the bus was south of the automobile when you arrived at the scene?
A. Approximately a hundred feet.

page 13 }

* * * * *

CROSS-EXAMINATION

* * * * *

page 15 } By Mr. Prince:
Q. Officer Hall, I show you a photograph. Does this show that cut-through there?
A. Yes, it does.
Q. And this is a photograph looking west on that section of Taussig Boulevard where those vehicles had come from; is it not?
A. Yes, it is.
Q. And is there not, sir, on this corner here a sign saying, "Do not enter"?
A. Yes, there is.
Q. And to refresh your recollection to a question that Mr. Anninos asked you, there is a yield sign there; is there not?
A. There is.

* * * * *

page 16 }

* * * * *

Q. And this burn mark that you were referring to, was that a burn mark on the curbing of the island?
A. Yes, it was.
Q. Okay. And that was about forty or fifty feet from the south edge of the cut-through?
A. I am not positive on the distance, but approximately.

Christian D. Clausen

* * * * *

page 19 } CHRISTIAN D. CLAUSEN, the plaintiff, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Anninos:

Q. State your full name.

A. Christian D. Clausen, sir.

Q. You have to talk loud enough so that we call all hear you.

A. Christian D. Clausen.

Q. All right. And what is your age?

A. Twenty-five.

* * * * *

Q. I direct your attention to October 1 of 1968, and ask you where you were working on that day?

A. Norfolk Naval Air Station.

Q. And what is your specific job there?

A. I am an aircraft engine mechanic.

page 20 } Q. About what time did you leave your work or did you leave the base?

A. We punched out at three-thirty-five.

Q. You punched out at three-thirty-five?

A. Yes, sir.

Q. And where were you going?

A. I was going to the barber shop at Wards Corner.

Q. Whereabouts is this barber shop located?

A. It is at the Wards Corner area by the bank.

Q. All right. Which bank?

A. The Virginia National Bank.

Q. Who was in the car with you that afternoon?

A. I was by myself.

Q. And what type of a car were you operating that afternoon?

A. 1967 Chevrolet Chevelle.

Q. All right, sir. Now, which way did you go on Taussig Boulevard?

Christian D. Clausen

A. I was heading towards the Granby Street. I guess it is east.

Q. That would be in an easterly direction?

page 21 } A. Yes, sir.

Q. All right. Now, as you approached Granby, what did you do?

A. Well, as I approached Granby Street, if you were going down thirty-one there is a cutoff there on Taussig where you can turn over there instead of going to the light and then make your turn.

Q. Is there a traffic light at Taussig Boulevard and Granby Street?

A. Yes, there is.

Q. Does this traffic light control traffic for north, south, west, and east traffic at the intersection?

A. Yes, it does.

Q. All right, sir. Now, what did you elect to do as you were approaching Granby Street?

A. Well, I always take the cutoff there.

Q. All right, sir. How wide is this cutoff?

A. Oh, its room enough for two or three cars.

Q. All right, Sir. As you were approaching the cutoff, was there any traffic inside of the cutoff?

A. Yes, there was a bus at the yield sign.

page 22 } Q. A bus?

