

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Records No. 730, 378; 730, 379 and 730, 382

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building
in the City of Richmond, on Wednesday, August 22, 1973.

GRAYSON C. REED,

APPELLANT

against

CARLYLE & MARTIN, INC.

NO. 730, 378

CARLYLE & ANDERSON, INC.

NO. 730, 379, and

GROVE MANUFACTURING COMPANY

NO. 730, 382

APPELLEES

From the Circuit Court of Loudoun County
Carleton Penn, Judge

Upon the petition of Grayson C. Reed a Writ of Error was awarded
to him to a judgment rendered by the Circuit Court of Loudoun County (a)
on the 2nd day of February, 1973, in certain motions for judgment wherein

Grayson E. Reed was plaintiff and Carlyle & Martin, Inc., Record No. 730, 378 and Carlyle and Anderson, Inc., Record No. 730, 379 were defendants and (b) on the 13th day of March, 1973, in a certain motion for judgment wherein Grayson C. Reed was plaintiff and Grove Manufacturing Company, Record No. 730, 382, was defendant; upon petitioner entering into three (3) bonds (one for each case) with sufficient security before the Clerk of the said Circuit Court in the penalty of Three Hundred Dollars each, with condition as the law directs.

* * * * *
Grayson C. Reed v. Carlyle & Martin, Inc.
RECORD
No. 730, 378
* * * * *

Filed in Circuit Court Clerk's Office August 24, 1972

MOTION FOR JUDGMENT

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page 1]

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Your Plaintiff, Grayson C. Reed, respectfully moves the Circuit Court of Loudoun County, Virginia, for judgment against the defendants Carlyle & Martin, Inc., a Non-Resident Maryland Corporation located in Hagerstown, Maryland, but transacting business in Virginia, in the amount of \$100,000.00 with interest and costs by reason of the following facts:

1. That on or about the 20th day of September, 1970, the Defendant, a farm equipment dealer sold to one Robert L. Hardy, a farmer and resident

of Loudoun County, Virginia, a piece of farm equipment, namely one forage handler, commonly known also as a fodder handler or ensilage wagon, said wagon having been manufactured by Grove Manufacturing Company, Greencastle, Pennsylvania, said farm equipment to be used in Loudoun County, Virginia.

page 2] 2. That the said Defendant represented that the aforesaid farm equipment was in good operating condition and safe for the purposes for which it was intended, to-wit: to cut and chop up ensilage material loaded into it and transport the same to some other place and then unload it by a side unloading conveyor belt. That said ensilage wagon was in fact defective and dangerous in that the conveyor belt or drag chain in the bottom of the wagon which moved the ensilage material forward in the wagon toward a set of beaters which chopped up the material and pushed it into a lateral conveyor belt by which the material was discharged from the wagon was defective, and not operating properly. In addition, said wagon was unsafe inasmuch as it did not have properly marked thereon instructions for its use, nor were any provided by the Defendant. It also did not have on it instructions for disengaging the beaters when the drag chain was not operating, and instructions, notices and warnings thereon as to the inherently dangerous nature of said wagon. As a result of all of this there was thus created an unreasonable danger to the users of said wagon.

3. That on or about September 24, 1971, the Plaintiff who was then and there employed as a farm hand by the said Robert L. Hardy, in Loudoun

County, Virginia, was engaged in unloading the wagon by climbing into it and hand pitch-forking the material with the beaters running because the drag chains were not operating properly.

4. That while said Plaintiff was working as aforesaid in said wagon, without any fault on his part, he slipped, was thrown forward by the drag chain or otherwise became entangled in the operating and moving beaters which struck and beat him and caused numerous, severe and disabling injuries hereinafter set forth.

5. The Plaintiff did not know at that time and place that it was dangerous to manually unload said wagon while the said beaters were page 3] operating, nor had he been advised of any manner whereby said beaters could be stopped while the wagon was being unloaded manually, nor was he informed by proper instructions accompanying the wagon or by adequate signs and notices provided or attached thereon of the dangers attendant to his actions.

6. The defendants owed the duty to Plaintiff to have sold the said ensilage wagon in good operating condition; to have sold same in a reasonably safe condition for manually unloading from within the wagon by the use of the conveyer belt; to warn plaintiff against unloading manually from inside said wagon while beaters were beating; to affix to said wagon sufficient permanent warnings of said dangers; to fix permanently to said wagon instructions for disengaging the "beaters" while unloading manually from within the said wagon and to otherwise instruct plaintiff as to the safe

use of said wagon; and the said failure to perform said duties toward plaintiff amounted to negligence on the part of defendant and proximately caused plaintiff's injuries.

7. As a result of Plaintiff's becoming entangled with the operating beaters, Plaintiff suffered a compound comminuted fracture of the upper left tibia, fracture of the neck of the right fibula, and injury to the knee joint of said leg, extensive lacerations of both lower extremities, necrosis of skin and tissue of both lower extremities, damage to the nerves of the lower extremities and other injuries, each and all of which caused Plaintiff to suffer great, severe and disabling injuries, extreme physical pain and suffering and mental anguish, temporary and permanent disability, extreme disfigurement of the lower extremities, hospitalization and medical treatment in excess of \$6,500.00, lost time and diminution of future earning capacity, each and all of which damages Plaintiff in the amount of \$100,000.00.

* * * * *

Filed Clerks office, September 20, 1971.

J. T. MARTZ
Clerk of the Circuit Court of
Loudoun County, Virginia

ANSWER AND GROUNDS OF DEFENSE

* * * * *

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Comes now the defendant, Carlyle & Martin, Inc., by counsel, and for Answer and Grounds of Defense to the Motion for Judgment filed heretofore states:

1. It denies the allegations contained in Paragraphs 1, 2, 3, 4, 5 and 6 of the Motion for Judgment.

2. It specifically denies all allegations of negligence contained in the Motion for Judgment.

3. It specifically denies all allegations of any breach of warranty.

4. It specifically denies any violation of any duties as alleged in the Motion for Judgment.

5. It denies the nature and extent of the injuries and damages as alleged in Paragraph 7 of the Motion for Judgment and asks for strict proof thereof.

6. And for further Answer and by way of Grounds of Defense this defendant asserts:

a. That the product in question was improperly used by the plaintiff herein.

b. That the plaintiff was contributorily negligent.

c. That the plaintiff assumed the risk of injury by improperly using the product.

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Filed Clerks Office February 2, 1973

FINAL ORDER

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Heretofore on the 3rd day of November, 1972 came the parties hereto upon the plaintiff's Motion to reconsider the court's ruling on the prior Motion for Summary Judgment by Order of October 6, 1972, said Order having been suspended by order of the Court entered October 25, 1972, and it being the opinion of the Court that the Motion for Summary Judgment should be sustained, it is hereby

ADJUDGED, ORDERED that the Judgment Order entered on the 6th day of October, 1972 granting summary judgment to the defendant be and the same hereby is reinstated and this matter is ended.

The Court on its own motion notes the exception of plaintiff to said action of the Court.

Entered this ___ day of February, 1973.

/s/ Carleton Penn
JUDGE

I ASK FOR THIS:

BRAULT, LEWIS, GESCHICKTER & PALMER

By /s/ Thomas C. Palmer
Thomas C. Palmer, Jr.
Counsel for Defendant

SEEN & EXCEPTED TO:

Robert M. Murray
Counsel for Plaintiff

* * * * *

Filed in Clerk's office October 6, 1972

* * * * *

ORDER

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Heretofore on the 14th day of September, 1972 came the parties hereto, by counsel, upon the Motion for Summary Judgment filed by the defendant, and after hearing argument of counsel and reading submitted Memoranda, the Court did render the Memorandum Opinion in which it sustained the Motion for Summary Judgment on the basis that the pleadings and evidence before the Court showed the plaintiff to be guilty of contributory negligence as a matter of law; now, therefore, it is

ADJUDGED, ORDERED and DECREED that the Motion for Summary Judgment be and the same hereby is granted and judgment is entered in favor of the defendant, Carlyle & Martin, Inc.

Entered this 6th day of October, 1972.

/s/ Carleton Penn
JUDGE

I ASK FOR THIS:

BRAULT, LEWIS, GESCHICKTER & PALMER

By /s/ Thomas C. Palmer, Jr.
Thomas C. Palmer, Jr.
Counsel for Defendant

SEEN & EXCEPTED TO:

/s/ Robert M. Murray
Robert M. Murray
Counsel for Plaintiff

Filed in Clerks office October 25, 1972

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ORDER (Suspension Order)

This cause came on upon Plaintiff's motion to reconsider the judgment heretofore entered in this cause on the 6th day of October, 1972 granting Summary Judgment to the Defendant; and upon Plaintiff's motion to suspend the execution of said judgment order granting summary judgment. And it appearing to the Court that said judgment order should be suspended pending reargument on November 3, 1972, it is, by the Court,

ADJUDGED AND ORDERED that the order of judgment granting to the Defendant summary judgment be, and the same hereby is, suspended, thereby retaining jurisdiction of said cause by this Court; and said motion for reconsideration be, and the same hereby is set for hearing on November 3, 1972.

AND THIS CAUSE IS CONTINUED.

ENTERED: 25 October 1972

/s/ Carleton Penn
J U D G E

I ASK FOR THIS

Roland D. Hartshorn
Attorney for Plaintiff

I certify a copy of the foregoing order was duly forwarded with postage paid to Brault, Lewis, Geschickter & Palmer on the 18th day of October, 1972.

/s/ Roland D. Hartshorn
Roland D. Hartshorn

Filed in Clerks Office October 4, 1972

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MEMORANDUM OPINION (For All Three Cases)

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This matter coming on to be heard on Defendant's motion for summary judgment, the issue to be determined by the Court is whether "it appears from the pleadings, . . . and the admissions, if any, in a deposition that the moving party is entitled to judgment. . . ". Rule 3:20.

Plaintiff, a farmer, then fifty-one years old, was injured while unloading ensilage from a "forage handler", a wagon constructed with drag-chains on the bottom of the bed which moved the ensilage to the end of the wagon, where it was caught by beaters that unloaded it by casting it onto a conveyor belt. The drag-chains were inoperative at the time of the injury, and in order to repair the wagon it was necessary to unload the ensilage some five feet deep in the wagon. The beaters, powered by the tractor to which the wagon was attached, were operative, and Plaintiff left them running while he threw the ensilage down onto them. In the process of unloading, a bank of ensilage slanting toward the beaters was formed by Plaintiff. Plaintiff was standing on the side of inclined ensilage when it gave way, causing him to fall into the beaters, from which he received the injuries which are the subject of this suit.

