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SUPREME COURT OF VIRGINIA
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JUN 10 1974
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740105

JESSIE S. MAXIE,

Appellant,

V.

JOHN DOE,

Appellee.

APPENDIX

R. Reid Young, Jr.
James W. Haskins
Young, Kiser & Haskins, Ltd.
60 West Church Street
Martinsville, Virginia 24112

Counsel for Appellant

Charles R. Warren, Jr.
Warren, Parker & Williams
Masonic Building
Danville, Virginia 24541

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

JESSIE S. MAXIE, Plaintiff, v. JOHN DOE, c/o Jack B. Russell Registered Agent for Zurich Insurance Company 1510 Ross Building Richmond, Virginia Defendant.	)	MOTION FOR JUDGMENT

TO THE HONORABLE JOHN D. HOOKER, JUDGE OF SAID COURT:

Plaintiff respectfully shows the following case:

(1) On or about December 14, 1971, Plaintiff was operating an automobile on Spruce Street Extension, in Henry County, Virginia.

(2) At the time and place aforesaid, the Defendant, John Doe, was operating an automobile.

(3) Notwithstanding the duties which the Defendant, John Doe, owed to the Plaintiff, Defendant was negligent in that:

(a) He operated the automobile under his control at an excessive rate of speed under the circumstances then and there existing;

(b) He operated the automobile under his control in a negligent manner in that he failed to keep a proper lookout for other users of the highway;

(c) He operated the automobile under his control

LAW OFFICES
YOUNG, KISER &
HASKINS
60 WEST CHURCH ST

in such a negligent manner that he caused the automobile to cross from its proper lane of travel into the lane of travel which was then being occupied by the Plaintiff, wrecking the Plaintiff's automobile and injuring the Plaintiff.

4. The identity of the Defendant, John Doe, is unknown to the Plaintiff.

5. As a direct and proximate result of the carelessness and negligence of the Defendant, the Plaintiff was caused serious and permanent injuries about her person, internally and externally, was caused excruciating pain and mental anguish, was required to incur great medical expenses and will be required to do so in the future, was permanently maimed and disabled, was required to suffer loss of earnings and earning capacity, and was rendered less capable of performing her normal daily tasks, all to her damage.

WHEREFORE, the undersigned doth move the Court for judgment against the Defendant in the amount of Fifty Thousand Dollars ($50,000.00).

JESSIE S. MAXIE

By James W. Haskins
Of Counsel

Young, Kiser & Haskins, p.q.
60 West Church Street
Martinsville, Virginia 24112

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

JESSIE S. MAXIE, Plaintiff	)	
V.	)	GROUNDS OF DEFENSE
JOHN DOE, Defendant	)	

Now comes the defendant, John Doe, and files his Grounds of Defense to the above styled action as follows:

1. The allegations of Paragraph One are admitted.

2. The allegations of Paragraph Two are denied.

3. Each and every allegation of Paragraph Three is specifically denied.

4. It is specifically alleged that John Doe was not present at the scene of this accident.

5. The allegations of Paragraph Five are denied.

6. It is specifically alleged that the plaintiff was herself guilty of independent acts of negligence which proximately contributed to cause her injury and would bar her recovery herein.

Respectfully Submitted,

JOHN DOE

By Counsel

WARREN, PARKER AND WILLIAMS
Counsel for John Doe
321 Masonic Building
Danville, Virginia 24541

By _____
Charles R. Warren, Jr.

C E R T I F I C A T E

I, Charles R. Warren, Jr., counsel for the defendant, John Doe, in the above styled action, do hereby certify that on the 22nd day of September, 1972, I mailed a true copy of the foregoing Grounds of Defense to James W. Haskins, of Young, Kiser & Haskins, counsel for the plaintiff, 60 West Church Street, Martinsville, Virginia 24112.

Charles R. Warren, Jr.

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21 **********
22 THE WITNESS, MRS. JESSIE S. MAXEY, having been first
23 duly sworn, testified as follows:
24 DIRECT EXAMINATION BY MR. YOUNG:
25 Q. You are Mrs. Jessie Maxey?

1 A. Yes sir.

2 Q. Mrs. Maxey, were you the driver of an automobile,
3 leaving the city of Martinsville, on December 15, at approxi-
4 mately 2:30 P. M., when an accident occurred?

5 A. Yes sir.

6 Q. Tell us exactly what happened?

7 A. I had started to my mother's. I just left the
8 beauty shop, and started to my mother's, which they call the
9 Irisburg Road, and I call it the Old Danville Road. I met this
10 car, at this high rate of speed, and it looked like it was coming
11 on top of me, on my side. I ran out of the road, on the right
12 side, but the curve was to the left, and as I ran out of the
13 road, I hit these gravels, and I lost control, and it spun,
14 and went off the road, and went down this embankment.

15 Q. Were you injured as a result of this accident?

16 A. Yes.

17 Q. How were you injured?

18 A. I had my back broke, and what the doctors call a
19 hematoma, or something, in my right leg.

20 Q. And the big thing was your back?

21 A. Yes.

22 Q. Does it bother you, at this time?

23 A. Yes.

24 Q. How does it bother you?

25 A. Well, by the end of the day, I can hardly make it.

1 Q. What type of work do you do?

2 A. I cut what they call heels, at DuPont - - - it's

3 when they send the things back to central storage , and

4 it has nylon on it, and you have cutters that cut it off.

5 Q. It's on spools - - - this is your job?

6 A. Yes. There's something like a spool.

7 Q. Had you had any trouble with your back, before the

8 accident?

9 A. No. I was working in ply-wrap, before that.

10 Q. Can you give us any better description of the auto-

11 mobile that you say ran you off the road?

12 A. It was practically a new car, but as to say what

13 kind it was, I can't.

14 Q. Could you tell who was in it, or how many people?

15 A. One man.

16 Q. Was he white or black?

17 A. A white man - - - it excited me so, I could tell he

18 was going to come on top of me, because it was on my side of

19 the road.

20 Q. Is there a center line in the road?

21 A. No sir.

22 Q. Using a center line as a reference point, can you

23 give us any idea how far that car was on your side, or did it

24 come over before you ran off the road?

25 A. It was all the way on my side, practically. I

1 don't know how to measure distance good, but it didn't seem much
2 more than that to me. I knew I had to go some where - - - he
3 had me.
4 Q. Could you estimate the speed of this vehicle?
5 A. I couldn't say how fast, but I knew it was going
6 fast.
7 Q. After the accident occurred, what is the next thing
8 you recall?
9 A. I recall trying to get out of the car, and Mr.
10 Prettyman standing beside of me.
11 Q. Do you recall anyone else coming to the scene of the
12 accident?
13 A. A Mr. Bocock.
14 Q. I believe this morning, with Mr. Haskins and myself,
15 you went back to the scene?
16 A. Yes sir.
17 Q. Can you tell us how far it is from the 7-11 Store,
18 in east Martinsville, to the accident?
19 A. Three-quarters of a mile.
20 Q. Did you see that measured yourself, this morning?
21 A. Yes.
22 Q. Was it measured on your car?
23 A. Yes sir.
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22 CROSS EXAMINATION BY MR. WARREN:
23 Q. Mrs. Maxey, this happened on December 14th, 1971?
24 A. Fifteenth.
25 Q. Was it the 15th - - - about what time of day?

BETTY G. THOMPSON
COURT REPORTER
DANVILLE, VIRGINIA

A. It was about 2:20 or 2:25 or 2:30 - - - somewhere along in that.

Q. Somewhere between 2:30 and 3:00 o'clock?

A. No - - - it happened before 2:30.

Q. Had you worked that day?

A. I had worked from 12:00 to 8:00 - - - what they call graveyard shift.

Q. You worked from 12:00 midnight, until 8:00 A. M., on the morning of the 15th?

A. Yes sir - - - came on to my sister's, and got in bed, and stayed until about 11:30 or 12:00.

Q. About what time did you get in bed?

A. I didn't have to clock out, because we just moved in a new plant, and my sister only lives about a ten minute drive from central storage.