A. Yes, sir.

Q. All right. Was it stopped or what was it doing?

A. No, sir, he was not stopped. He was sort of at a coast.

Q. At a coast?

A. Yes, sir.

Q. How far ahead of you was this bus when you first saw it?

A. When I first saw him?

Q. Yes, sir.

A. Well, it must have been about two or three car lengths ahead of me.

Q. What did you do when you saw the bus coasting at the yield sign?

A. Well, when I had got to the yield sign I had come to a stop.

Q. All right, sir. Where was your car stopped in relation to where the bus was?

A. On his side, sort of to the back of him.

Christian D. Clausen

Q. On his side?
A. Yes, sir.
Q. All right. What do you mean by sort of to
page 23 } the back of him?
A. Well, I was not behind up with the bus. I could not get sort of right at his front, so I was still at—when I say to the rear, I mean on the side of him but—
Q. Where would the front part of your car be in relation to the driver's side of the bus?
A. To the driver's side of the bus?
Q. Yes, sir.
A. It would be sort of to the middle of the bus.
Q. About the middle of the bus?
A. Yes, sir.
Q. All right, sir. Was there any obstruction between the front of your car and where the driver of the bus was to interfere with either your view or the bus driver's view?
A. No, sir.
Q. All right. Now, after you came to a stop, what happened to the bus?
A. Well, he was already going out on Granby Street.
Q. What?
A. He was already turning out on Granby
page 24 } Street.
Q. Now, will you explain as best you can how he was turning into Granby Street?
A. Well, he was turning into Granby street. He turned into the right-hand lane.
Q. And which way did he proceed?
A. He proceeded down Granby Street.
Q. And what did you do as he proceeded in the right-hand lane south on Granby Street?
A. Well, then I started off.
Q. Where did you go?
A. I went to the extreme left-hand lane to the island.
Q. Why did you go to the extreme left-hand lane to the island?
A. Well, because I had to go down to the barber shop, which was on the left-hand side. Farther down there is a left-hand turn there.
Q. Would that be the intersection of Granby and Little Creek Road?
A. Yes, sir.

Christian D. Clausen

Q. Is that what your intention was, to get into that extreme left lane to make a left turn to go to the barber shop?

A. Yes, sir.

Q. Now, as you were proceeding south on
page 25 } Granby Street in the left southbound lane, did
you see the bus?

A. As I proceeded down Granby Street?

Q. Yes.

A. Yes, sir.

Q. Where was it?

A. He was in the right-hand lane.

Q. That would be two lanes over from where you were?

A. Yes, sir.

Q. And what movement if any did this bus make as you and he were proceeding south on Granby Street?

A. Well, he started coming over into the center lane.

Q. All right, sir. Was he ahead of you or where was he in relation to your car when he started into the center lane?

A. Yes, sir, he was ahead of me.

Q. All right, sir. And what happened?

A. Well, as I seen him start from his right lane he pulled into the center lane, and instead of stopping he just kept right on coming and sort of—he came right into the center lane and right into the left lane.

Q. What did you do when you seen him come
page 26 } in your left lane?

A. All I could do was try to get in the island, and that's when he hit me and pushed me there.

Q. Did your car go on the island?

A. Yes, sir, it pushed me up there, and he dragged me off.

Q. The bus dragged you off?

A. Yes, sir.

Q. What part of your car came in contact with the bus?

A. My right front fender came in contact with his left rear bumper.

Q. All right, sir. And did they ultimately become disentangled; that is your car and the bus?

A. Yes, sir. It completely ripped the front part of my fender off.

Q. It ripped it off?

A. Yes, sir.

Q. And did the bus stop then and there?

Christian D. Clausen

A. No, sir, he continued on down a ways.
Q. Did you stop then and there?
A. Yes, sir.
Q. Did you move your car before the officer came?
A. No, neither vehicle was moved.
page 27 } Q. Neither vehicle?
A. After he had stopped down a ways neither vehicle was moved after that.
Q. What did you do if anything after you saw the bus continuing on south on Granby Street?
A. Well, I blew my horn. I blew it for awhile, and he finally stopped.
Q. What lane were you in when the impact occurred; that is when your car came in contact with the bus?
A. In the left-hand lane.
Q. All right, sir. And did you request of the driver of the bus that the police be called?
A. No, sir, he said there was no need in that.
Q. Did you request of the driver of the bus that the police be called?
A. Did I request?
Q. Yes, did you ask that the police be called?
A. I didn't ask him, I told him after we exchanged information that I was going to call. He asked me where I was going, and he said there was no need, that usually in accidents such as this that they could settle with the company, that somebody would come out and take care of it.
page 28 } He didn't want to call the police. He said it was just a city law.
Q. Was this daytime?
A. Yes, it was.
Q. What were the weather conditions generally?
A. Clear, bright.
Q. Are the three southbound Granby Street lanes divided by any mode or any way?
A. Broken lines.
Q. Did you have any conversation immediately after this occurred with the driver of the bus in relation to whether he saw your or not?
A. Yes, sir. He couldn't understand where I came from. He said the last time he had looked down at Granby Street it was red there and there was no traffic coming. He couldn't understand where I came from. He said that after awhile

he thought that I had come from across Granby Street where that broken island is there.