Plaintiff charges that Defendant, the vendor of the machine, was

under a duty to instruct and warn regarding the use of it, and that same was defective [page 57] and dangerous. Plaintiff further avers that he did not know "that it was dangerous to manually unload said wagon while the said beaters were operating...".

Defendant contends that Plaintiff was guilty of contributory negligence and that he assumed the risk of his injury.

Plaintiff had been a farmer all of his life. He had previous experience with a machine of this type. No one had instructed him to leave the beaters running during the manual unloading. He elected this course of action himself because it was the easiest way (Tr. 17) and the quickest way (Tr. 33) to unload the ensilage. Irrespective of Plaintiff's complaint as to absence of instructions pertaining to operation of the beaters independently of the drag-chains, it would have been a simple matter to turn off the tractor powering the machine, had he wished to do so.

"... '(t)he doctrine of assumption of risk rests on two premises: (1) that the nature and extent of the risk are fully appreciated; and (2) that it is voluntarily incurred.' Leslie v. Nitz, 212 Va. 480, 483, 184 S.E. 2d 755, 757 (1971); Landes v. Arehart, 212 Va. 200, 203, 183 S.E. 2d 127, 129 (1971). Moreover, the doctrine of assumption of risk must be distinguished from that of contributory negligence. See Budzinski v. Harris, 213 Va. 107, 189 S.E. 2d 372 (1972); Stoner v. Robertson, 207 Va. 633, 151 S.E. 2d 363 (1966); Arrington v. Graham, 203 Va. 310, 124 S.E. 2d 199 (1962). Carelessness is the essence of contributory negligence while venturousness is the chief

characteristic of assumption of risk. Stoner v. Robertson, 207 Va. at 637, 151 S.E. 2d at 366. " Lark's Admr. v. Hess' Admr., Supreme Court of Virginia, Record No. 7881 (September 1, 1972).

From admissions of Plaintiff in his deposition as mentioned above, the test of the second premise is fully met.

As to the first premise, however, Plaintiff states he "never thought anything about it" (Tr. 36). This statement must be construed most favorably in Plaintiff's favor, and while equivocal, indicates no knowledge of the risk essential to its assumption.

page 58] Upon the issue of contributory negligence, as previously stated, Plaintiff had been a farmer all of his life and was familiar with the operation of this type of equipment. He knew the beaters were exposed, and that they rotated, engaging and ejecting the contents of the wagon. He knew the ensilage was composed of chopped corn and fodder (Tr. 22), which was deep in the wagon. By his mode of unloading he created a "slant" upon which he stood near the beaters, which he chose to leave in operation.

"...Knowledge of the risk is not necessary if, in the exercise of ordinary care, one should have known of its existence..." Budzinski v. Harris, supra at 110.

Clearly, in the exercise of ordinary care, Plaintiff should have known of the existence of the risk, and it was unreasonable for him to voluntarily place himself in that position of peril.

The Court, therefore, is of the opinion that the pleadings and Plaintiff's admissions show him to be guilty of contributory negligence as a matter of law, and defendant's motion for summary judgment is granted.

/s/ Carleton Penn
JUDGE

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LETTER OF OPINION OF COURT filed November 27, 1972

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In re: Reed v. Carlyle & Anderson, Inc.
Law No. 3895
Reed v. Carlyle & Anderson, Inc.
Law No. 3915
Reed v. Carlyle & Martin, Inc.
Law No. 3892
Reed v. Grove Manufacturing Co.
Law No. 3893

Gentlemen:

Having fully considered your arguments, together with the memoranda of law and further authorities cited, the Court is of the opinion that the judgment of the Court granting the Motion for Summary Judgment should stand in Law Actions 3915 and 3892.

The Court is of the further opinion that the Motion for Summary Judgment in Law Action 3893 should be sustained.

The affidavits filed by plaintiff as a proffer of evidence of custom and usage in the community must be rejected where the danger is so obvious and patent. Further, such evidence would tend to contravene plaintiff's theory of exposure to danger.

page 71] There is nothing in the file of Law Action 3895, except the Motion for Judgment (apparently defective), and the Proof of Service.

If this action is not to be pursued, it should be removed from the docket.

Counsel may submit the appropriate orders.

Cordially yours,
/s/ Carleton Penn

Carleton Penn
Judge

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Filed Clerks office February 20, 1973

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Notice is hereby given that Grayson C. Reed, Plaintiff, excepts to and appeals from a final judgment rendered and entered by the Circuit Court of Loudoun County, Virginia, on February 2, 1973, denying Plaintiff's motion to reconsider its order and reinstating its order granting summary judgment to the defendant, Carlyle & Martin, Inc., and granting and entering a Final Order of Judgment for the Defendant, Carlyle and Martin, Inc. and Plaintiff hereby announces and gives notice of his intention of applying for a Writ of Error and Appeal with Supersedeas, if appropriate, to the Supreme Court of Virginia.

PLAINTIFF'S ASSIGNMENT OF ERROR

1. The Trial Court erred in granting summary judgment on the ground that contributory negligence was established as a matter of law on the part of Plaintiff.

2. The Trial Court erred in granting judgment to Defendant and such judgment was erroneous as a matter of law and fact.

3. The Trial Court erred in refusing to submit the appropriate and requisite issues to a Jury Trial.

page 77] 4. The Trial Court erred in refusing to consider Plaintiff's pretrial exhibits offered by the Plaintiff.

5. The Trial Court erred in failing to give proper credence to plaintiff's pretrial exhibits when tendered by the Plaintiffs in connection with their offer of proof.

6. The Trial Court erred in refusing to submit to Trial by jury those issues as were properly the province of the jury rather than the Court.

7. The Trial Court erred in reaching its decision only on certain portions of the depositions and ignoring or refusing to consider other portions of the depositions which denied or contravened those portions relied on by the Court.

8. The Trial Court erred in relying only on the depositions in reaching its decision rather than considering all the evidence.

9. The Trial Court erred in relying on certain portions of the depositions which contained incompetent, irrelevant and immaterial testimony.

10. The Trial Court erred in refusing to allow plaintiff to present a complete case at trial.

11. The Trial Court erred in that the Court considered and decided issues of facts which were under applicable law solely within the province of the Jury.

12. The Trial Court erred in that it failed to consider and give proper consideration to the effect of the local customs and usage.

13. Inasmuch as there is no requirement that the Plaintiff make out his whole case during the pretrial activities, the Court erred in dismissing the case over Plaintiff's objections that his case was not complete.

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Filed in Clerks office November 3, 1972

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AFFIDAVIT OF ASBURY N. SMITH (All Three Cases)

AFFIDAVIT

State of Virginia
County of Loudoun, to-wit:

I, Barbara E. Wood, a Notary Public in and for the County aforesaid and the State of Virginia, do hereby certify that Asbury N. Smith, a person known or identified to me, upon oath deposed and said as follows:

My name is Asbury N. Smith and I live at Route 1, Box 130, Lovettsville, Virginia.

I have been a farmer for many years and a farm equipment dealer

for 12 years. I have sold and repaired ensilage wagons.

I hereby state that I have personally seen and observed on several occasions individuals unloading ensilage wagons by standing in the wagons and pitching the ensilage into the operating beaters.

I also state that I have personally unloaded ensilage wagons in this manner when someone was standing by at the controls.

I also state to my knowledge that this method of unloading wagons is not an uncommon practice in this area.

/s/ Asbury N. Smith
(Name of person making statement)

Sworn to and subscribed before me, this 30 day of October, 1972.

My Commission expires on: 9/1/75

/s/ B. E. Wood
Notary Public

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Filed in Clerks office November 3, 1972

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AFFIDAVIT OF MEREDITH R. BEACHLEY (All Three Cases)

AFFIDAVIT

State of Virginia
County of Loudoun, to-wit:

I, James L. Bowman, a Notary Public in and for the County afore-
said and the State of Virginia, do hereby certify that Meredith R. Beachley

a person known or identified to me, upon oath deposed and said as follows:

My name is Meredith R. Beachley, and I live at Rt. 1 Jefferson, Md. 21755.

I am a mechanic and repairman of farm equipment and have been so for 6 years.

I hereby state that I have personally seen and observed on numerous occasions individuals unloading ensilage wagons by standing in the wagons and pitching the ensilage into the operating beaters.

I also state to my knowledge this is a common practice among farm hands in this area.

/s/ Meredith R. Beachley
(Name of person making statement)

Sworn to and subscribed before me, this 31st day of October, 1972.

My Commission expires on: 9/8/75

/s/ James L. Bowman
Notary Public

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Filed in Clerks office November 3, 1972

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AFFIDAVIT OF MERLE E. ANDERSON (All Three Cases)

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AFFIDAVIT

State of Virginia
County of Loudoun, to-wit:

I, Patricia M. Danner, a Notary Public in and for the County aforesaid and the State of Virginia, do hereby certify that Merle E. Anderson, a person known or identified to me, upon oath deposed and said as follows:

My name is Merle E. Anderson, and I live at 102 Euna Spring Road, Brunswick, Maryland.

I was a repairman mechanic of farm equipment and an Assistant Shop Foreman for 8 years.

I hereby state that I have personally seen and observed on several occasions individuals unloading ensilage wagons by standing in the wagons and pitching the ensilage into the operating beaters.

I also state to my knowledge this is a common practice among farm hands in this area.

/s/ Merle E. Anderson
(Name of person making statement)

Sworn to and subscribed before me, this 30th day of October, 1972.

My Commission expires on: November 25, 1973.

/s/ Patricia M. Danner
Notary Public

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Filed in Clerks office October 29, 1971

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GRAYSON C. REED v. CARLYLE & ANDERSON, INC.
RECORD NO. 730,379

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MOTION FOR JUDGMENT

* * * *

Comes now the plaintiff and alleges as follows:

1. That the plaintiff was during the month of September, 1970 employed as a farmhand on the farm of one Robert Hardy in Loudoun County, Virginia.
2. That the plaintiff's employer had purchased from a firm called Carlyle and Martin of Hagerstown, Maryland, a piece of farm equipment manufactured by the Grove Manufacturing Company called a forage or fodder handler otherwise known as a crop dopper or an ensilage wagon which said wagon was being used on the farm of said Hardy.
3. That on or about 20 September, 1970, the drag chain on the wagon in question was not operating properly and as a result of this, Hardy contacted Mr. Carlyle of Carlyle and Martin from whom he had purchased the wagon and was referred by Mr. Carlyle to the defendants Carlyle and Anderson, Incorporated of Hamilton, Virginia who, were to repair the wagon.
- page 2] 4. On 20 September, 1970, Carlyle and Anderson sent a representative to the farm of Mr. Hardy in Loudoun County, Virginia. Said representative was unable to repair the wagon and left the farm after telling the plaintiff and others that the wagon had to be unloaded before he could repair it.