Q. Could we say about 8:20?

A. You could.

Q. It's not what I say.

A. About 8:20 or 8:30.

Q. And you slept until what time?

A. About 11:30.

Q. Did you sleep?

A. Yes.

Q. When had you been in bed before that?

A. That afternoon, before I went to work that night. I always went to bed about 5:00 or 6:00.

1 Q. When were you in bed prior to the time you went to
2 work at midnight, on the early morning of the 15th?
3 A. I always went to bed about 6:00 in the afternoon,
4 and slept until 10:30 or 11:00, at night.
5 Q. You sleep three, four or five hours, then, and
6 worked eight hours, and slept three or four hours, and then you
7 were up and going around again?
8 A. Yes.
9 Q. Where did you go then?
10 A. Went to the beauty shop, and had my hair washed
11 and set.
12 Q. Then where were you going?
13 A. To my mother's, at Irisburg.
14 Q. You go out Spruce Street, to do that?
15 A. Yes.
16 Q. What is the speed limit on Spruce Street?
17 A. Thirty.
18 Q. On Spruce Street Extension?
19 A. Thirty, all the way down.
20 Q. What was your speed, going out?
21 A. Between twenty and twenty-five.
22 Q. What was it when you got on Spruce Street Extension?
23 A. On Spruce Street Extension?
24 Q. Yes - - - the accident happened on Spruce Street
25 Extension?

A. Whichever one you call it.

Q. Did you travel at the same speed all the way down there, to the scene of the accident - - - on Spruce Street and Spruce Street Extension - - - all the way out?

A. Yes sir.

Q. Your speed did not vary from the 7-11 Store, until the scene of the accident?

A. No sir.

Q. And that was between twenty and twenty-five - - - what did you say?

A. Twenty or twenty-five miles per hour, because I travel that road every day, practically, going to my parents', and I know it's a terrible road, and we have an accident down there about every day.

Q. It's a terrible road, isn't it?

A. Yes sir.

Q. Do you know where Mr. Prettyman lives, or did live, at that time?

A. I know that he said he lived there, at that time.

Q. Right there at the scene of the accident?

A. Where I ran in his yard.

Q. The house right there at the scene?

A. Yes.

Q. The first thing you are aware of, after the accident was over, and you went down this bank, was that Mr. Prettyman was right there, at your car?

1 A. No. I unfastened the seat belt. I slid over to
2 the right. I didn't get out on the left - - - on the right. I
3 was sitting there, dazed or shocked, or something, and Mr.
4 Prettyman said, "Are you hurt".
5 Q. How long was it before you saw Mr. Prettyman?
6 A. I really couldn't say.
7 Q. It was a very short while - - - pretty quick?
8 A. I thought he was there a very short while after
9 the car came to a stop.
10 Q. How long was it after Mr. Prettyman was there, that
11 Mr. Bocock came?
12 A. Well, it wasn't too long, because it seemed like
13 to me they were both there about the same time.
14 Q. You think Mr. Bocock came up right after Mr.
15 Prettyman did?
16 A. I think so, to the best of my knowledge.
17 Q. Did you see any other people there at the scene?
18 A. Nobody came down in the field where I was.
19 Q. Did you see anybody up on the road?
20 A. I saw some people up on the road later, and nobody
21 came down in that field except Mr. Wilson, and a colored man
22 that was helping him.
23 Q. What did they come down there for?
24 A. To get the car out.
25 Q. What kind of wrecker service?

A. AAA.

Q. They came?

A. Yes - - - Mr. Prettyman called them, and called the police.

Q. You drove the car away - - - the man from AAA drove it away?

A. No - -- Mr. Wilson drove the wrecker, and this colored man drove my car to Mr. Wilson's service station.

Q. You rode in the car, and one of the men from AAA drove it away?

A. To Mr. Wilson's station.

Q. Have you got any idea of your own, as to how wide the hard surface is there?

A. It's a very narrow hard surface, and there's no shoulder on the lefthand side of the road, but it is on the right

Q. Is there room for two cars to pass on the hard surface?

A. Yes, if you're driving right.

Q. How wide is the shoulder on the road, on the right the way you were going?

A. Two or three feet - - - with gravel - - - they put a lot of gravel on the right.

Q. And there's no shoulder on the other side?

A. Right.

Q. The curve that this car came out of - - - is that curve to your right or left?

A. The curve that he came out of, he would have been coming to my left.

Q. Was that curve to your right or left - - - when you went into the curve, would you have turned right of left?

MR. YOUNG: Which curve?

Q. The curve this car came out of - -- if you had gotten into the curve, would you have turned to the right or left, to go into that curve?

A. It's a big bank there - - - I would have had to turn in to the right.

Q. Then the car came from your right, into this curve?

A. He had to come from the left, to come around.

Q. I believe we understand each other - - - the curve was from your right?

A. I was in the curve right at Mr. Prettyman's house, which goes to the left.

Q. I think the jury understands. How far away was this car, when you first saw it?

A. At least five or six lengths of a car.

Q. About how far would you say that would be, in feet?

A. I don't know how to measure feet, Mr. Warren.

Q. Did this other car ever apply its brakes?

A. Not to my knowledge, it didn't, but I did mine - - - I locked them on those gravel.

Q. I'm not asking that - - - did the other car ever apply its brakes - -- did you say?

A. No sir.

Q. Did you see it go back to the right?

A. No sir, I didn't see it.

Q. How close did the car come, when it passed you?

A. That, I would be afraid to say - - - he was going right at me, and my first thought was, "Lord, get out of the way", and I jerked the wheel.

Q. You did not see the car pass you?

A. No.

Q. You did not see it pass you?

A. It was coming into me, on the right.

Q. You did not see it pass you?

A. No sir.

Q. You don't know whether it was on the right side, or what?

A. I don't know where it was when it passed - - - it was coming into me when I ran out on the gravel.

Q. Could you give us any idea of how fast the car was going?

A. No sir - - - it was going fast.

Q. You think it was going faster than the speed limit?

A. I think it was.

Q. Is the speed limit there thirty?

A. Yes.

Q. Was it going fast?

A. Forty or fifty at least - - - maybe sixty - - - it seemed like it was flying.

Q. It was going at least forty or fifty, or sixty?

A. It was flying - - - I couldn't say for sure exactly how fast - - - it seemed like to me it was coming right straight on my car, and it was flying.

1 Q. What is your name, please?

2 A. James Prettyman.

3 Q. Where do you live, Mr. Prettyman?

4 A. 721 Indian Trail.

5 Q. Where were you living on December 15, 1971?

6 A. At 1504 Spruce Street.

7 Q. Was that inside the city of Martinsville, or in

8 Henry County?

9 A. My house is in the city - - - part of the lot is

10 in the county, I believe.

11 Q. The lines run right there, in that area?

12 A. Yes.

13 Q. I see. What work do you do?

14 A. I'm a manufacturing supervisor, at DuPont.

15 Q. Were you working with DuPont, at that time?

16 A. Yes.

17 Q. On December 15, in the afternoon, of 1971, were you

18 at home?

19 A. Yes.

20 Q. Before we go into what you observed - - - would you

21 please describe the area right there in the presence of your home,

22 so the jury can pick it out and identify the location, please?