Q. About how many car lengths had you traveled south of the southern tip of the cutoff on Granby Street before this accident occurred?

A. It was approximately two or three car lengths.

* * * * *

page 29 }

* * * * *

Q. All right. You said two or three car lengths?

A. Yes, sir.

Q. When you came to a stop as you have previously described to the side of the bus, did you look to your left?

A. Yes, sir.

Q. And what if anything did you see?

A. What did I see?

Q. Yes, sir.

A. Well, the light at Granby Street was red, so there was no traffic coming.

Q. And would that be red for north and southbound traffic?

A. Yes, sir.

Q. Was there any vehicular traffic coming south on Granby Street?

A. No, sir.

page 30 }

* * * * *

Q. What happened to you as a result of this impact, Mr. Clausen?

A. Well, the day after that I think I had a bobbing of the head where my body—my shoulders wouldn't hold my head up. It just started falling on down. It sort of fell all around. It wouldn't stay in one place, and it was annoying, so I just had to move it from side to side and then it just bobbed around and I had a sensation where things would happen in front of me that I didn't realize it was happening until a month or two after it happened.

Christian D. Clausen

page 31 } Q. Did you see a physican because of this symptom the next day?
A. Yes, sir.
Q. Who was this physician?
A. Doctor Gervas Taylor.

* * * * *

page 35 }

* * * * *

CROSS-EXAMINATION

By Mr. Prince:

* * * * *

page 37 }

* * * * *

Q. And there is a center island which is maybe fifteen wide or so; is it not?
A. Yes, sir.
Q. And the portion of Taussig Boulevard that you had been on comes in at an angle of more than ninety degrees here; is that right?
A. Yes.
Q. Now, as I understand your testimony, when you came up to the intersection the bus was already there, right?
A. Yes, sir.
Q. And the bus was either stopped or moving very slowly?
A. Yes, sir.
Q. And you came up to the left of the bus, with the front of your vehicle about even with the center of the bus; is that correct?
A. Yes, sir.
page 38 } Q. And you were to the left of the bus?
A. Yes, sir.
Q. And then you say the bus started forward?
A. Yes, sir.
Q. Now, the bus had not completed its turn when you started forward, had it?

Christian D. Clausen

A. No, sir. He was about three-quarters of his turn.

Q. He was about three-quarters of the turn. And then you started forward?

A. Yes, sir.

Q. And you made your turn from the left portion of this road; did you not?

A. Yes, sir.

Q. And made your turn into the left lane?

A. Yes, sir.

Q. Now, you say that there was no traffic at all coming from your left?

A. No, sir.

* * * * *

page 39 }

* * * * *

Q. All right. Now, the bus then you say made its turn right into the right-hand lane?

A. Yes, sir.

Q. And you made your turn into the left-hand lane?

A. That's right.

Q. And this was one whole lane separating the
page 40 } two of you?

A. Yes, there was.

* * * * *

page 43 }

* * * * *

Q. All right, Mr. Clausen. I have drawn here freehand on the blackboard a diagram. Does it fairly represent the area where the accident occurred?

page 44 } A. Yes, sir.

Q. Up here to the left of the blackboard would be the intersection of Taussig and Granby where the traffic light is, right?

A. Right.

Q. And this section here which is marked with an X

is the portion of Taussig which extends over the Granby portion, right?

A. Yes, sir, yes, sir.

Q. And on Granby there are three lanes, right?

A. Yes.

Q. Now, using this diagram, then, your vehicle and the bus were at the intersection somewhat like this, correct?

A. Yes, sir.

Q. The bus is represented by this green vehicle. Your car is represented by the red vehicle. The front of your car was about equal or even with the middle of the bus and to the left of the bus?

A. Yes, sir.

Q. The bus started forward and was turned into the right-hand lane?

A. Yes, sir, that's correct.

page 45 } Q. And while the bus was making its turn and was about three-quarters of the way through its turn, from the left lane you turned into the left lane?

A. That's correct.

* * * * *

page 46 } Q. Now, after the bus made its turn, did the bus get straightaway completely in its right-hand turn?