5. As a consequence of the foregoing, plaintiff on 29 September, 1970, in Loudoun County, Virginia, was unloading the wagon by standing in the bed of the wagon and shoveling the ensilage into the moving beaters, when without any fault on his part, he slipped, was thrown into the beaters and the drag chain or otherwise became entangled with the beaters with the result that said beaters struck and beat plaintiff causing him to suffer the injuries described herein.

6. That the defendant, Carlyle and Anderson, Incorporated, through its agent and employees were negligent and violated their duty to the Plaintiff in that they failed to advise or instruct the plaintiff or his employer as to the safe and proper method of unloading the wagon; that they failed to advise the plaintiff or his employer of the danger of getting into the wagon while the beaters in the wagon were in motion; that they failed to observe (and hence take any action with respect thereto,) that there was not displayed on the wagon or attached thereto adequate warnings and notices as to the dangerous nature of the beaters when in operation and that they failed in other ways to take such reasonable precautions to advise the plaintiff and his employer as to how the problem could be safely and properly handled and how the equipment could be safely and properly unloaded and that this negligence of the defendant was the proximate cause of the injuries to the plaintiff as herein stated.

page 3] 7. As a proximate result of said negligence, Plaintiff slipped, was thrown or otherwise became entangled with said beaters which struck and

beat Plaintiff causing him to suffer a compound comminuted fracture of the upper left tibia, a fracture of the neck of the right fibula and injury and damage to the knee joint of said leg, extensive lacerations, bruises and contusions of both lower extremities and other injuries each and all of which caused plaintiff to suffer great, severe and disabling injuries, extreme physical pain and suffering and mental anguish, temporary and permanent disability, extreme disfigurement of the lower extremities, hospitalization and medical treatment in excess of \$6,500.00 lost time and diminution of future earning capacity each and all of which damaged plaintiff in the amount of \$100,000.00.

WHEREFORE, Plaintiff moves the Circuit Court of Loudoun County, Virginia, for Judgment against the Defendant Carlyle and Anderson, Incorporated, in the amount of \$100,000.00 with interest and costs.

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Filed Clerk's Office October 5, 1972

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ANSWER AND GROUNDS OF DEFENSE

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Comes now the defendant, Carlyle & Anderson, Inc., by Counsel, and for Answer and by way of Grounds of Defense to the Amended Motion for Judgment filed herein states:

1. It admits the allegations contained in Paragraph 1 of the Amended Motion for Judgment.

2. It admits the allegations contained in Paragraph 2 of the Amended Motion for Judgment.

3. It denies the allegations contained in Paragraphs 3, 4, 5 and 6 of the Amended Motion for Judgment.

4. It specifically denies all allegations of negligence contained in the Amended Motion for Judgment.

5. It denies the nature and extent of the injuries and damages as alleged in Paragraph 7 of the Motion for Judgment and asks for strict proof thereof.

6. By way of Grounds of Defense this defendant states:

a. That the sole proximate cause of any alleged injuries or damages suffered by the plaintiff was the negligence of the plaintiff.

b. That in any event, this defendant intends to rely upon the defense of contributory negligence.

page 19] c. That the plaintiff assumed the risk.

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Filed Clerks office September 25, 1972

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page 16]

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AMENDMENT TO MOTION FOR JUDGMENT

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COMES NOW the Plaintiff, Grayson C. Reed, by Counsel, pursuant to leave to amend the original motion for judgment granted by this Court on the 14th day of September, 1972, in the manner and form as follows:

1. Plaintiff respectfully amends the allegations of Paragraph 5 of the original motion for judgment so that said paragraph as amended will read as follows:

"5. As a consequence of the foregoing, Plaintiff, on this 29th of September, 1970, in Loudoun County, Virginia, was unloading the wagon by standing in the bed of the wagon and shoveling the ensilage into the moving beaters, when, without any fault on his part, and without any negligence on his part causing or contributing to the said injuries and without any assumption of any risk therefrom, he slipped and was thrown into the beaters and the drag chain, or otherwise became entangled with the beaters with the result that said beaters struck and beat plaintiff, causing to him bodily harm injuries hereinafter described."

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Filed Clerks office February 2, 1973

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(Final) ORDER

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Heretofore on the 3rd day of November, 1972, came the plaintiff

and defendant, by their counsel, upon the Motion for Summary Judgment filed herein, and after hearing argument of counsel, it is the opinion of the Court that the Motion for Summary Judgment should be granted for the same reasons cited in the Memorandum Opinion in At Law #3892, and it is therefore

ADJUDGED & ORDERED that the Motion for Summary Judgment filed by the defendant is hereby granted and judgment is entered in favor of the defendant, Carlyle & Anderson, Inc.

Entered this ___ day of February, 1973.

/s/Carleton Penn
JUDGE

I ASK FOR THIS:

BRAULT, LEWIS, GESCHICKTER & PALMER

By /s/ Thomas C. Palmer
Thomas C. Palmer, Jr.
Counsel for Defendant

SEEN AND EXCEPTED TO:

Robert M. Murray
Counsel for Plaintiff

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Filed in Clerks Office November 27, 1972

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LETTER OF OPINION OF COURT
Set forth in Record No. 730, 378, above

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Filed in Clerks office February 20, 1973

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

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NOTICE is hereby given that Grayson C. Reed, Plaintiff, excepts to and appeals from a final judgment rendered and entered by the Circuit Court of Loudoun County, Virginia, on February 2, 1973, denying Plaintiff's motion to reconsider its order and reinstating its order granting summary judgment to the defendant, Carlyle & Martin, Inc. and granting and entering a Final Order of Judgment for the Defendant, Carlyle and Anderson, Inc. and Plaintiff hereby announces and gives notice of his intention of applying for a Writ of Error and Appeal with Supersedeas, if appropriate, to the Supreme Court of Virginia.

Plaintiff's Assignment Of Error

1. The Trial Court erred in granting summary judgment on the ground that contributory negligence was established as a matter of law on the part of Plaintiff.
2. The Trial Court erred in granting judgment to Defendant and such judgment was erroneous as a matter of law and fact.
3. The Trial Court erred in refusing to submit the appropriate and requisite issues to a Jury Trial.

page 36] 4. The Trial Court erred in refusing to consider Plaintiff's pretrial exhibits offered by the Plaintiff.

5. The Trial Court erred in failing to give proper credence to plaintiff's pretrial exhibits when tendered by the Plaintiffs in connection with their offer of proof.

6. The Trial Court erred in refusing to submit to Trial by jury those issues as were properly the province of the jury rather than the Court.

7. The Trial Court erred in reaching its decision only on certain portions of the depositions and ignoring or refusing to consider other portions of the depositions which denied or contravened those portions relied on by the Court.

8. The Trial Court erred in relying only on the depositions in reaching its decision rather than considering all the evidence.

9. The Trial Court erred in relying on certain portions of the depositions which contained incompetent, irrelevant and immaterial testimony.

10. The Trial Court erred in refusing to allow plaintiff to present a complete case at trial.

11. The Trial Court erred in that the Court considered and decided issues of facts which were under applicable law solely within the province of the Jury.

12. The Trial Court erred in that it failed to consider and give proper consideration to the effect of the local customs and usage.

13. Inasmuch as there is no requirement that the Plaintiff make out his whole case during the pretrial activities, the Court erred in dismissing the case over Plaintiff's objections that his case was not complete.

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AFFIDAVITS OF MERLE E. ANDERSON, ASBURY N. SMITH
AND MEREDITH R. BEACHLEY SET FORTH IN RECORD
NO. 730, 378, ABOVE

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GRAYSON C. REED V. GROVE MANUFACTURING COMPANY
RECORD NO. 730, 382

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Filed Clerks Office August 24, 1972

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page 1]

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MOTION FOR JUDGMENT

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TO: THE HONORABLE JUDGES OF THE SAID CIRCUIT COURT.

Your Plaintiff, Grayson C. Reed, respectfully moves the Circuit Court of Loudoun County, Virginia, for judgment against the Defendant, Grove Manufacturing Company, a non-resident corporation, in the amount of \$100,000.00 with interest and costs, by reason of the following facts:

1. The Defendant, Grove Manufacturing Company is a non-resident corporation whose main offices are located in Greencastle, Pennsylvania,

and is engaged in manufacturing farm equipment, more particularly, defendant manufactured and sold a certain piece of farm equipment known as a forage handler and sometimes otherwise known as a fodder handler, cropshopper, or an ensilage wagon, but shall hereinafter be described as a forage handler.

page 2] 2. That on or about the 20th of September, 1970, one of the aforesaid forage handlers was purchased by Robert L. Hardy, a farmer of Loudoun County, Virginia, from a firm known as Carlyle & Martin, Inc., of Hagerstown, Maryland, and the said piece of equipment was to be used upon the said Robert L. Hardy's farm located in said Loudoun County, Virginia.

3. The said forage handler was designed by Defendant to haul chopped forage from the fields where it was cut to such place as the farmer planned to store same and by use of available drives, to automatically unload by use of a drag chain underneath the load and by means of certain beaters and a cross conveyor belt, the forage or ensilage contained in the wagon was deposited into the desired storage bin. The exact manner and operation of said forage handler is well known to the defendant and need not be more specifically pleaded.

4. The said forage handler did not have attached thereto in any manner instructions for the safe operation of said equipment or any warnings as to dangers which might be encountered in manually unloading said forage handler from within the wagon bed itself.

5. While in normal operation, the said forage handler had a gear driven, powered body drag chain which was located in the bed of the wagon

upon which the chopped forage had been loaded by the forage chopper, another piece of equipment which was used in the fields at the time the forage was actually cut. The purpose of these drag chains was to convey the forage load slowly forward into the beaters which in turn beat or hurled the forage forward onto the lateral conveyor belt. These beaters were power driven and were made of a heavy metal turning at a high rate of speed and could, upon contact with a person, break and mangle his body or limbs as well as actually endanger the life of the person who might come in close contact therewith.

page 3] 6. The lateral conveyor belt, which was located in the front of the forage handler at the bed level, would convey the forage which was beat forward by the beaters laterally into a conveyor belt which in turn conveyed the forage to the unloading point or the storage bin.