23 A. Yes.

24 Q. I believe there's an apartment house across the road?

25 A. It's an apartment house across the road, and there are

very few homes on the side of the road opposite my home. The road itself is a winding road, with a lot of embankments and twists and turns, and it's a double lane road, without any markings down the median. Directly opposite my house, there's a horse shoe bend, that goes around a hill to the righthand side of my house. There's no shoulder to the road opposite my house. There's a slight shoulder to the road on the same side of my house.

Q. About how much shoulder would there be on your side?

A. There's just a gravel shoulder - - - I would say five to eight feet. It's not much at all, and there's none on the other side.

Q. On the opposite side of the road from you, is there kind of a bank that goes down on the road level?

A. Yes.

Q. About how far is it from the top of that bank, down to the bottom? What is the depth of the bank, approximately?

A. Possibly fifteen feet.

Q. On this particular occasion, December 15, I believe we said, did I ask whether you were at home?

A. Yes, you did - - - I was at home.

Q. How is your house built - - - do you have any windows on the house? Is part of your house facing the road?

A. Yes. The front part of my house faces the road. It's built in an "L" shape, and one story - - - one bedroom and

1 the living room and the kitchen - - - two windows on the kitchen
2 face the road, and one window in the kitchen faces the inter-
3 secting road - - - Druid Lane.
4 Q. Of course, we're talking about the accident that
5 happened there in front of your house. Was there anything that
6 happened or occurred, to call your attention to the fact that
7 something unusual was going on out there in the road, in front
8 of your home?
9 A. There was a rushing noise, and I really didn't know
10 where it came from - - - it was a rushing noise out in front.
11 Q. Did you look out?
12 A. Yes.
13 Q. What window did you look out of, or did you go
14 outside?
15 A. I didn't go outside, and I didn't go right up to
16 the window, but I went to one of the two windows in the kitchen,
17 facing the road, and I was standing back some distance.
18 Q. What did you see?
19 A. I saw a car going backwards down the embankment on
20 the opposite side of the road.
21 Q. Could you give us your best judgment as to the time
22 this took place?
23 A. It was around 3:00, because my children came home
24 from school shortly after this happened?
25 Q. It was around when?

1 A. Around 3:00.

2 Q. Why do you set it at that time?

3 A. Because my children came home from school, right

4 after this happened.

5 Q. What time do they get out of school?

6 A. They get out of school between 2:30 and 3:00. One

7 year they got out at 2:30 and the next, at 2:45 - - - I'm not

8 sure.

9 Q. Are you sure that it happened around 3:00?

10 A. Yes.

11 Q. Did you see any other traffic on the road, when

12 you looked out of the window, Mr. Prettyman?

13 A. No.

14 Q. Did you go out of the house?

15 A. Yes.

16 Q. What did you do?

17 A. I went out of the house and walked across my front

18 lawn - - - ran across my front lawn, and I crossed the street

19 and down to where the car was.

20 Q. Did you do that right after you saw the car going

21 down?

22 A. To be honest, it took me three seconds or so, to

23 get enough nerve to go out of the house.

24 Q. And you went right straight on?

25 A. Yes.

1 Q. Where was Mrs. Maxey when you got there?

2 A. She was in the right front seat - - - it's a bench

3 seat in the car she was in, I think - -- I'm not sure - - - she

4 was in the right - - - the side opposite the driver's side.

5 Q. Did you assist Mrs. Maxey?

6 A. Yes - -- I leaned in the driver's window, and asked

7 if she was all right, and she complained about a pain in the

8 back of her neck, and so then I went around and told Mrs. Maxey

9 to stay where she was, and I would get help.

10 Q. Did you make a telephone call, at her request?

11 A. Yes.

12 Q. Whom did you call?

13 A. Mr. Wilson.

14 Q. Who is Mr. Wilson?

15 A. He owns a gas station down the street.

16 Q. A service station operator?

17 A. Yes.

18 Q. Did Mr. Wilson later come out?

19 A. Yes.

20 Q. Did you call anyone else, at her request?

21 A. No.

22 Q. And did she ask you to call anyone else?

23 A. I don't remember that she did.

24 Q. Do you recall whether or not she said anything at

25 that time about the existence of a second automobile?

A. I just don't remember that she did or did not.

Q. Your witness.

****

CROSS EXAMINATION BY MR. YOUNG:

Q. Let me see if I understand your knowledge of the traffic situation - - - you were on the offside - -- using the road as a reference point, of your kitchen, when you heard some type of racket out there?

A. I was in the kitchen, and probably in the back portion.

Q. You were not where you could see out, at that time?

A. No.

Q. In other words, the traffic conditions that existed at the time you first heard the noise, you wouldn't be able to tell us about?

A. I have no idea.

Q. That's all.

****

THE WITNESS, MR. LEON JAMES, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WARREN:

Q. What is your name, please?

A. Leon James.

Q. Mr. James, where do you live?

A. Route 1, Henry County.

1 Q. Where were you living in December of 1971?

2 A. Druid Lane.

3 Q. Do you have any children?

4 A. Two, then.

5 Q. In December of 1971, how many did you have?

6 A. Two.

7 Q. Were either of those children in school, or both?

8 A. One.

9 Q. Boy or girl?

10 A. Girl.

11 Q. What school was she attending?

12 A. Druid Hills Elementary.

13 Q. What work do you do?

14 A. Wholesale auto parts.

15 Q. I believe you work here in Martinsville?

16 A. Yes sir.

17 Q. Down near 220?

18 A. On Starling Avenue, next to the fire station.

19 Q. On the afternoon - - - do you know Mrs. Maxey?

20 A. No sir.

21 Q. On the afternoon of December 15,1971, the date this

22 accident occurred, did you see Mrs. Maxey, the lady here?

23 A. Yes sir.

24 Q. Where were you going, and where had you been?

25 A. I had been to school to pick up my daughter, and I

was going home.

1 Q. What road were you on, going from school, to your
2 home?
3 A. Spruce Street.
4 Q. What time did you pick up your daughter in school?
5 A. Around 3:00 o'clock - - - somewhere in there.
6 Q. Were you headed - - - which way were you going on
7 Spruce Street, when you saw Mrs. Maxey?
8 A. Towards Danville.
9 Q. I believe they call that the Old Danville Road?
10 A. Yes.
11 Q. And you were headed out the Old Danville Road,
12 towards Danville?
13 A. Yes.
14 Q. Where did you see Mrs. Maxey?
15 A. She passed me on Spruce Street.
16 Q. Approximately where were you on Spruce Street, the
17 best you can recall?
18 A. About in front of that Sunoco - - - somewhere along
19 in there, the best I can recall.
20 Q. What is the speed limit there, Mr. James?
21 A. Thirty or thirty-five miles per hour.
22 Q. Was your daughter in the car with you, when you saw
23 Mrs. Maxey?
24 A. Yes.
25 Q. In what way did you see her?