A. Yes, sir.

Q. And then you say the bus was somewhat ahead of you; did you not?

A. Yes, sir.

Q. And then the bus started angling over towards your lane?

A. Yes, sir.

Q. And did you say—or let me ask you what was your speed at that time?

A. About eighteen to twenty miles an hour.

Q. Eighteen to twenty miles an hour?

A. (Witness nodding head affirmatively.)

Q. When did you first notice the bus coming towards you?

A. Well, I didn't believe he was coming towards me. He started out into the center lane, but instead of staying in the center lane that's when he came almost directly across,

right across the three lanes. It wasn't a sort of a slow motion like you have it there. He had more of a—

* * * * *

page 47 }

* * * * *

Q. Now, it is a fact is it not as shown by these photographs that the extreme rear portion of the bus, mainly the bumper, and the extreme front portion of your automobile came into contact?

A. Yes, sir.

Q. Did the two bumpers of those vehicles catch each other or was it down?

A. The bumper was still there. He ripped off my front fender.

Q. Now, Mr. Clausen, you said that when you saw the bus coming over into your lane the only thing you could do was to go up on the island. Could you not have applied your brakes?

A. No, sir. He was already so far that when he completed his—speaking of the distance of the bus now—after he had gotten in my lane the bus sort of turned the way a bus has got a big back end there that just swept around and caught me.

* * * * *

page 73 }

* * * * *

Mr. Anninos: Plaintiff rests.

* * * * *

Mr. Prince: Your Honor, on behalf of the defendant I move the court to strike the plaintiff's evidence and to enter summary judgment for the defendant, on the grounds that the plaintiff is guilty of contributory negligence as a matter of law which is a proximate cause of this accident.

* * * * *

page 85 }

* * * * *

Mr. Prince: Your Honor, I would like get it in the record on my motion. Are you overruling it?

The Court: I overrule your motion.

* * * * *

page 89 }

* * * * *

FRANCES H. CURRY, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Prince:

* * * * *

page 90 }

* * * * *

Q. Mr. Curry, on October 1, 1968, you were operating a bus which was in a collision with a vehicle operated by Mr. Clausen, weren't you?

A. Yes, sir.

Q. And at the time of the accident where were you going?

A. Down to Granby Street towards Granby High School.

* * * * *

page 91 } Q. All right, sir. Are you familiar with the intersection of Taussig Boulevard and Granby Street where the accident happened?

A. Yes, sir.

Frances H. Curry

* * * * *

page 92 }

* * * * *

Q. And you were headed in an easterly direction?

A. Yes, sir, down Granby Street. I was headed in an easterly direction proceeding to turn on Granby Street.

Q. All right. Now, Mr. Curry, as you came down Taussig Boulevard, how many lanes of travel did this section of Taussig Boulevard accommodate?

A. Two.

Q. And which of these two lanes were you in?

A. The extreme right.

Q. And what was your intention when you got up here to the intersection?

A. To make a right-hand turn to go down Granby Street towards Granby High.

Q. All right, sir. Now, as you were approach-
page 93 } ing the intersection, Mr. Curry, would you tell the jury what you did.

A. Yes, sir. When I entered the intersection, as I got about half way through it—into it—I looked through my rear-view mirror and there was not a car in any time in the intersection or either beyond the intersection, no automobiles at all.

Q. When was this that you looked?

A. When I got into the intersection.

Q. Now, what do you men?

A. About half way through the intersection, before I made my turn into Granby Street.

* * * * *

Q. Use this red vehicle as a model of your bus and place this on the board about where it was when you first looked in your rear-view mirror.

A. Right about along there. Now, here is the beginning of the intersection. I was going about fifteen miles an hour, so when I got along about here traveling in this direction I looked through my rear-view mirror. There was no car whatever in sight over here. (Indicating)

Frances H. Curry

page 94 } Q. That is your left?
A. Right, to my left. So I proceeded on to make my turn and had my signal light on.

* * * * *

page 95 }

* * * * *

Mr. Anninos: Now, for the record, at this point could we describe the position of the bus as put on there by the defendant's driver?