7. Plaintiff avers that by virtue of the nature of the equipment and the necessity of forcing the forage forward with great force, said forage handler was a dangerous instrumentality, inherently dangerous to human life, limb or body of anyone working in close proximity thereto. Plaintiff further avers that the Defendant, being a manufacturer of forage handlers and other similar farm equipment, knew, or in the exercise of ordinary care should have known and reasonably anticipated that the use of said forage handler in the manner hereinafter set forth would produce serious injuries as suffered by the Plaintiff in this case.

8. On or about September 29th, 1970, the Plaintiff, who was then and there employed as a farm hand by the said Robert L. Hardy, a farmer, on said farmer's Loudoun County, Virginia farm, was engaged in unloading the said forage handler by standing in it and manually unloading same by hand pitchforking the chopped forage or fodder forward into the beaters while same were running so as to convey same to the lateral conveyor belt. as the drag chains located in the base of the wagon bed were not operating properly and were not conveying the fodder forward into the beaters.

9. While Plaintiff was working as aforesaid in the said wagon bed on top of the load of chopped forage or fodder, he, without any fault on his part slipped on the ensilage material or fodder, was thrown forward by the drag chain or otherwise became entangled with the operating and moving beaters which struck and beat him severely, causing numerous, severe and disabling injuries as hereinafter set forth.

page 4] 10. Plaintiff did not know at said time and place that it was dangerous to manually unload said wagon while the said beaters were operating, nor had he been advised in any manner of any method, gear or other device whereby he said beaters could be disengaged and stopped while said wagon was being unloaded manually.

11. Defendant, in manufacturing said wagon, had installed thereon a gear or switch whereby said beaters could be disengaged or stopped in such manner that the rest of the conveyor belt system could continue to operate; however, no instructions, warnings, or other information was

attached to the said forage handler wagon or otherwise provided to plaintiff advising or warning him in any manner.

12. The Defendant owed to plaintiff the duty to manufacture and sell the said forage handler in a reasonably safe condition both as to design and operation, for all uses known to or reasonably anticipated by the Defendant; to have manufactured and sold same with reasonable safeguards to protect any person manually unloading same in the form of shields, guards or other safety appliance belts which would prevent such person from slipping or falling forward and into the mechanical beaters; to warn plaintiff and others against manually unloading said wagon from inside said wagon while the beaters were running and when no safety devices or belts were available; to affix permanently to said wagon instructions and warnings disengaging the "beaters" while unloading said wagon manually from within the wagon and to otherwise instruct plaintiff as to a safe manner to manually unload said forage handler, however, Defendant failed to perform each and every said duty owed to the Plaintiff, each said failure being and constituting negligence which proximately caused plaintiff's said injuries as hereafter set forth.

page 5] 13. The injuries suffered by Plaintiff was proximately caused by the negligent and careless acts or omissions of duties owed to Plaintiff, more specifically:

(a) In failing to manufacture and sell said forage handler in a reasonably safe condition, both as to design and operation, for all uses

known to or reasonably anticipated by the Defendant;

(b) In failing to have manufactured and sold said forage handler with reasonable safeguards to protect any person manually unloading same; in the form of shields, guards or other safety appliance which would prevent such person from slipping or falling forward and into the mechanical beaters;

(c) In failing to warn plaintiff and others against manually unloading said wagon from inside said wagon while the beaters were running and when no safety devices or belts were available;

(d) In failing to affix permanently to said wagon instructions and warnings for disengaging the "beaters" while unloading said wagon manually from within the wagon;

(e) In failing to otherwise instruct plaintiff and others as to a safe manner to manually unload said forage handler; and

(f) In failing to design and manufacture said wagon in such manner as to eliminate and avoid risk to users of said product to prevent them from becoming entangled with or injured by the said beaters.

14. As a proximate result of said negligence, Plaintiff slipped, was thrown or otherwise became entangled with said beaters which struck and beat Plaintiff causing him to suffer a compound comminuted fracture of the upper left tibia, a fracture of the neck of the right fibula and injury and damage to the knee joint of said leg, extensive lacerations, bruises

page 6] and contusions of both lower extremities and other injuries each and all of which caused Plaintiff to suffer great, severe and disabling injuries, extreme physical pain and suffering and mental anguish, temporary and permanent disability, extreme disfigurement of the lower extremities, hospitalization and medical treatment in excess of \$6,500.00 lost time and diminution of future earning capacity each and all of which damaged Plaintiff in the amount of \$100,000.00.

15. That the Defendant impliedly warranted that the wagon was fit for the purpose for which it was designed, that it was a fit and safe mechanism to be used for grinding fodder, and that said product was fit and suitable for that purpose. That in reliance upon Defendants skill and judgment and its implied warranties of fitness for the purpose intended, the Plaintiff used it.

16. That said wagon was in fact not fit for use for its intended purpose and as the proximate result of the breach of said warranty of fitness, your Plaintiff sustained the injuries and damages as herein alleged.

17. That the Defendant impliedly warranted that said wagon was of merchantable quality fit and safe and in proper condition for the ordinary use for which said wagons are designed and used. That in reliance of said implied warranty of merchantability, said wagon was purchased and used.

18. That said wagon was not merchantable quality and was unfit, unsafe, and unusable for the purpose for which it was intended and as a result thereof, the Plaintiff sustained the injuries and damages as herein alleged.

page 7] 19. That the Defendant knew that its wagon would be sold to the public and would be used by persons such as the Plaintiff, and would be relied on by such persons, safely to do the job for which it was manufactured and hence the Defendant because of its position as a manufacturer, owed a strict duty to the Plaintiff not to harm the Plaintiff through the use of Defendant's product.

20. That the Defendant breached this duty and that as a result thereof, the Plaintiff sustained the injuries and damages herein alleged.

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Filed in Clerks office October 19, 1972

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GROUND'S OF DEFENSE

* * * * *

The defendant, Grove Manufacturing Company, herewith states its Grounds of Defense to the Motion for Judgment filed by plaintiff in this action.

1. As to Paragraph 1, defendant admits that it is a non-resident corporation with main offices in Greencastle, Pennsylvania, and it engages in the manufacture of farm equipment. Defendant does not know whether the other averments contained in Paragraph 1 of the Motion for Judgment

are true, nor does defendant know whether the other facts averred in said paragraph exist.

2. Defendant does not know whether the averments contained in Paragraph 2 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

3. Defendant does not know whether the averments contained in Paragraph 3 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

4. Defendant does not know whether the averments contained in Paragraph 4 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

page 18] 5. Defendant does not know whether the averments contained in Paragraph 5 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

6. Defendant does not know whether the averments contained in Paragraph 6 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

7. Defendant does not know whether the averments contained in Paragraph 7 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

8. Defendant does not know whether the averments contained in Paragraph 8 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

9. Defendant does not know whether the averments contained in Paragraph 9 of the Motion for Judgment are true, nor does defendant know

whether the facts averred in said paragraph exist; however defendant denies that the plaintiff was without fault as averred in Paragraph 9 of the Motion for Judgment.

10. Defendant denies the averments contained in Paragraph 10 of the Motion for Judgment.

11. Defendant does not know whether the averments contained in Paragraph 11 of the Motion for Judgment are true, nor does defendant know whether the facts averred in said paragraph exist.

12. Defendant denies the averments contained in Paragraph 12 of the Motion for Judgment.

13. Defendant denies the averments contained in Paragraph 13 and sub-paragraph (a), (b), (c), (d), (e) and (f) of the Motion for Judgment.

14. Defendant denies the averments contained in Paragraph 14 of the Motion for Judgment.

page 19] 15. Defendant denies the averments contained in Paragraph 15 of the Motion for Judgment.

16. Defendant denies the averments contained in Paragraph 16 of the Motion for Judgment.

17. Defendant denies the averments contained in Paragraph 17 of the Motion for judgment.

18. Defendant denies the averments contained in Paragraph 18 of the Motion for Judgment.

19. Defendant denies the averments contained in Paragraph 19 of the Motion for Judgment.

20. Defendant denies the averments contained in Paragraph 20 of the Motion for Judgment.

21. Defendant denies the averments contained in Paragraph 21 of the Motion for Judgment.

Defendant denies that plaintiff is entitled to recover \$100,000.00 with interest and costs or any other sum from defendant in this action.

PLEA OF CONTRIBUTORY NEGLIGENCE

While not admitting that it was guilty of negligence, but expressly denying same, defendant avers that Grayson C. Reed was guilty of contributory negligence barring a recovery in this action.

ASSUMPTION OF RISK

The Plaintiff, while engaged in the performance of the work for which he was employed by Robert L. Hardy, and while performing the acts averred in the Motion for Judgment, assumed all the risks attending the performance of said work and the operation of any machinery he was operating.

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Filed in Clerks Office October 3, 1972

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MOTION FOR SUMMARY JUDGMENT

* * * * *

Defendant, Grove Manufacturing Company, moves the Court for summary judgment based upon the pleadings, the depositions and facts disclosed by the record.

GROVE MANUFACTURING COMPANY

By /s/ Stilson H. Hall
Counsel

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Filed in Clerks office October 6, 1972

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GROUND OF MOTION FOR SUMMARY JUDGMENT

* * * * *

The defendant, Grove Manufacturing Company, herewith states grounds for its motion for summary judgment:

1. The averments in the motion for judgment and the depositions of the plaintiff and Edward L. Moten show conclusively that plaintiff was guilty of contributory negligence.

2. The averments in the motion for judgment and the depositions of the plaintiff and Edward L. Moten show conclusively that plaintiff assumed the risk attending the operation in which he was engaged.

3. The motion for judgment and the depositions filed in this action show that the defendant was without negligence.

4. The negligence of the defendant, Grove Manufacturing Company was not a proximate contributing cause of the accident and the injuries sustained by the plaintiff.

5. The condition of which plaintiff complains was not due to defective manufacturing and it clearly appears that the ensilage wagon was not purchased new from the manufacturer but was second-hand equipment upon which repairs had been made. Grove Manufacturing Company, defendant, was not responsible for the condition of the wagon at the time plaintiff was injured.