A. She passed me going out.

Q. How fast were you going when she passed you?

A. About the speed limit.

Q. How fast was she going, when she passed you?

A. I would say around forty-five to fifty-five - - - somewhere along in there.

Q. Where did she go after she passed you?

A. On out Spruce Street.

Q. Did she ever get out of your sight?

A. Yes.

Q. When did she?

A. When she topped the knoll, going around the curve.

Q. Did she reduce her speed, during that time she was in your sight?

A. I wouldn't have any way of knowing.

Q. Did you see her brake lights come on?

A. I don't remember - - - I don't think so, but I don't remember.

Q. Did you see her again?

A. Yes.

Q. How much later did you see her?

A. A minute, or something like that.

Q. Where did you see her?

A. The car was sitting over an embankment, on Spruce Street.

1 Q. Between the time Mrs. Maxey went out of your sight,
2 and you came on the car, off the road, did any car pass you,
3 going at a high rate of speed?
4 A. I don't remember.
5 Q. Did you notice - - -
6 MR. YOUNG: I understood that he said, "I don't remem-
7 ber"?
8 Q. Did you notice?
9 A. No sir.
10 Q. Did any cars pass you, that you recall?
11 A. I don't remember that.
12 Q. How far were you from the scene of the accident,
13 at the time she passed you, Mr. James?
14 A. Oh, somewhere around three-quarters of a mile, or
15 a mile, I reckon - -- I'm not sure.
16 Q. May we be heard in chambers?
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8 IN COURT: (Mr. James continues to remain on the witness
9 stand, under direct examination by Mr. Warren.)
10 MR. WARREN: If the Court please, I have been taken
11 by surprise on this witness, on two points, and would like to
12 question him in regard to this.
13 THE COURT: You are saying that this witness, Mr. James,
14 has taken you by surprise?
15 MR. WARREN: Yes.
16 THE COURT: And you would like to remind him, or refresh
17 his recall on two points?
18 MR. YOUNG: We have no objection.
19 Q. Mr. James, there was a previous hearing, which you
20 attended in February of this year, and you recall that you testi-
21 fied - - - do you recall, Mr. James, my asking you, "Did you
22 meet any other vehicle coming towards you at a high rate of
23 speed", and your answer was, "No sir", do you recall testifying
24 to that?
25 A. Yes.

1 Q. Do you recall being asked, "Do you recall meeting
2 any other vehicle that passed you", and your answer was, "I
3 do not recall"?
4 A. Yes.
5 Q. And your testimony was then that you do not remem-
6 ber another vehicle coming towards you, at a high rate of speed?
7 A. Yes.
8 Q. And you do not recall about others, is that correct?
9 A. Yes.
10 Q. We were talking about Mrs. Maxey's vehicle, as it
11 passed you - - - do you recall my asking you this question - - -
12 "How far was it from the scene where the accident occurred",
13 and your answer was "One-half mile" - - - do you recall that?
14 A. Yes.
15 Q. "Did the car ever get out of your sight - - - the
16 one that passed you", and you said, "Yes, when it went through
17 the curve", and "Did this car slack in speed any, while it was
18 in your sight", and your answer was, "No sir, not that I remem-
19 ber" - - - do you remember that?
20 A. Yes sir.
21 Q. That's all.
22 **********
23 CROSS EXAMINATION BY MR. YOUNG:
24 Q. Let me see if I can get this straight - - - I
25 don't think you're telling one thing, at one time - - -

1 apparently, you have answered at the previous hearing a definite
2 no sir and yes sir, and then you said, "I don't remember" - - -
3 have you intended to convey to this Court and jury, the idea
4 you just don't honestly remember?
5 A. No sir.
6 Q. What are you saying now?
7 A. Repeat the question.
8 Q. The car that you might or might not have met,
9 coming towards you - - - you said you don't remember, is that
10 correct?
11 A. Are you talking about one meeting me?
12 Q. Right.
13 A. If it had been running at a fast rate of speed,
14 I would have noticed it.
15 Q. Any other traffic, you didn't pay attention - - -
16 is that what you're telling us?
17 A. Yes.
18 Q. And when you answer yes or no, what you really mean
19 is you don't remember?
20 MR. WARREN: I object.
21 Q. He's on cross examination.
22 A. I don't remember meeting one, at a high rate of
23 speed.
24 Q. You don't intend to say yes or no?
25 A. No.

1 Q. This other thing here was dealing with the course,
2 and how far you had Mrs. Maxey in sight. You said that you
3 checked, and she passed you somewhere around the Sunoco place - -
4 that would be - - -
5 A. Somewhere in there.
6 Q. Just about where the 7-11 is - - - the jury might
7 know more about where that is?
8 A. Right.
9 Q. If you measured the distance from the Sunoco place,
10 to where the accident occurred, it would be further than mea-
11 suring it from 7-11 - - - it would have those - - - it's closer
12 to the accident?
13 A. Right.
14 Q. The curve that you were talking about where you lost
15 sight of her, would be the curve in the vicinity of Prospect
16 Hill Drive?
17 A. That's the one that sits down there?
18 Q. Right.
19 A. Okay.
20 Q. That would mean that this car coming towards this
21 lady, that passed you - - - would it have been out of your sight
22 for between one-half and three-quarters of a mile, before it
23 reached the point of the accident?
24 A. I suppose so.
25 Q. Have I, Mrs. Maxey or Mr. Haskins, since this last
hearing, spoke to you about this case?

1 A. No sir.

2 Q. That's all.

3 THE COURT: I realize distances are difficult to recall.
4 You testified you saw Mrs. Maxey's car at or about the Sunoco
5 Station?

6 A. Yes sir.

7 THE COURT: And she was proceeding in the same direction
8 you were, which is east, or towards Danville?

9 A. Yes.

10 THE COURT: From where you saw Mrs. Maxey, or from where,
11 she passed you, for what approximate distance was she in your
12 sight?

13 A. I would say from the 7-11, to the dip.

14 THE COURT: Could you give the jury any estimate as to
15 how far it was from the 7-11 or the Sunoco Station, to what
16 you describe as the dip - - - I assume this is where she went
17 out of your sight?

18 A. Yes sir. Fifty yards - -- I'm not good at distances.
19 Let me see if I could pick out a place in town.

20 THE COURT: Could you look out the window in the rear
21 of the courtroom, across the street, or in the courtyard, and
22 give these gentlemen any idea about what your guess would be
23 of the approximate distance.

24 A. I would say it might be from here to the Pontiac
25 place.

1 THE COURT: From here to Richardson's Pontiac?

2 A. I would say that's about right.

3 MR. YOUNG: Is the Court asking him how far it was in

4 his sight before he lost sight?

5 THE COURT: Yes. From the Sunoco Station, to wherever

6 it was when it went out of sight.

7 MR. YOUNG: I would agree that his estimate is pretty

8 fair - - - from the Sunoco Station, to the curve, would be about

9 that far.

10 THE COURT: From here, to the Richardson Pontiac place?

11 MR. YOUNG: Yes.

12 MR. WARREN: That's all for us, if the Court please.

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3 THE WITNESS, THOMAS BOCOCK, having been first duly

4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. YOUNG:

6 Q. You are Thomas Bocock?

7 A. Yes sir.

8 Q. Mr. Bocock, where do you work, and what do you do?

9 A. I am a plumber, self employed.

10 Q. Do you recall where you were working on December 15,

11 1971?

12 A. Working off of Tan Bark.

13 Q. Did you hear an accident occur?

14 A. Yes.

15 Q. Where did you later find that accident occurred?

16 A. I was working off of Tan Bark, and an accident

17 happened off of Spruce Street.

18 Q. How far were you working from the scene where the

19 accident occurred?

20 A. Approximately about three hundred yards.

21 Q. You didn't see it occur?

22 A. I heard it.

23 Q. When you heard it, what did you do, if anything?

24 A. When I heard the racket, I got up and went to the

25 window and looked out, and when I seen - - - I seen her car

sitting over the bank.

1 Q. What did you do?

2 A. I went on out the house, and went to see if I could

3 help her.

4 Q. Did you go straight over there?

5 A. Yes.

6 Q. Where was Mrs. Maxey?

7 A. It was a gentleman that had done got her out of

8 the car, and she was standing there, and I asked was anybody

9 hurt.

10 Q. And what did she tell you?

11 A. Not to my knowledge.

12 Q. Did she say how the accident occurred?

13 A. She said a can ran her off the road.

14 Q. Your witness.

15 MR. WARREN: No questions.

16 THE WITNESS STANDS ASIDE.

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14 MR. YOUNG: If the Court please, the plaintiff rests.