* * * * *

Mr. Anninos: The witness has indicated that he is making his turn in such a manner onto Granby so the end of his bus or the approximate end of his bus is approximately in line with the southernmost tip of the grass plat or island that divides the three southbound lanes from the three northbound lanes.

* * * * *

By Mr. Prince:
Q. As you have described here, as you left Taussig Boulevard and went into Granby Street, which lane did you turn into?
page 96 } A. This is exactly the way I went, because my bus—the length of my bus—I went just like this and there was no way for a car to get in here. (Indicating)

* * * * *

page 98 }

* * * * *

By Mr. Prince:
Q. Then what happened at that point?
before I got ready to make the turn. There was not a car
A. As I said, when I made the turn—there was no cars

in sight. I proceeded to make my turn. I had gotten about two-thirds of the way into Granby Street, proceeding on the left-hand side, because I had to stay on the left-hand side when I got to my turnoff point about twenty-five or thirty blocks farther down Granby.

I heard something bump on the rear end of the bus. I didn't know what it was, whether an automobile went up onto the curb or what, so I stopped and I got out and looked. And the automobile of this gentleman was about I would say twenty-five or thirty feet behind my bus, and I was on my left-hand side—in the left-hand lane.

So I got out and then he went and called the policeman. The police came.

Q. All right. Now, let me interrupt you here, Mr. Curry. When you heard this bump, was your bus still in the process of turning or was it straightaway then?

page 99 } A. It was on the last lap of turning.

Q. All right, sir. Now, were the vehicles there when the police officer came?

A. Yes, sir.

Q. Did you and Mr. Clausen ever talk to the police officer?

A. Yes, sir.

Q. Together?

A. Yes, sir.

Q. And was that there or did you later move your vehicle?

A. No, sir. The police officer told me to drive my bus into the parking lot and we will get all the information—he will get all the information from us there.

I drove my bus into the parking lot. I got out of the bus, went into the police car, and Mr. Clausen also got into the police car. And then he asked us questions about the accident.

* * * * *

page 100 }

* * * * *

CROSS-EXAMINATION

By Mr. Anninos:

Q. As I understand you, Mr. Curry, to this day you cannot

say to the court and to the gentlemen of the jury that you saw the car operated by Mr. Clausen before the accident; is that right?

A. That's right.

Q. There was nothing to your left to obstruct your view?

A. Not a thing.

Q. There was nothing to your right to obstruct your view?

A. No, sir.

* * * * *

page 103 } Q. And the way you showed it to the jury it was along over in here. (Indicating)

A. Okay, sir.

Q. I am trying to trace the way you showed us.

A. All right.

Q. You came straight across here?

A. Right.

Q. And the way you showed it to us it did this?

A. Right.

Q. And when you got in the left lane, I believe your vehicle was two-thirds into this lane?

A. All right.

Q. You were turning?

A. That's right.

Q. Is that correct?

A. The bus is forty feet long. It's not

* * * * *

page 106 }

* * * * *

Q. So you came almost straight across the west southbound lane?

A. Right.

Q. And you crossed the middle southbound lane?

A. Right.

Q. And you were two-thirds into your turn in the extreme left southbound lane?

A. Right.

Q. And then you heard a noise, I believe you called it?

Frances H. Curry

A. That's right.
Q. Is that right, sir?
A. Uh-huh.
Q. So you were approximately two-thirds into your turn when you heard a noise? (Indicating)
A. That's not two-thirds right there, sir.
page 107 } Q. Which way?
A. Up farther.
Q. Like this? (Indicating)
A. A little bit more. Right there, that's right, about two-thirds.
Q. You were in about this position?
A. The rear of my bus was into Granby, at the corner of Granby and Taussig Boulevard.
Q. So the rear of your bus—
A. Was at the corner of Granby, yes, sir.
Q. All right, sir. So it would be, then, there as I have described it in the record, when the rear of your bus—when you heard the noise was approximately in line with the southern edge or tip of the island that separates the three southbound from the three northbound lanes?
A. That's right. It was in Granby Street, yes, sir.
Q. And you heard the noise in this position? (Indicating)
A. I heard the noise when I was two-thirds of the way. The rear of my bus was proceeding right at the corner of Granby.