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Filed in Clerks Office March 13, 1973

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(FINAL) ORDER

* * * * *

After hearing argument of counsel, and upon due consideration of the motion of Grove Manufacturing Company for summary judgment, the Court is of the opinion that said motion should be granted for the same reasons cited in the Memorandum Opinion in Law No. 3892. A copy of said Memorandum Opinion is attached hereto.

It is therefore ADJUDGED and ORDERED that the defendant's motion for summary judgment be and the same is hereby granted; and it is further adjudged and ordered that the plaintiff shall have and recover nothing from the defendant in this action, and final judgment is entered for the defendant, to which rulings of the Court, the plaintiff, by counsel, objects and excepts.

ENTER this 13th day of March, 1973.

/s/ Carleton Penn

Judge

* * * *

Filed October 4, 1972

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MEMORANDUM OPINION OF COURT BELOW
LETTER OPINION OF COURT BELOW, November 27, 1972
Set Forth Under Record No. 730, 378

* * * *

Filed in Clerks Office March 29, 1973

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * *

NOTICE is hereby given that Grayson C. Reed, Plaintiff, excepts to and appeals from a final judgment rendered and entered by the Circuit Court

of Loudoun County, Virginia, on March 13, 1973 granting summary judgment to the Defendant, Grove Manufacturing Company, and granting and entering a final order of judgment for the Defendant, Grove Manufacturing Company and Plaintiff hereby announces and gives notice of his intention of applying for a Writ of Error and Appeal with Supersedeas, if appropriate, to the Supreme Court of Virginia.

PLAINTIFF'S ASSIGNMENT OF ERROR

1. The Trial Court erred in granting summary judgment on the ground that contributory negligence was established as a matter of law on the part of Plaintiff.

2. The Trial Court erred in granting judgment to Defendant and such judgment was erroneous as a matter of law and fact.

3. The Trial Court erred in refusing to submit the appropriate and requisite issues to a Jury Trial.

page 44] 4. The Trial Court erred in refusing to consider Plaintiff's pretrial exhibits offered by the Plaintiff.

5. The Trial Court erred in failing to give proper credence to plaintiff's pretrial exhibits when tendered by the Plaintiffs in connection with their offer of proof.

6. The Trial Court erred in refusing to submit to Trial by jury those issues as were properly the province of the jury rather than the Court.

7. The Trial Court erred in reaching its decision only on certain portions of the depositions and ignoring or refusing to consider other

portions of the depositions which denied or contravened those portions relied on by the Court.

8. The Trial Court erred in relying only on the depositions in reaching its decision rather than considering all the evidence.

9. The Trial Court erred in relying on certain portions of the depositions which contained incompetent, irrelevant and immaterial testimony.

10. The Trial Court erred in refusing to allow Plaintiff to present a complete case at trial.

11. The Trial Court erred in that the Court considered and decided issues of facts which were under applicable law solely within the province of the Jury.

12. The Trial Court erred in that it failed to consider and give proper consideration to the effect of the local customs and usage.

13. Inasmuch as there is no requirement that the Plaintiff make out his whole case during the pretrial activities, the Court erred in dismissing the case over Plaintiff's objections that his case was not complete.

* * * * *

AFFIDAVITS OF MEREDITH R. BEACHLEY, ASBURY N.
SMITH AND MERLE E. ANDERSON - Set Forth Under Record
No. 730, 378

* * * * *

FOR ALL THREE CASES (No. 730, 389; 730, 379; 730, 382)
DEPOSITION OF GRAYSON CARROLL REED

* * * * *

page 6]

Q. When was the first time, during the time that you've been a farmer, that you ever came in contact with an ensilage wagon?

A. 1969.

Q. 1969?

A. Yes.

Q. And whose ensilage wagon was that?

A. That was Paul Stone's.

Q. Do you know what type ensilage wagon it was?

A. Yes, it was a John Deere.

* * * * *

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Q. Now, you know that we are here today about this injury you sustained in using Mr. Hardy's ensilage wagon. Is that what you would also call an ensilage wagon?

A. Yes.

Q. And what kind of wagon was that?

A. That was a Grove wagon.

Q. Can you tell me how this wagon of Mr. Hardy's differed from the wagon that you had used before, the John Deere?

A. I don't know that there was too much difference in the wagon.

Q. You don't think it was much different?

A. No, sir, I don't.

Q. Now, these wagons have what are termed beaters in them, do they not?

A. Yes.

Q. And what is the purpose of a beater?

* * * * *

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A. They unload the stuff to the front end of the wagon.

Q. The beaters unload it?

A. The drag chains pull it up, and the beaters pull it off so it will go on to the belt and into the silo.

Q. I see. So these beaters, they are not intended to cut anything up, or anything like that?

A. No.

Q. Now, the John Deere that you had operated before in '69, did it also have beaters?

A. Yes.

Q. And did it also have drag chains?

A. Yes.

Q. So most ensilage wagons are basically the same, is that correct?

A. Yes, they are basically the same.

Q. Now, on the date that you were injured, will you tell us how the accident happened?

A. I was on Mr. Hardy's wagon the day I was injured. Well, the chains was broke on it, the drag chains was broke, and the John Deere man come out there and said that it would have to be unloaded before he could fix it.

* * * * *

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Q. And?

A. So we took it out into the field to unload it, and the beaters was running on the front of it, and I was throwing the ensilage off.

Q. Pardon, I didn't hear that?

A. I was throwing the ensilage off with a fork and slipped into the beaters.

Q. Now, you say the chains were broken in the wagon?

A. The drag chains was broken in the bottom of the wagon.

Q. Both of them were broken?

A. Both of them were broken.

Q. None of the drags were working?

A. No.

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Q. And did you all use it on Saturday?

A. I put a load on it Saturday afternoon, and the chains broke on it, and we never got the load off.

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Q. Did you ever see that the chains were broken?

A. Oh, yes, I seen after he said they were broken, they were broken. I looked in then, and they were broke.

* * * * *

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Q. You looked under the wagon?

A. I looked under the wagon, and they were broke.

Q. There are different sets of levers to operate the beaters and the drag chains and the conveyor, are there not?

A. Yes, there are different sets of levers on there.

Q. Now, can the beaters operate by themselves without the conveyor belt working?

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A. Yes.

Q. And can the beaters operate while the drag chains are not operating?

A. Yes.

Q. So all of these things can operate independently?

A. Yes

Q. Now, you say that you put one load on, and you couldn't get it off because the chains were broken?

A. Yes.

Q. Did you take that load off that day?

A. No.

Q. You left it on the wagon?

A. That was the same load that I was throwing off on Tuesday.

Q. So the wagon was never unloaded from Saturday until Tuesday when you were injured?

A. It was never unloaded until Tuesday.

Q. Now, you mentioned that somebody came out from John Deere?

A. Yes.

Q. And would that be from Carlyle & Martin?

A. No, that is Carlyle & Anderson in Purcellville.

Q. Do they sell John Deere equipment?

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A. Yes, in Purcellville.

Q. And it was somebody from there who came out?

A. Yes.

Q. Do you know who the gentleman was who came out?

A. No, I don't. I don't know what his name was.

Q. Do you happen to recall him? Had you ever seen him before?

A. No, I don't think I'd ever seen him before.

Q. Have you seen him since this occurred?

A. No.

Q. Did this man look at the wagon?

A. Yes, he looked at it.

Q. And what did he say?

A. He said it would have to be unloaded before he could fix it.

Q. And did he give you any instructions on how to unload it?

A. No.

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Q. Who was around at the time that the gentleman came out from Carlyle & Anderson?

A. His wife, Mr. Hardy's wife, was there.

Q. Anyone else?

A. And one of the colored fellow who worked there, Mr. Moten.

Q. Mr. Moten, M-o-t-e-n (spelling), is that how you spell it?

A. Yes.

Q. Now, did the representative from Carlyle & Anderson stay around while you started to unload it?

A. No.

Q. He left?

A. Yes.

Q. Did he give you any instructions or anything as to what to leave running while you were unloading it?

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A. No, all he said was it had to be unloaded before he could fix it.

Q. He made no indication, or gave you no indication, as to how he thought you should do it?

A. No.

Q. The machine is still hooked up to the tractor, right?

A. Yes.

Q. And what was running on the machine at the time you were unloading?

A. The beaters and the conveyor belt down in front of the wagon.

Q. Now, why did you leave the beaters running while you were unloading it?

A. Well, that's the easiest way to throw it off.

Q. Can you explain to me how you were throwing it off?

A. I was throwing it into the beaters, and it was going out onto the ground.

Q. Now, how full was the wagon before you started unloading?

A. It was full up to the top, like it always is.

Q. Full up to the top?

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A. Yes.

Q. This wagon has sides about six to eight feet tall?

A. Yes, it was taller than I was.

Q. Taller than you were?

A. Yes.

Q. And how did you get into the wagon to unload it?

A. Went in from the back end of it.

Q. Now, when you say the back end, is that in distinction, or opposite from the end where the beaters are?

A. Yes.

Q. So we'll call the back end--

A. That's the back of the wagon.

Q. Pardon?

A. That's the back of the wagon.

Q. The back of the wagon has a big door that lifts up, does it not?

A. Yes.

Q. And at the other end are the beaters?

A. Yes.

Q. And the drag chains when they were operating pulled the ensilage toward the beaters, right?

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A. Pull toward the front of the wagon.

Q. And the conveyor belt that you are talking about is also right below the beaters, right?

A. Yes, it runs this a way.

Q. Now, you went in from the back, is that correct?

A. Yes.

Q. And what did you do, just stand up on top of the ensilage?

A. Yes.

Q. And you were standing on top of the ensilage and throwing it down toward the beaters, is that correct?

A. Well, I had done unloaded some of it before that. We had some of it unloaded off the wagon.

Q. You mean before you got into it?

A. Yes.

Q. Were you standing on top of ensilage when you first started unloading it?

A. Yes.

Q. And how much ensilage do you think you were standing on at the time? I mean in depth, when you first started unloading?

A. Oh, I imagine - - it had settled down. I imagine about five feet.

page 20] Q. About five feet?

A. (Nodding head.)

Q. How long had you been working unloading inside the wagon when you were injured?

A. I guess about a half hour.

Q. About a half hour?

How much of the wagon had you unloaded at the time you were injured?