15 MR. WARREN: We rest.

16 At this point in the proceedings, the jury was taken
17 to the scene of the accident, by direction of the Court, to view
18 the scene, after which they were to return to the courtroom,
19 for final argument and deliberation.

20 **********

21 IN CHAMBERS:

22 MR. YOUNG: If the Court please, now that all the evidenc
23 is in, the plaintiff, by counsel, would move to strike the evi-
24 dence of the defendant, as it relates to liability in this
25 case. The only witness to which the defendant could look to

for any solace, as far as the defense is concerned, is the witness, James. The witness, James, says this lady passed him, exceeding the speed limit some ten or fifteen miles per hour, three-quarters of a mile from the place the accident occurred. That's all the defendant has - - - the only inference that can be drawn from that statement to support any defense, as far as the negligence of the plaintiff is concerned - - - as far as John Doe is concerned, I submit to the Court, that there is no evidence other than Mrs. Maxey, as to whether or not John Doe was in fact there. It is uncontradicted that he was - - - if there is a defense presented in this case, I ask again if we don't have to look to such statement as James made - - - a man who has been impeached in front of the jury by his lawyer, because he was taken by surprise - - - his statement is not the same as it was, apparently, according to counsel for the defendant, as it was the last time the case was tried. Be that as it may, the only thing that Mr. James said is this - - - this woman was going forty-five to fifty miles per hour, on a four lane road, and that shortly after she went out of sight, prior to the time she got on the curvy road - - - there is no evidence as to what speed she might have been doing at the time of the crash, when John Doe ran her out of the road. The only question for the jury is whether or not Mrs. Maxey was herself contributorily negligent. It was a question of extending negligence which she might have been guilty of at the Sunoco place, from there,

to the point of the accident. I submit to the Court that this is not a reasonable inference - - - the road is not the same - - - all of these factors would have been factors which it would have been the duty of the defendant to prove by a preponderance of the evidence. If we look at it from a contributory negligence point of view - - - not matters that can be left to speculation - - - it must be proven in order to entitle the defendant to a contributory negligence instruction - - - if he is not entitled to that, the evidence of the defendant has to be stricken in this case.

MR. WARREN: If the Court please, he is overlooking one piece of evidence - - - really, in effect - - - the witness, James, upon being questioned by me, reiterated his statement that before no car had passed him going at a high rate of speed - - - he didn't recall any vehicle coming towards him. We take the testimony of Mrs. Maxey herself - - - she stated that she did not change her speed one mile per hour any where along the entire road. The witness, James, said that she passed him at a speed, going at fifteen to twenty miles per hour in excess of the speed limit. He testified her speed was forty-five to fifty-five. She said it was twenty to twenty-five, but she also said she did not alter her speed any where along the entire road. If the jury believed as she passed James going at a speed of forty-five to fifty-five, they would be fully justified in believing that she was going that speed at the time of the accident. She states this other car was going forty, or fifty or sixty, and

1 this car was one-half mile behind her - - - probably even less,
2 because he was going in the same direction she was, although,
3 assuming that it was three-quarters of a mile to the scene - - -
4 no vehicle came to him, and passed him at an excessive rate
5 of speed. The jury can draw a conclusion as to the fact that
6 John Doe was not there, or either Mr. James would have seen that
7 car, as it passed him. As far as contributory negligence is
8 concerned, I really don't think that this is the issue before
9 the Court - - - it is the existence of John Doe. If John Doe
10 was there, I don't see sufficient evidence here to go to a jury
11 on the issue of contributory negligence - - - the question is
12 the existence of John Doe - - - I think there is sufficient
13 evidence here.
14 THE COURT: You are saying that in your judgment, really,
15 the only issue before this jury is whether or not there was a
16 John Doe?
17 MR. WARREN: I think so - - -
18 THE COURT: The motion to strike - - - if I follow you
19 correctly, Mr. Warren, what you are saying in response to the
20 motion - - - that the inference that could be drawn from the
21 testimony of Mr. Prettyman and Mr. James, that this is sufficient
22 to take the question of the existence or non-existence of John
23 Doe, to the jury?
24 MR. WARREN: Yes sir.
25 THE COURT: I agree - - - the motion to strike will be
overruled. Note the plaintiff's exception.

1 I agree that the only question here is whether or not John Doe
2 was there.
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1 MR. YOUNG: There was one objection that I made - - -
2 a pre-trial objection. If the Court please, the Court will re-
3 call at the outset, out of the presence of the jury, counsel
4 for the plaintiff moved the Court to disallow the testimony
5 relating to the speed of the plaintiff, as it would not be rele-
6 vant, or have any bearing on the liability issue in this case.
7 The evidence is all in, and I would simply point out, at this
8 time, that counsel for the defendant, has in effect agreed
9 with the motion made at the pre-trial hearing, by counsel for
10 the plaintiff, when he agrees that there is no issue of contri-
11 butory negligence. The only way the speed of Mrs. Maxey could
12 possibly have been relevant before this jury, would have been
13 on the question of contributory negligence. Counsel, after all
14 the evidence is in, for the defendant, now admits that there is
15 no contributory negligence aspect in this case. I point it
16 out again, because to me, it bolsters the position of the plain-
17 tiff, before the trial.
18 MR. WARREN: Counsel for the defendant would call the
19 Court's attention to this fact - - - that unless John Doe ran
20 Mrs. Maxey off the road, she is not entitled to recover. She
21 may have gone off the road for any one of a dozen different
22 reasons, one of which chould have been excessive speed, or maybe
23 to keep her car under control, on this type of road, but so far
24 as John Doe is concerned, and John Doe's liability - - - that
25 particular feature as to why she ran off the road is immaterial.

If he was not there, her speed was irrelevant as to the issue, although it could have been the only reason of the accident - - - the sole question is whether or not John Doe was there, so the speed of Mrs Maxey's car has nothing to do with John Doe.

THE COURT: Mr. Young's position is, what does it relate to?

MR. WARREN: The fact that she lost control of her car, and it brought about the accident. If there's no contributory negligence, we know there has to be something that contributed to the accident, but it is a defense made by John Doe - - - contributory negligence would be a defense made by John Doe. If he were not there, then contributory negligence is not involved, because John Doe is not involved. The speed could have caused her to wreck all right - - - sure it could - - - as a matter of fact, that's what we're saying, but we're saying John Doe had nothing to do with it.

THE COURT: On behalf of the plaintiff, the following instructions will be given - - - A, B, and C. Mr. Warren, do you have any objection?

MR. WARREN: No sir.

THE COURT: On behalf of the defendant, the following instructions will be given - - - 1, 2, 3, 4, and 5. Any objections to any of these instructions, gentlemen?

MR. HASKINS: If the Court please, the plaintiff objects to giving Defendant's Instruction Number 3, for the following

1 reason - - - that there has been no legal evidence of the maxi-
2 mum speed limit at the place of the accident, and there is no
3 evidence in the record to support the statement in the instruction
4 that the speed limit is thirty, and it is in direct conflict with
5 Plaintiff's Instruction A, and it is misleading and confusing,
6 and it would tend to mislead the jury, as to the burden of proof,
7 in regard to the recovery. Plaintiff's Instruction A tells the
8 jury that the plaintiff can recover if they prove that John Doe
9 violated any of the elements set forth, and there is no mention
10 of the contributory negligence in the instruction, and the
11 record shows that counsel for the defendant has stipulated that
12 contributory negligence is not an issue in this case, and further
13 that it presents an erroneous burden of proof as to the de-
14 fendant's procedures in showing whether she exceeded the speed
15 limit, and whether she was negligent or not. The way the Court
16 has given the instruction, the plaintiff further objects that the
17 instruction does not state whether or not the plaintiff was ex-
18 ceeding the speed limit must be proven by the defendant by a
19 preponderance of the evidence. It allows the jury to believe
20 from any evidence in the case that if the plaintiff was exceeding
21 the speed limit, then she was negligent. Any type of negligence
22 on the part of the plaintiff must be proven by the defendant,
23 by a preponderance of the evidence, just as the plaintiff must
24 prove evidence of the defendant, by a preponderance of the evi-
25 dence.