* * * * *

page 108 }

* * * * *

Q. And you heard the noise at this point?
A. Yes, sir.
Q. All right, sir. After you heard the noise, how far did you travel before you stopped?
A. I would say fifty or sixty feet.
Q. You traveled fifty or sixty feet; is that correct, sir?
A. That's right, because I didn't know what had happened.

* * * * *

Frances H. Curry

page 111 }

* * * * *

Q. What made you stop?
A. Well, the crash and then a horn blowing.
Q. A horn blowing?
A. Yes, sir, I guess that's what. It was after I heard the contact, after I heard the bump.

* * * * *

page 113 }

* * * * *

Q. And you say the horn was part of the thing that made you stop?
A. I heard a horn blowing, and I heard the contact. I heard the noise, and that's why I stopped. It wasn't exactly the horn, because they are blowing all the time on Granby Street.
Q. But there was a continuous horn blowing, was it not, sir?
A. Well, I can't remember whether it was or not, sir. They are blowing all the time, and the stop light had Granby Street blocked when I made my turn.
Q. You had looked to your left and saw no cars coming?
A. No cars coming and nobody on the left side, nobody. Or not in the rear.
Q. Not in the rear?
A. On the left side.
Q. You saw nobody?
page 114 } A. I saw no cars, no, sir, not on Taussig Boulevard. At Granby Street there was no cars.
Q. Now, come down if you will, sir, and point in this left lane where the impact took place.
A. Now, sir, I didn't see the impact so I don't know exactly where it took place, but it had to take place right in this spot here. (Indicating)

* * * * *

page 115 }

* * * * *

Mr. Prince: You may come down, Mr. Curry.
Your Honor, defendant rests now.
Mr. Anninos: I just want to put him on for rebuttal.

* * * * *

CHRISTIAN D. CLAUSEN, the plaintiff, recalled as a witness on his own behalf, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION (Rec.)

By Mr. Anninos:
Q. Mr. Clausen, I have just one question. You heard the testimony of Mr. Curry, the operator of this bus; did you not?
A. Yes, sir.
Q. And did you hear him say what you told
page 116 } him at the scene of the accident?
A. Yes, sir.
Q. Did you tell him that you were behind him at any time?
A. I explained to him that the first time I did say that I was behind him, but I had to retract my statement, because as soon as I said that he thought I was saying my front bumper was to his back bumper. When I said behind him I meant to the driver's side to the right of him.

* * * * *

Mr. Prince: Your Honor, at the conclusion of all of the evidence the defendant renews its motion to strike the plaintiff's evidence and to enter summary judgment
page 117 } for the defendant, on the grounds that the plaintiff has violated Section 46.1-215 of the Code of Virginia, which violation he had admitted to.

* * * * *

Mr. Anninos: Our position is the same as it was when

counsel for the defendant argued his original motion to strike, and that is that it is a jury question to that phase of it.

However, now that the defendant has admitted to his counsel and to me that in broad daylight when he was in a position to see he never saw the plaintiff at any time.

The Court: You didn't show that he was in a position to see. He said the bulk of the bus was such
page 118 } that it prevented him from seeing it.

Mr. Anninos: No, Judge, he could see to his left.

* * * * *

The court is going to sustain the motion, and enter summary judgment, and to which action the plaintiff by counsel will except.

Mr. Anninos: You sustain the motion to strike, Your Honor? Your original feeling was that it ought to go to the jury.

page 119 }

* * * * *

Mr. Anninos: But plaintiff's theory is—and we are entitled to plaintiff's theory—that it didn't happen then and there as the defendant says it happened. We say it happened sixty feet south, after both vehicles were southbound, one in one lane and one in the other lane, sir.

That is our theory, and it ought to go to the jury.

The Court: The court has made his decision.

Mr. Anninos: Note our exception.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Assignments of Error	2
Motion for Judgment	2
Judgment of February 5, 1969	4
Witnesses:	
Daniel M. Hall	5
Christian D. Clausen	9, 26
Frances H. Curry	19
Proceedings	19, 27