A. We had about half of it off.

Q. Now, when you say half, would that mean that the front half of the wagon would be sort of empty, or were you taking it from the top, and the stack was going down so far as height was concerned?

A. Well, the colored fellow was working on the back of the wagon, and I was working on the front. There was two of us unloading.

Q. And what did he do on the back?

A. He threw it out the back of the wagon.

Q. He threw it out the back, and you were throwing it out the front?

A. Yes.

Q. This Mr. Moten, do you know where he lives?

page 21] A. Yes, he lives over in Maryland.

Q. He lives in Maryland?

A. Yes.

Q. Did anybody indicate to you to be careful and watch what you were doing around those beaters?

A. No.

Q. Mr. Moten didn't say anything to you?

A. No.

Q. Mr. Hardy didn't say anything to you?

A. Mr. Hardy wasn't there. He was working.

Q. Mrs. Hardy didn't say anything?

A. No. all she told us was to unload it.

Q. Now, at the time you were injured, were you still standing on ensilage?

A. Yes, but I was down further toward the bottom of the wagon when I was injured. Some of it was off the top then.

Q. How much ensilage do you think would have been under your feet at the time that you were injured?

A. I don't know. I imagine about three foot, maybe a little better.

Q. And when we are speaking of ensilage, what are we speaking of?

page 22] A. Chopped up fodder, corn.

Q. Chopped up corn, things like that?

A. Corn and fodder.

Q. How close were you to the beaters when it happened?

A. I don't really know. The ensilage give out from under my feet, and I went down feet first into the beaters.

Q. So at the time that you were injured, then, when you went into the beaters, you went in because the ensilage below you gave way, is that correct?

A. Yes, it gave way under my feet.

Q. So the beaters then were operating in a normal manner at that time, is that correct?

A. Yes.

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Q. There was nothing about the wagon that was actually operating in an abnormal manner at the time that you fell into the beaters, is that correct?

A. The drag chains wasn't working on it at the time that I fell into it.

Q. Well, they weren't working at all, is that correct?

A. No, that is correct.

Q. So they were not working abnormally, they were just not operating at all?

A. They just were not operating.

Q. And the conveyor belt was operating in a normal manner?

A. Yes, it was working.

Q. And actually what happened was that the ensilage below your feet went out from under you?

A. Yes.

Q. Had you slipped before, had you sort of slipped or anything before while you were unloading it?

A. No.

Q. This was the first time that you had slipped at all?

A. It's the first time that I'd slipped.

Q. Had you ever unloaded an ensilage wagon by hand before?

A. No, that was the first one.

Q. And am I correct, you do not know how close you were to the beaters at the time this occurred, is that correct?

A. Not exactly

Q. Well, can you give me your best estimate?

A. Well, the ensilage slacking down, I imagine I was four or five feet from the beaters.

Q. Yes.

A. You see, it was slacking down like that, the ensilage was.

Q. You were standing on top, let's say, of a little bank sort of, of ensilage?

A. Yes.

Q. Were you right at the top of this bank you say that was slanting up towards you?

A. No, I wasn't kind of up the top of it, I was standing on the side of it.

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Q. Standing on the side of it. So you were standing then on a pile of ensilage that was angled toward the beaters, is that correct?

A. Yes, slanting off.

Q. Did both of your legs go into the beaters?

A. Both of them.

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* * * * *

A. Mr. Hardy called me on the telephone that morning before he went to work.

Q. Did he tell you what he wanted you to do?

A. Yes.

Q. What did he tell you?

A. He told me he wanted to fill the silo, that they was coming out from Carlyle & Anderson to fix the wagon.

Q. Did he tell you whether or not you should unload the wagon?

A. No, he didn't say anything about unloading it.

Q. And when you got to work, the only person who was there was Mrs. Hardy and Moten, is that right?

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A. That's right.

Q. And what, if any, directions did Mrs. Hardy give you?

A. She didn't give us any at that time. We went on to the field. We had another wagon and started to haul with it. And then the man from the John Deere Company come.

Q. Where was the wagon for the John Deere repairman that day?

A. It was sitting at the silo at the barn.

Q. Did he suggest that you move it to the field?

A. He suggested for us to unload it. He said we had to unload it.

Q. And who made the decision to take it to the field to unload it so the cattle would eat it?

A. Mrs. Hardy.

Q. She told you to do that?

A. Yes.

Q. How did you get the wagon to the field?

A. Pulled it out with the tractor.

Q. Did anyone direct you to get up on this ensilage and feed it into the beaters?

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A. No.

Q. You decided to do that on your own?

A. Yes.

Q. All of the ensilage could have been thrown off from the rear couldn't it, like Moten was doing?

A. Yes, I guess it all could have been thrown off that way.

Q. And you decided the quickest way to do it was to start these beaters working and you would get up on the ensilage and throw the ensilage into the beaters, is that correct?

Q. Yes.

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A. It must have been about 2:30.

Q. You'd been working on this for about an hour before this accident happened?

A. An hour or a little less.

Q. I believe you stated earlier in your testimony today that you were

familiar with another type of wagon?

A. Yes, I had used a John Deere wagon.

Q. And that the operating parts of the two wagons were very much the same?

A. Yes, all of them are very much the same.

Q. As I understand the fact that these--what do you call those things that were broken?

A. The drag chains.

Q. The drag chains. I understand that the drag chains were broken and were not operating at all, is that correct?

A. That is correct.

Q. And they had nothing to do with your fall?

A. No, I wouldn't--

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Q. Can you answer the question, if you can, did these drag chains that were not functioning have anything to do with causing you to fall?

A. Well, they caused me to have to unload it, by them being broke.

Q. But otherwise they had nothing to do with your fall, is that correct?

A. No, they didn't have nothing to do with the fall. They were causing me to be in the wagon because they was broke.

Q. Did you make any inquiry from Mr. Hardy or anyone else as to whether or not it was safe to be on this ensilage unloading it with these beaters operating?

A. No.

Q. You made that judgment yourself?

A. Yes.

Q. Who decided that you were to get up on the ensilage and push it into these beaters, you or Moten?

A. Well, Moten was on one end, and I thought I'd get up on the other end and push off the other end.

Q. Could you, with the aid of a pitchfork, have thrown this ensilage over the side of the wagon, rather than push it into the beaters?

A. Well, it would have been pretty high to throw it over. It was higher than my head.

Q. At the time that you got up on the ensilage and started pushing it into the beaters, did you consider that you were in a dangerous position, or did you consider that was safe?

A. No, I never thought anything about it.

Q. What caused the ensilage to give way with the consequence that you fell?

A. My weight on it I guess, pushing down on it, caused it to give way.

Q. Have you been in communication with the Grove Manufacturing Company since this accident?

A. No, I ain't.

Q. And I understand from your testimony, from Mr. Palmer who examined you, that you had been fully familiar with this type wagon and the way it operated before this accident happened?

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A. Yes, I'd worked with them before, yes.

* * * * *

Q. He just said get the ensilage off?

A. He said get the ensilage off before he could fix it, and he left and went back.

Q. Did he tell you that there was any danger in unloading it in the fashion in which you proceeded to unload it?

A. No. He never told us anything.

Q. Did you ask him whether it was safe to do that?

A. No.

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EXAMINATION BY COUNSEL ON BEHALF OF THE PLAINTIFF

BY MR. HARTSHORN:

Q. Mr. Reed, on the day of this accident, what kind of shoes did you wear?

A. Just ordinary, everyday shoes.

Q. Well, tell us what kind that was; when you say everyday shoes, what kind of shoes?

A. Well, shoes that come up to your ankle with rubber soles on them.

Q. High side shoes?

A. Yes, come up to your ankle.

Q. Were they farm type shoes?

A. Farm type shoes when people--like people wear when they work on a farm or someplace.

Q. The first time you had seen the Grove wagon was on Saturday when Mr. Hardy brought the vehicle out?

A. That's the first time I'd seen it.

Q. Now, on the Tuesday in question, did you know that the beaters could be stopped by a gear?

A. No.

Q. When was the first time that you ever heard that these beaters could be stopped by a gear?

A. No.

Q. When was the first time that you ever heard that these beaters could be stopped by a gear?

A. After the wagon had gone back up there, and then it had been sold again.

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Q. And how long was that after the accident roughly?

A. It must have been last February sometime.

Q. Maybe six months or a year after the accident?

A. No. Well, maybe six months.

Q. Maybe six months. And where were you when you found out, or were told, that the beaters could be stopped by a separate gear?

A. Up the other side of Hagerstown, at the same wagon I was hurt in.

Q. You were viewing the wagon with someone else?

A. Yes, me and Mr. Weatherly was up there.

Q. Who was it that told you that the beaters could be stopped?

A. The man that bought the wagon again.

Q. The man who bought the wagon?

A. Another farmer who bought the wagon.

Q. On the Saturday when it was delivered, and on the Tuesday when you unloaded it, or where in the act of unloading it, were there any signs or warnings or

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instructions attached to that wagon as to how to stop the beaters and so forth?

A. No.

Q. Were there any warnings or signs indicating that you should not unload the wagon from inside?

A. No.

Q. And hand unload it?

A. No.

Q. Could you have unloaded the wagon standing on the ground?

A. No.

Q. There is no way in the world you could do that?

A. No way you could have done it.

Q. So in some form you had to get up in the wagon to unload it?

A. No way you could unload it.

Q. So in some way, shape or form you had to get up in the wagon to unload it?

A. You had to get up in the wagon to unload it. You couldn't do it standing on the ground.

Q. At any time either the Saturday or the Tuesday that you were injured, did you have any--well, you were never in the wagon on Saturday, were you?

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A. No.

Q. On Tuesday when you were in the wagon, did you have any reason or feeling to believe that you were in any danger?

A. No.

Q. How long do you calculate that it would have taken the two of you working together, you and Moten, to unload that wagon?

A. I imagine it took a couple of hours. There's about three tons of stuff on that wagon.

Q. To completely unload it?

A. Yes.

Q. And you started at what time, about 2:30 you said?

A. About 2:30.

Q. So, with two of you working, it would have taken until maybe 5:30 or so, according to your calculations?

A. It would have taken around two hours or a little better to unload.

Q. And during the time both of you were working, throwing off about the same amount of stuff?

A. Yes.

Q. So if one man were working, it might take as much as four hours or better?

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A. Yes.

Q. Did you see anything on the vehicle that indicated that there was any type of a safety belt that you could attach to yourself when you were up on it?