MR. YOUNG: Along this same line, the plaintiff, by counsel, would move that counsel for the defendant not be allowed to comment on speed as it relates to the manner in which the automobile driven by the plaintiff, was being driven, having conceded that there is no aspect of contributory negligence, it would not be fair to comment on the speed of the plaintiff, three-quarters of a mile from the accident. If the defendant is not entitled to an instruction on contributory negligence, he is also not entitled to argue to the jury that the plaintiff was in fact contributory negligent, even though he may use some other classification, such as sole proximate cause. The point is, if the plaintiff is not guilty of contributory negligence, then it is not proper for him to comment in final argument on such speed, as he thinks she may have been driving.

THE COURT: Mr. Warren says that whether we talk about contributory negligence that says that John Doe was there, and was negligent, and that the negligence of Mrs. Maxey contributed to cause the accident. His position is that if he talks in terms of contributory negligence, he is more or less conceding that he was there - - - he says John Doe was not there, and this lady's injury was caused by her own negligence - - - excessive speed.

MR. YOUNG: I understand, but - - - number one, John Doe was not there, then the defendant is entitled to recover, and if he is there, the plaintiff is contributorily negligent.

1 If John Doe was not there, then it is a position which in effect
2 says - - - we don't care what the plaintiff did - - - it makes no
3 difference - - - the reason that there is no case for the jury to
4 consider is that there was no John Doe. What the plaintiff
5 might or might not have done is not important. I can't argue
6 contributory negligence by virtue of the fact that now there were
7 two people, and we take the position that the evidence says there
8 were two people there - - - there is no refutal that John Doe
9 wasn't there. Her own statement - - - there's no statement to the
10 effect that he wasn't there - - - implications and innuendo, yes.
11 **********
12 IN COURT:
13 The instructions were read to the jury, by the Court,
14 after which final arguments followed:
15 MR. WARREN: May it please the Court, and you gentle-
16 men of the jury, at this stage of the trial, normally the counsel
17 for the plaintiff would make the first argument, and then I would
18 make an argument for the defendant, and then counsel for the
19 plaintiff would finish up, but however, in view of time, and in
20 view of the shortness of the evidence, we agreed that I would
21 proceed, and the plaintiff would make just one - - - the
22 final argument. As you were told when this started, this is an
23 action set up under the law of the state of Virginia, allowing
24 a plaintiff to bring an action for damages against an unknown
25 and unidentified driver. Of necessity, that presupposes that this

person who is unknown or unidentified, is supposed to come into this courtroom and defend himself - - - it's a legal fiction that this unknown individual - - - this John Doe, will come in and defend himself, because, of course, he can't, and those who represent John Doe must take what they can find, and the evidence they have to work with, and defend John Doe, in a court of law, before you, the jury. That's the position in which we find ourselves, John Doe and me. We have brought in here to you, the evidence that we have been able to find, to give to you a picture as to what occurred on this December 15th, out there on Spruce Street Extension. We have no eye witness to this accident at all, other than Mrs. Maxey herself. The evidence, as it has come out before you this morning, presents to you, in effect, two situations, or two questions. One is, was John Doe there - - - we say John Doe was not there, and number two, was this accident entirely Mrs. Maxey's fault. We have in law, a term that we call contributory negligence, which we apply to a plaintiff in a situation of this kind. When contributory negligence is pleaded, it means that a defendant may be guilty, but if the plaintiff is guilty too, she contributed to her own injury, and cannot recover. This is a very frequent type of situation that you are faced with - - - to me, that is not true. John Doe is not defending on a basis of contributory negligence. Do not misunderstand me. We are not saying, and we do not contend for one moment that John Doe did anything in concert with Mrs.

1 Maxey, that brought about this accident, because we say that
2 John Doe was not there. We base that upon the fact that Mr.
3 Prettyman looked out, and saw Mrs. Maxey's car still in motion,
4 but no other vehicle, and upon the fact that Mr. Leon James,
5 who was following behind her - - - Mr. Young brought on Mrs.
6 Maxey, and said they measured off three-fourths of a mile - - -
7 they were both going in the same direction, and he was there
8 within a minute after the accident happened, where it occurred.
9 Mr. James says - - - his testimony was a little different, but
10 when he was reminded of what he said, he repeated that he saw no
11 vehicle - -- he passed no vehicle going at an excessive rate
12 of speed, after Mrs. Maxey passed him. He was not certain about
13 whether he passed anybody else or not, but he would have noticed
14 it if it had been excessive. He said he was going around
15 thirty, and he stated that Mrs. Maxey's speed was some forty-five
16 to fifty-five, which was from fifteen to twenty-five miles per
17 hour, over the speed limit. Mr. James didn't know Mrs. Maxey.
18 He would have no reason to come in here and perjure himself.
19 We can all be mistaken - - - he says he was going thirty, and
20 she passed him, and was going out of sight, and she did nothing
21 to reduce her speed while she was in his view, as he saw. Mrs.
22 Maxey said, as she went down Spruce Street, she was going twenty
23 to twenty-five, but under direct questioning, Mrs. Maxey said
24 that at no point, any where along Spruce Street, or Spruce Street
25 Extension, did she reduce her speed, ever. If Mr. James is

1 correct in stating that when she passed him when he was going
2 thirty, where the speed limit is thirty, going forty-five to
3 fifty-five, then she was still going that speed on this crooked,
4 narrow road, you gentlemen saw, and this road is hardly safe to
5 travel at any speed. Here's the instruction the Court has
6 given you - - - Instruction Number 3 - - - "If you find from
7 this evidence that the sole cause of this accident" - - - forget
8 about John Doe - - - we are not considering John Doe in this
9 argument - - - if the sole cause of this accident was the speed
10 of Mrs. Maxey - - - that she was going at a speed that was too
11 rapid to control her car, on this crooked road, and because of
12 her speed, she lost control and went off the road - - - if this
13 was the cause of this, your deliberations will end there - - -
14 your verdict must be for John Doe. If her speed was at fault
15 - - - the only cause of this accident - - - if she was going so
16 fast that she could not maintain control of the car - - - forget
17 John Doe - - - then, your verdict should be for the defendant.
18 We say that John Doe was not there, and the burden is upon them
19 to prove that he was. The only person who saw John Doe, or made
20 any indication that there was another car any where on that road,
21 was Mrs. Maxey herself. She told you that that car was going
22 forty, fifty or sixty miles per hour out there where you were
23 this morning, and Leon James didn't see it, and he was following
24 right along behind her. He followed her as far as from here
25 to the garage - - - your guess is as good as mine - - - one-fourth

1 of a mile maybe - - - going the same direction - - - forty, fifty
2 or sixty miles per hour, and Leon James says he didn't see it,
3 and didn't meet it. The defense is bound to be negative, be-
4 cause it wasn't there for him to see. John Doe is in a difficult
5 position - - - he cannot come into this courtroom, and swear
6 to you, on his oath, that he was not there and didn't force this
7 woman off the road, and wasn't on the highway that afternoon.
8 The only thing John Doe can do is bring in people there at the
9 area, at the time of the accident, and tell you what they saw,
10 and that's what John Doe has done. We say that any person - - -
11 be it Mrs. Maxey or Jim Young or Charlie Warren, who drives that
12 road at forty-five to fifty-five miles per hour, is being rather
13 foolish, or rather unwise. Leon James had his daughter in the
14 car with him, that he picked up at school at 3:00 in the after-
15 noon, and he was driving along at what he considered to be a safe
16 speed, at thirty - - - the maximum allowed, and she passed him,
17 and she went off and left him, and he was following her, and
18 immediately, in less than a minute, came up on the scene of this
19 accident. We know not what more we can do to present to you
20 the entire factual situation involved - - - Mrs. Maxey was hurt,
21 and I am sorry, and I regret it. I wouldn't have had it happen
22 for anything, and I know she wouldn't, but we are here, faced
23 with a legal situation, in a Court of law, and you are asked to
24 decide and do justice between Mrs. Maxey and John Doe, and the
25 burden of proving how it happened, and what really went on - - -

1 removing from your mind the uncertainties of this then, is on the
2 plaintiff, and not on the defendant, and we say this evidence
3 does not go that far, and we respectfully request from your hands
4 a verdict on behalf of the defendant, John Doe. Thank you.
5 **********
6 MR. YOUNG: May it please the Court, and gentlemen
7 of the jury, I don't know what else Mr. Warren could have done.
8 I think he did the best he could. He's defending a coward,
9 who isn't here, who left the scene of running this woman off
10 the road, and I don't know what else he could do either, but
11 yell, for mercy. The man he is basically relying on is a man
12 named James - - - he's relying on James to have you return a
13 verdict for the defendant, and yet, he said, "Mr. James, you
14 haven't told the truth one time or the other" - - - "Me - - -
15 no, Mr. Warren." And, yet, he would say to you now, the man
16 that called his own witness a liar before you, and properly so,
17 and ask you to bring in a verdict for John Doe, who left the
18 scene - - - the coward John Doe. This jury is too intelligent
19 for any persuasion, and I have no intention of attempting to do
20 that, but I do ask you gentlemen not to be misled by little
21 things that turned up in this case - - - this lady says she was
22 run off the road. I would question in my own mind, some things
23 Mr. Warren didn't mention. If that car wasn't there - - - you
24 can think of all sorts of arguments - - - you could shoot holes
25 in anyone's argument. You can look through any case, and

1 find things like that - - - only one question - - -was she run
2 off the road down there. The strangest sort of argument I've
3 ever heard in my life, Mr. Warren, of necessity, has had to make
4 to you. He says first, John Doe wasn't there - - - why go any
5 further? If you believe that, you are not going to do anything.
6 Why talk about how fast she might have been going? It makes no
7 difference. If Mr. Warren is correct, and you can believe that
8 John Doe wasn't there, it doesn't make any difference if she was
9 doing one hundred and fifty miles per hour - - - it doesn't
10 have any bearing. John Doe was there, and he caused this lady
11 to take evasive action there - - - her car went out of control.
12 Think about that - - - I think every one of you drives - - - let'
13 assume she said she was going the speed she said she was going,
14 and almost like this, her car was backing into the culvert - -
15 at forty-five or fifty, it would have been below that apartment.
16 It would not go out of control, and go straight down the bank
17 like that - - - the odds are, it wouldn't. None of us know
18 really what they would do - - - it is reasonable to assume that
19 the speed she says she was traveling, is the speed she was
20 traveling, based on where we find her car ended up. Mr. Warren
21 came on a little strong, even assuming that Mr. James is capable
22 of telling the truth - - - for the sake of argument - - - he said
23 Mr. James said he didn't meet any other car traveling at a high
24 rate of speed. I heard him weasel with the answer - - - I don'
25 remember, and I don't think I do - - - Mr. Warren felt that in

1 front of you, he had to call the only witness he could rely on
2 here, a liar.
3 MR. WARREN: I object. He has used it three or four
4 times - - - I did not call that witness a liar.
5 THE COURT: I think you are correct - - - I'm not sure
6 Mr. Young really means that you were questioning his veracity.
7 MR. WARREN: I think the language is too strong to be
8 using here.
9 MR. YOUNG: Let me put it like this, for Mr. Warren's
10 sake - - - Mr. Warren is disturbed before you, because this
11 witness did not say today, what he had said under oath pre-
12 viously - - - you can call that what you want to - - - if you
13 feel that I have used the word incorrectly for saying one thing
14 on one day, and one thing on another, I apologize. Was this
15 woman injured - - - she sued for $50,000.00, and this is a lot
16 of money for anyone. Mrs. Maxey has suffered a lot of injury,
17 and she was in the hospital forty-six days, and she has specials
18 in excess of $5,000.00, and for the rest of the twenty-six years,
19 if she lives a normal life, she will be crippled in her back
20 to the extent of fifteen to twenty per cent. If John Doe was
21 there, and I believe we have proven it beyond a shadow of a
22 doubt, she is entitled for a verdict in the amount for which
23 she sued - - - $50,000.00 is a lot of money, but not when you
24 start talking about a permanently injured back. She doesn't
25 ask you to give her anything - - - as her counsel, I say do not

1 give her anything that you feel she is not entitled to - - -
2 anything at all - - - she has not sued for too much in this case.
3 John Doe caused this accident, and under the law, he should be
4 made to pay for it. She sued for $50,000.00, and I believe that
5 if you feel she is entitled to recover at all, she is entitled
6 to recover for the full amount for which she sued. Thank you.
7 **********
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24 The jury again retired at 2:10, and returned at 2:52,
25 with a verdict in favor of the defendant, after which, the jury

was polled, and with each answering in the affirmative, and the jury was then dismissed.

THE COURT: All right, gentlemen.

MR. YOUNG: We move to set the verdict of the defendant aside, as being contrary to the law and evidence, and without sufficient evidence to support it, and other reasons previously stated to the Court, in chambers.

MR. WARREN: I have no comment to make.

THE COURT: The motion will be overruled, and to that, note the plaintiff's objection and exception.

****

The foregoing transcript of oral testimony and other incidents of trial, omitting all medical testimony, recorded on the 3rd day of May, 1973, in the Circuit Court of Henry County, Virginia, was stenographically recorded by and transcribed by the undersigned court reporter, who was first duly sworn, according to law. I hereby certify that this is a true transcript, and that as of this 3rd day of December, 1973, I have filed with John Matthews, Clerk of the Circuit Court of Henry County, Virginia, by mail, a true copy of this transcript, and have mailed a copy to Mr. James W. Haskins, Attorney for the Plaintiff, and to Mr. Charles R. Warren, Jr., Attorney for the Defendant.

Betty G. Thompson
COURT REPORTER

BETTY G. THOMPSON
COURT REPORTER
DANVILLE, VIRGINIA

A

THE COURT INSTRUCTS THE JURY, that it is the duty of the operator of a motor vehicle to exercise ordinary care:

1. To keep a proper lookout;
2. To keep his vehicle under proper control;
3. To operate his vehicle at a reasonable speed under the circumstances and traffic conditions then and there existing regardless of any posted speed limit.

And if you believe from a preponderance of the evidence that the Defendant, John Doe, failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then he was negligent; and if you further believe from such evidence that any such negligence was a proximate cause of the collision, then, you shall find your verdict in favor of the Plaintiff, Jessie S. Maxie.

INSTRUCTION NO. 1

THE COURT INSTRUCTS THE JURY that the burden is on the plaintiff to prove by a preponderance of the evidence that John Doe was actually at the scene of this accident. If you find that she has not carried this burden, your verdict shall be for the defendant.