A. No.

Q. Or any signs to indicate that you should use some form of a safety belt?

A. No.

Q. Were there any shields over the beaters, or anything that would prevent you from falling against them?

A. No.

Q. They were open and right there?

A. They were open.

Q. Now, you say that Mrs. Hardy was the one that gave you the orders after you came back from lunch to unload the wagon on Tuesday.

A. To unload the wagon, yes.

Q. Had you ever, from time to time, taken instructions from Mrs. Hardy in the operation of the farm?

A. Oh, yes, when Mr. Hardy wasn't home. You see, he wasn't there through the day. He worked.

Q. I see.

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Q. And she gave out the instructions there at the farm?

A. Yes.

Q. So it was not unusual for you to take orders from Mrs. Hardy?

A. No.

Q. Had you ever been around one of these wagons when the drag chains

had broken before this date or before this time?

A. Yes, I was around once before when it was broken. It was only one of them broke at that time, and they still unloaded with one chain. The one chain dragged the whole load.

Q. It still unloaded itself?

A. Yes. You see, the drag chain is in two pieces, two trains, one on each side of the wagon.

Q. When both drag chains break, it doesn't move the load at all?

A. It won't move it at all then. It just sits there.

Q. Could you tell in looking at the equipment either on that Saturday or the Tuesday in question, whether both drag chains were broken?

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A. Yes, both of them were broken.

Q. What did the condition of the drag chains look like when you viewed them?

A. Well, they was wore some.

Q. What made you think they were worn?

A. Well, you can tell when they are worn. They are round, and when they wear off, they wear off flat where the links are fastened together.

Q. Did you see any indication that they had been patched before?

A. Yes, I seen where some new links had been put in them before.

Q. When you felt this ensilage give way under your feet as you previously described, was there anything on the wagon that you could grab, any safety bars or anything like that?

A. No, there is nothing you can grab.

Q. Were there any bars up toward the beaters that you could grab onto, that you could hang onto?

A. No.

Q. Did you have time to do anything to keep you from falling into those beaters?

A. No. It happened so quick, I didn't have time to do nothing.

Q. The only thing you had time for was to cry out for help?

A. Dry out for help.

Q. Did you indicate that you were thrown over the beaters, you went up over them?

A. I went up over them. They run that way.

Q. They beat upward?

A. Yes, they beat upward.

Q. In some fashion, and threw you up over?

A. Yes, on top.

Q. Are there two sets of beaters, an upper and a lower set?

A. Yes.

Q. Did you go in below the upper set and over the lower set, is that what you are saying?

A. I went in the lower set. I was going over top of the other ones. I couldn't go between them.

Q. How close are they together? How close are these beaters together?

A. Oh, they ain't but that far apart (indicating).

Q. The lower and upper?

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A. That's where I was when Moten stopped the tractor, laying on that belt. One leg was still fastened in the beaters.

Q. One leg was still entangled in the beaters?

A. Yes.

Q. And you say that Moten stopped it by stopping the tractor?

A. Yes.

Q. Had you operated any gears on that wagon that day?

A. No.

Q. Had you operated any gears on that wagon on the Saturday?

A. No

* * * * *

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A. The 9th.

Q. What is that?

A. The 9th of this month.

Q. The 9th of March. And at that time, is it your understanding it is to be determined whether or not you have permanent disability, and if so, how much?

A. Yes.

Q. You have been asked why you threw ensilage in toward the beaters so that it could be carried off. Did you feel that it was safe to do it that way at the time?

A. Well, I didn't feel any danger about it at the time.

Q. And you didn't appreciate that there was any risk at that time at all?

A. No.

Q. Before this accident, were you working full time?

A. Well, at both places I was working full time.

Q. Well, between the two places were you working full time?

A. Yes.

* * * * *

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BY MR. PALMER:

Q. Mr. Reed, is it my understanding that you didn't know how to operate this machine at the time this happened?

A. Didn't know how to operate it? Well, I know how to unload it, yes.

Q. You knew how to unload it?

A. Well, if it had been working, I knew how to use it.

Q. You knew that there were three levers, one for the beaters, one for the conveyor, and one for the drag chains?

A. No, I didn't know there was one on there to cut the beaters off.

Q. You didn't know that?

A. No.

Q. But you knew on the John Deere that you'd worked on before they had three, isn't that right?

A. Yes, the John Deere I knowed.

Q. Now, did Mr. Moten know how to operate this machine?

* * * * *

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A. I reckon. He's the one that was unloading. I wasn't supposed to be unloading it.

Q. So Mr. Hardy never gave you any instruction on how to operate this machine?

A. No.

* * * * *

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Q. And you didn't think you were taking any risk by standing inside and shoveling this stuff toward those beaters?

A. No, I didn't think so.

MR. PALMER: That's all I have.

FURTHER EXAMINATION BY COUNSEL ON BEHALF OF THE
DEFENDANT GROVE MANUFACTURING COMPANY

BY MR. KUYKENDALL:

Q. Now, Mr. Reed, I want to just review briefly something that I have been over with you to a certain extent, but I want to be sure I understand you.

It is my understanding that this wagon was taken out to the field for the purpose of getting the ensilage unloaded:

A. Yes.

Q. And that you felt that the quickest way to

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unload it, was to have the beaters operating so that you could shovel this ensilage into the beaters, and they would throw the ensilage up on

the conveyor belt, is that right?

A. That's right.

Q. Now, you wanted the beaters operating to facilitate the unloading of the ensilage, didn't you?

A. That's right.

Q. And if you had been aware of the location of the lever by which you disengaged the beaters, you wouldn't have used it, because you wanted the beaters operating, is that correct?

A. Well, I don't know. You could have put it on the belt without the beaters working.

Q. But you just testified that you wanted the beaters operating because it would help you hurry the job up?

A. Yes.

Q. So you wanted the beaters operating, didn't you?

A. Yes.

Q. And if you had known where the lever was located that would have disengaged these beaters, you wouldn't have used it, because you wanted the beaters to operate, isn't that right?

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MR. HARTSHORN: I want to object to that on the grounds that I think that's all speculative inasmuch as the man indicated he didn't know that the beaters could be stopped.

MR. KUYKENDALL: Well, I am asking him if that's the fact.

MR. HARTSHORN: Well, if he didn't know the beaters could stop, why have any speculation on it.

BY MR. KUYKENDALL:

Q. He made the objection, you can answer the question.

Isn't that a fact?

A. Yes, they was running. I throwed it in there, and they was already running.

Q. And you wanted them to run, because it would hurry up the job, didn't you?

A. Yes, it would hurry up the job.

* * * * *

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Q. And where is the lever that controls the operation of the beaters on the Grove vehicle?

A. They are all on the front.

* * * * *

Q. But I am talking about the beaters?

A. The beaters, yes, that's on the front.

Q. Yes. And the lever that operates the beaters on the John Deere is on the front of the wagon?

A. Yes, they are all on the front.

Q. So, if you had wanted to stop the beaters, you would have looked to the front to see if the lever was there, wouldn't you?

A. Yes, if I'd wanted to stop them.

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Q. And you would have found it there had you looked?

A. Yes, I'd have found it if I'd looked for it I reckon.

Q. Before you started to work on this wagon, that is, to get up on the ensilage and start moving it, did you look to see if there were any signs or directions on the wagon about how you operated it?

A. No, there were no signs on how to operate it.

Q. Did you look for any?

A. Yes, I looked. There was none on it.

Q. Why did you look?

A. Well, I always look at them.

Q. Well, what did you expect-- what were you looking for? What information did you want?

A. Well, some of them tells you not to get in the wagon, the hay balers and stuff has got signs on there to stop them to work on them..

Q. Well, is there a sign on the wagon that is operated by John Deere?

A. I don't know.

MR. HARTSHORN: I object to that. It has no bearing on this case.

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Q. Does it?

A. I don't know.

MR. PALMER: For the record, it does have a bearing on this case.

BY MR. KUYKENDALL:

Q. Did you ever look on the John Deere wagon to see if there were any signs or directions about how to operate it, and respecting the danger in operating it?

A. No. I didn't use that John Deere wagon but one year, and that was in '69, and I never looked on it.

Q. Where did you look on the Grove wagon for signs or directions?

A. Well, it is usually on the side where the levers is around the front.

Q. Well, when did you look to see if there were any signs or directions on the Grove wagon?

A. I don't know the time.

Q. Did you say you looked to see if there were any signs that indicated that it might be dangerous to use the wagon?

A. There wasn't none on them.

Q. I said, did you say that you looked for a sign?

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A. Yes, I looked for them, but they weren't on them.

Q. Did you have any question about whether it would be dangerous to operate the wagon?

A. No.

Q. Then why were you looking for the signs?

A. Well, I was just looking around the wagon.

Q. Did you ask the man who had come there from the John Deere place if it was dangerous to get up on the ensilage and operate it?

A. No.

Q. Did you look for signs before he got there, or after he left?

A. After he left.

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BY MR. HARTSHORN:

Q. Did the John Deere wagon ever break down at any time you were running it?

A. No.

Q. Did any wagon that you've ever worked on break down other than this Grove wagon?

A. No.

Q. Do you have any reason at all to try to stop any beaters on any wagons?

A. No.

Q. And you say on the date in question, Moten was operating the wagon?

A. Yes.

MR. HARTSHORN: I have no further questions.

* * * * *
DEPOSITION OF ROBERT LEROY HARDY

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Q. Where is it located?

A. In Lovettsville, or near Lovettsville.

Q. How big is your farm?

A. 123 acres.

Q. And have you employed Mr. Reed here in the past?

A. Yes, sir.

Q. And directing your attention specifically to September of 1970

he was working for you then, is that correct?

A. Yes.

Q. And he was working for you I believe when he was injured?

A. Yes.

Q. He was injured, I believe, while he was working in a Grove wagon,
is that correct?

A. Right.

Q. Do you recall where you bought that wagon?

A. Yes.

Q. Where was that?

A. At Carlyle & Martin.

Q. And where is Carlyle & Martin located?

A. Hagerstown.

Q. And do you recall on what date you actually obtained the wagon?

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A. I could probably come pretty close to it. Mr. Reed was injured I believe on September 29th, and the wagon I believe was bought two Saturdays previous to that.

* * * * *

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Q. Do you recall what the circumstances were that you wanted another wagon at that time?