INSTRUCTION NO. 2

THE COURT INSTRUCTS THE JURY that the jury are the sole judges of the weight of the evidence and of the credibility of the witnesses, and the jury has the right to discard or accept the testimony or any part thereof of any witness which the jury regards proper to discard or accept, when considered in connection with the whole evidence in the case, but the jury has no right arbitrarily to disregard the credible testimony of a witness. And in ascertaining the preponderance of the evidence and the credibility of witnesses, the jury may take into consideration the demeanor of the witness on the witness stand; his apparent candor or fairness; his bias, if any; his intelligence; his interest, or lack of it, in the outcome of the case; his opportunity, or lack of it, for knowing the truth and for having observed the facts to which he testifies; any prior inconsistent statements by the witness if proven by the evidence; and from all these and taking into consideration all the facts and circumstances of the case, the jury are to determine the credibility of the witnesses and the preponderance of the evidence.

INSTRUCTION NO. 3

THE COURT INSTRUCTS THE JURY that the maximum speed limit at the time and place of the collision involved herein was 30 miles per hour; and if you believe from the evidence that the plaintiff was driving her vehicle in excess of this limit, then the plaintiff was negligent.

And if you further believe from such evidence that any such negligence was THE SOLE proximate cause of the collision, then you shall find your verdict in favor of the defendant.

INSTRUCTION NO. 4

THE COURT INSTRUCTS THE JURY that a verdict must not be based in whole or in part upon surmise, conjecture or sympathy for either of the parties, but must be based solely upon the evidence and the instructions of the Court.

INSTRUCTION NO. 5

THE COURT INSTRUCTS THE JURY that the mere fact that there has been an accident and that as a result thereof the plaintiff has been injured, does not of itself entitle the plaintiff to recover. In order to recover against the defendant the burden is upon the plaintiff to prove by a preponderance of the evidence that the defendant was negligent and that any such negligence was a proximate cause of the collision.

And if the jury are uncertain as to whether any such negligence has been thus proven by a preponderance of the evidence, or if you believe that it is just as probable that the defendant was not guilty of any such negligence as it is that he was, then you shall return your verdict in favor of the defendant.

TWENTY-FIRST
XXXXXXXX JUDICIAL CIRCUIT
OF VIRGINIA

September 26, 1973

JOHN D. HOOKER
JUDGE
STUART, VIRGINIA

HENRY COUNTY
PATRICK COUNTY
CITY OF MARTINSVILLE

Young, Kiser & Haskins
Attorneys at Law
P.O. Box 72
Martinsville, Virginia

Mr. Charles R. Warren, Jr.
Attorney at Law
321 Masonic Building
Danville, Virginia 24541

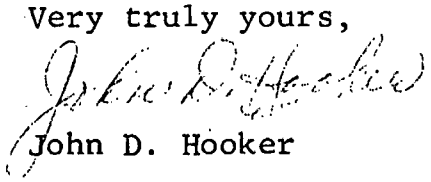
Re: Jessie S. Maxie Vs: John Doe

Gentlemen:

Frankly, the motion to set the verdict aside in this case had gotten "cold" on me and this accounts for the undue delay. I hope that no hardship has resulted to the parties involved. I have now reviewed my notes, re-read the instructions and the written argument of counsel. This case has been tried twice. In the first trial the jury was unable to agree and in the second trial the jury found its verdict for the defendant.

The only issue argued to the jury was whether or not John Doe was involved in the accident. The plaintiff argued that he was, and the defendant argued that he was not at the scene. This being true, the instruction complained of may have been unnecessary; if so, it was harmless. Even though the instruction was not mentioned and apparently played no part in the jury's verdict, it could be argued with persuasion that the evidence and the inferences to be drawn therefrom support the instruction. Be this as it may, the plaintiff Mrs. Maxie has had her full day in court (twice) before an impartial jury--a jury that heard the testimony of all the witnesses and observed them as they testified, viewed the scene of the accident, heard the argument of counsel and unanimously agreed on a verdict for the defendant. The motion to set this verdict aside will be denied.

Very truly yours,



John D. Hooker

JDH:prw

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

JESSIE MAXIE	)	
	)	
V. 5207	)	ORDER
	)	
JOHN DOE, ETC.	)	

On May 3, 1973, came the parties, the plaintiff in proper person as well as by counsel and the defendant by counsel, upon issue joined, seven qualified jurors were selected as follows: Charlie R. Spencer, Beneford Hylton, Russel M. Bryant, David Adams, Jimmie Stone, Ruben Reid Barker, Jr., and Tommy C. Wall, all of whom were sworn to well and truly try the issue joined between Jessie Maxie, plaintiff and John Doe, defendant, and a true verdict render according to the evidence.

After hearing the evidence, the jury retired to consult of their verdict and after some time returned this verdict as follows:

"We, the jury, find in favor of the defendant."
s/J.C. Stone

WHEREUPON, the plaintiff, by counsel, move the Court to set aside the verdict of the jury and grant to the plaintiff a new trial upon the following grounds:

1. The verdict was contrary to the law and evidence.
2. The verdict was without evidence to support it.
3. For other grounds set forth in the record.

WHEREUPON the Court overruled said motion and directed that judgement be entered in favor of the defendant.

WHEREUPON, the plaintiff in due course renewed their motion praying that the Court set aside the verdict of the jury in favor of the defendant for the reasons previously assigned and that the Court erred in giving the defendant Instruction No. 3 to the jury.

WHEREUPON, the 3d of May, 1973, the Court heard oral arguments in regard to said motion and received written memoranda of law from both of the parties hereto.

WHEREUPON, the Court having fully considered said motions of the plaintiff to set aside verdict of the jury heretofore rendered herein, is of the opinion to and does overrule said motion on the grounds that there was sufficient evidence upon which to base the verdict that said verdict was not contrary to the law in the evidence and that said instruction to the jury was not improper.

It is, therefore, ADJUDGED and ORDERED that said verdict of the jury heretofore returned herein be and the same is affirmed and final judgement is entered for the defendant.

To all of which the plaintiff excepts.

Enter:

/s/ John L. Hooker
Judge
10-10-73

I Ask For This Order:

/s/ Charles R. Warren Jr.
Charles R. Warren, Jr., Counsel for Defendant

Seen:

/s/ James W. Haskins
James W. Haskins, Counsel for Plaintiff

LAW OFFICES
WARREN, PARKER AND WILLIAMS
DANVILLE, VIRGINIA

A COPY
TESTE: John H. Matthews, Clerk

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

JESSIE S. MAXIE, Appellant, vs. JOHN DOE, Appellee.	)))))))))	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: THE CLERK OF THE CIRCUIT COURT OF HENRY COUNTY

Notice is hereby given that the Appellant, Jessie S. Maxie, does hereby file with the Clerk of the Circuit Court of Henry County, Virginia, this her Notice of Appeal and Assignments of Error from a final judgment Order entered on the 10th day of October, 1973.

The Appellant hereby assigns as error the following:

I. The Trial Court erred by giving Defendant's Instruction No. 3 to the jury.

II. The Trial Court erred in failing to set aside the verdict of the jury on the ground that it was contrary to the law and evidence.

A transcript of testimony and other incidents of the above-styled case will be hereafter filed with the Clerk of this Court pursuant to Rule 5:9 of the Rules of Court of the Supreme Court of Virginia.

THIS 18th day of October, 1973.

LAW OFFICES
YOUNG, KISER &
HASKINS
60 WEST CHURCH ST.
MARTINSVILLE, VA.

JESSIE S. MAXIE

By James W. Haskins
Of Counsel

Young, Kiser & Haskins, Ltd., p.q.
60 West Church Street
Martinsville, Virginia 24112

CERTIFICATE

I, James W. Haskins, of counsel for the Appellant, do hereby certify that I have this 18th day of October, 1973, mailed a true copy of the foregoing Notice of Appeal and Assignments of Error to Charles R. Warren, Jr., of Warren, Parker and Williams, Masonic Building, Danville, Virginia, 24541, counsel of record for the Appellee.

James W. Haskins
James W. Haskins