A. Yes. We had a problem with the wagon we were using.

Q. I see. What kind of wagon was that?

* * * * *

A. G-e-h-l (spelling).

Q. So you called Mr. Carlyle on that Saturday to ask him about a new wagon?

A. I asked him if he had any other wagons, yes.

Q. And what did he say when you called him?

A. I asked him for a good, used wagon. He said he had two Grove wagons that had just come in, and they were both identical in year and model, and I could have either one I wanted for \$1350.

Q. Now, he said they had just come in?

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A. Yes.

Q. Did he indicate how long he'd had them?

A. He didn't but he indicated that they hadn't been there long. He had taken them in just recently.

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A. I just looked under them to see if the undercarriage was all right, and see if the chain running through them wasn't broken.

Q. And when you looked at that time, was the chain all right?

A. Yes.

Q. And then you drove it, towed it, I believe, down to your farm?

A. Yes.

Q. What did you use to tow it?

A. A pickup truck.

* * * * *

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Q. Then did somebody from Carlyle & Martin come out or Carlyle & Anderson?

A. First, you know--I am giving this by what I know of it because I was not there myself. All this time I was at work.

Q. All right.

A. After we unloaded it, they came out and looked at it, and I presume they did something to it. Then we tried it again, and again it wouldn't work. And this is when Mr. Reed and Mr. Moten were unloading.

Q. Could it have been that you got the wagon down there on a Saturday, and it was the following Tuesday that Mr. Reed was injured?

A. It could have been, but I don't remember it that way, but I wouldn't trust my memory going back that far without looking up the dates, but I believe Mr. Reed went to the hospital somewhere around Tuesday, September the 29th, and we could look up, if I could find the date when that wagon was delivered, that would clear that up if that would make that much difference to you.

* * * * *

Q. Now, Mr. Hardy, you stated that the drag chains wouldn't work. Were they broken?

A. The drag chains sort of run together at this point. I've

repaired drag chains in several wagons, and I hate to say positively one way or the other that they were or were not.

Q. You are just not sure, is that it?

A. Yes.

Q. Would you recall if you had looked under and had seen any broken links under there?

A. It wasn't broken when I first went up and picked it up, no.

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Q. When you got back, did you instruct Mr. Reed or Mr. Moten how to operate this machine?

A. I don't think I could give them much instruction on them. They both have more experience at it than I do, really.

Q. The two machines that you had on your farm before, do they operate virtually the same way as the Grove machine?

A. Yes. The only difference would be that one would discharge from one side, the left, and the other would discharge from the right.

Q. And on these machines, would the beaters, the drag chains, and the conveyor belt operate independently of each other?

A. Some wagons are set up that way. I don't know at this point whether the Grove wagon was set up that way or not.

Q. Now, when you bought this from Carlyle & Anderson, the Grove machine, did you have any discussion with Mr. Carlyle or Mr. Martin, about the operating condition of the wagon?

A. No, just that when I called them on the phone, he said that

both wagons were late model wagons, and that the man who had turned them in said that they were good and the only reason why he wanted to get rid of them is that he preferred his make of wagon over the one that he had.

Q. And did they make any representations to you at the time you bought this wagon about safety or anything like that?

A. How do you mean that?

Q. Well, did they tell you anything about how to operate it in a safe manner, or that this was an especially safe wagon, or anything like that?

A. No.

Q. And had Mr. Reed operated these two other wagons you had on your farm while he was working for you?

A. Yes.

Q. Now, so far as the individual who came out to the farm to try to repair the wagon, were you there when he came out?

A. No, I was not.

Q. Do you know if he made any repairs to the wagon when he was there?

A. I only know what my wife told me, that he had come to the door, and said that he had finished checking the wagon. What he meant by this, I don't know.

* * * * *

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Q. In other words, this Grove wagon was loaded with ensilage, and

the conveyor belt wouldn't work?

A. Right.

Q. So you had to get the ensilage off of it so that it could be repaired?

A. Right.

Q. And you and your son proceeded to remove the ensilage by shoveling it out the back?

A. Yes.

Q. You didn't turn the beaters and the conveyor belt on and let it take, or push the ensilage toward the conveyor, did you?

A. No sir.

Q. Why not?

A. It just seemed easier to unload it out the back.

Q. Did it occur to you that it might be dangerous to be on the ensilage and undertaking to remove it from the wagon while the beaters and the conveyor belt were operating?
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A. Well, we weren't operating it forward. We were going back. The beaters are at the front, and we didn't operate it that way very long. We did it by hand.

Q. You did not give Mr. Reed any instructions as to how to get the ensilage out of the wagon, did you?

A. Well, I wasn't there that day, when they had the accident.

Q. You didn't tell him before that the wagon should be unloaded and tell him how to do it?

A. No.

Mr. Reed had experience in farming, and he has more experience certainly than I do, so I didn't say anything to him about it.

* * * * *

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Q. And that in talking to Mr. Carlyle, was it, that you talked to?

A. Yes.

Q. He told you that he had a good, late model wagon, that it was in good shape, but the seller wanted a different wagon, that's the reason he turned them into him.

A. He was offering this by explanation I think of what the wagons were worth. They were two late model wagons, and I think he was trying to indicate to me that the man turned them in, and thought there was nothing wrong with them.

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Q. So, after you and your son had unloaded it, somebody came out from Carlyle & Martin or Carlyle & Anderson?

A. Carlyle & Anderson.

* * * * *

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Q. Did you have any conversation with Mr. Reed before you went to work, by telephone or otherwise?

A. Usually I saw him in the morning for a few minutes, but I don't recall what we said.

Q. You don't know what form of conversation you may have had with him that day?

A. No.

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DEPOSITION OF EDWARD L. MOTEN

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page 6]

Q. What were you doing, at the time of the accident?

A. Both of us were loading ensilage off the wagon.

Q. Unloading off the wagon?

A. Yes.

* * * * *

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A. Well, he bought it, he got the thing from out of I don't know, Hagerstown, somewhere, and, of course, he bought a couple of them, and he had a little trouble with them on the chain parts. They keep breaking and you have to unload it by hand, that's the only way he could get it off--that's the way I see it--they shove it off.

Q. You had to shove it off?

A. Yes.

* * * * *

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Q. When you are talking about these augers, are you talking about the beaters in front?

A. When he slipped off that thing, he slipped up the ensilage up toward the front and I guess he must have slipped and the thing was running.

Q. Are those the beaters, in the front, there, that go around?

A. They got two beaters, one on top and one down under the thing to pull the ensilage out, and the other things in there.

Q. There was ensilage in there, at the time you were working.

Is that right?

A. Yes, we almost had a load of it, to pitch off.

Q. You had to unload it?

A. Unload it, by hand, in order to fix, you know, your chains.

* * * * *

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Q. Did you leave it over there by the silo, or did you take it someplace else to unload it?

A. No, we brought it up in there. We took it over into up above his house to feed it to the cattle. It was the only way you could unload it, because you couldn't get into the silo with it.

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Q. Did you and Mr. Reed discuss how you were going to unload this, or anything like that?

A. Oh, yes, we did, I told him, of course, we was figuring I was going to get in the front, he was going to get the back, and I said, both of us get in the back, you know, but he said it wouldn't hurt nothing, as long as that thing wasn't running, you know, on the floor.

And, I still told him, you know, it's a little dangerous, is what it was. I didn't argue with him, I just went on and I got in the back of the wagon. But the door, see, you got a door to the thing you raise up and put two hooks on, then pull it so far, and unload some, you know, for the cows not to mess it up and, you know, and pull a little farther to keep on kicking it all the way off.

Q. There is a big door in the back that goes up, right?

A. Yes, there is.

Q. So, you actually discussed with Mr. Reed, then, whether or not he should go up in the front and unload that?

A. Yes, like I said before, like I told you before, I told him the same thing. I told him it was

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dangerous, which it was, so, he said you have ensilage piled up this way, and you have a fork--with a pitch fork, he was digging and pulling it this way, and the way I understand it, you know, feel about it--see, I was going around to the side of the wagon, about half-way between the wagon before I got up into the back of it, again to start from the back and he was unloading from the front. And, at that time, he slipped, and he just said, oh, my God, Dick, help me.

And, I said cut the tractor off, and he was just laying in that thing.

Q. The tractor, of course, you had that hooked up to the drive shaft, right?

A. Yes, he said to hook it up. He was more of a boss than I was.

Q. He was more of a boss than you were?

A. Yes, he said hook it up, and he said leave it running, it won't hurt nothing.

Q. Did you know if you could stop the beaters from running and leave the conveyor belt running, or anything like that?

A. I don't know. See, I don't know anything about that machinery. You have to tear them apart, I imagine you got chains and things running to it.

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Q. So far as you remember, there are two separate cogs, one for the beaters and one for the belt?

A. No, I didn't say that.

Q. You didn't, excuse me.

A. I didn't know what it was, we only stopped the thing, and the whole thing--

Q. You just stopped the chain?

A. Yes.

Q. Do you know if you could have stopped the beaters, and left the belt running?

A. I still don't know that, there, because I operated that under my

way of doing things, and I don't feel like I wanted a lot of ensilage on the belt thing, I would stop and pull the tractor and stop that, and then start the-- pull the clutch, and then start the tractor back up, because it, you generally sit on the tractor and work the whole thing when you are unloading off to the blower to feed into your silo.

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Q. I want to ask you just a couple questions. When Grayson Reed went onto that wagon that morning to unload the ensilage, was he standing up on top of the ensilage, pushing it down, when he slipped, or was he down on that bed of the wagon when he slipped?

A. Well, the ensilage is like, you push it down so far, you know, from your beaters and you push it with a pitch fork, then he turned his back to the beaters, pulling like I said, pull it with the pitch fork down, or when he dropped down to the belt, it would come right out and fall down on the ground and you would get out and cut the tractor off and pull it and restart again, like the same thing you're doing before.

Q. Where was he standing when he slipped, was he up on top?

A. He was on the ensilage, he couldn't stand on the floor because there was too much ensilage in the wagon.

Q. Did he fall at a position below the top of the ensilage when he slipped?

A. That, I mean, I don't know. We had a great deal off--and, he had

to slip, you know, like he would pull it down because he started before I got to the back of the wagon, and he hold to the wagon as you pull up, you know, and he stopped, and he start forking it out. He had one leg sitting up so on the ensilage like this, and one leg up on here pulling it, and I guess it's when his left foot, left foot, his left foot had to slip, I guess, you know, and it hooked him into the beaters, and it caught his pants or something or other.

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