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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 741053

DOROTHY LOGAN,

Plaintiff in Error,

v.

MONTGOMERY WARD & CO., INCORPORATED,

Defendant in Error.

APPENDIX

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* * *

DOROTHY LOGAN,

Plaintiff,

vs.

MONTGOMERY WARD & CO., INCORPORATED

* * *

and

BOTTLED GAS CORPORATION OF VIRGINIA

* * *

Defendants.

AT LAW

NO._____

MOTION FOR JUDGMENT

[Filed August 30, 1971 and

Amended by order entered August 28, 1972]

The plaintiff, Dorothy Logan, moves the court for judgment against the defendants, Montgomery Ward & Co., Incorporated (an Illinois corporation), and Bottled Gas Corporation of Virginia (a Virginia corporation), jointly and severally, in the sum of Fifty Thousand Dollars for the wrongs and injuries hereinafter stated, to-wit:

1. On or about August 29, 1969 the plaintiff, then named Dorothy S. Wallace, purchased from the defendant Montgomery Ward & Co., Incorporated, at its store in Baltimore Maryland one Signature Gas Range, to-wit, with serial or identification number 2638-55.

2. At and before said date said defendant manufactured Signature Gas Ranges or caused them to be manufactured and given the brand name "Signature", and said defendant holds itself out as being the manufacturer of Signature Gas Ranges and other household appliances bearing the trade name "Signature". Said defendant is the only merchant by whom or which Signature Gas Ranges are sold to the general public.

3. Said defendant warranted that said gas range was fit for use and that the use of said range by the plaintiff in her home for domestic purposes was and would be safe.

4. Thereafter, to wit on September _____, 1969, the defendant Bottled Gas Corporation of Virginia installed said gas range in the home of the plaintiff in Brunswick County, Virginia, and supplied a cylinder of fuel and located same out of doors on said premises and connected the cylinder to the range by tubing or other conduit in such manner that fuel gas under pressure might flow from said cylinder to the gas range and into the burners.

5. The defendant Bottled Gas Corporation of Virginia warranted that the tubing or conduit and all fittings were proper and adequate to safely convey the fuel gas from the cylinder to the range burners, that the use of said fuel gas in said range was and would be safe and that in all other respects the said range, as it had been

installed and supplied by said corporation, could be safely used by the plaintiff.

6. On a later day, to wit on September ____,1969, the plaintiff had lit the oven burner and was cooking food or was about to cook food in the oven of the gas range and did so in reliance upon the defendants' warranties.

7. Fuel gas then in said oven, or elsewhere in and about the range, exploded and in consequence a sudden conflagration occurred in the part of the house where the plaintiff then was.

8. It was and had been the duty of the defendants and of each of them to have forseen and anticipated an explosion such as did occur, to have taken steps calculated to prevent the explosion that did occur, to have warned the plaintiff of the likelihood of such explosion and to have informed the plaintiff of the procedures she should follow to avoid danger when using the gas range.

9. The said defendants violated their said duty and breached their respective warranties and thereby proximately caused the explosion to occur.

10. As a result of the negligence of the defendants and each of them the plaintiff was grievously burned and sustained serious and permanent injuries and disfigurement, was required to submit to prolonged hospitalization and medical treatment, was prevented from going about her usual affairs, has suffered and will continue to suffer physical

pain and mental anguish, has sustained loss of future earning capacity and has incurred and will have to incur in the future the expenditure of considerable sums of money in her endeavor to be cured of said injuries and disfigurement. Moreover, the plaintiff suffered loss and damage, resulting from the conflagration, by the partial destruction of her dwelling house and destruction of clothing and other personal belongings.

WHEREFORE the plaintiff prays judgment against the defendants in the sum first above mentioned.

* * *

* * *

ANSWER AND GROUNDS OF DEFENSE ON BEHALF OF MONTGOMERY WARD & CO., INC.

[Filed September 28, 1971]

Defendant, Montgomery Ward & Co., Inc. (Montgomery Ward), by counsel, in answer to plaintiff's Motion for Judgment, assigns the following grounds of defense:

(1) Montgomery Ward neither admits nor denies the truth of the allegations contained in paragraphs 1, 2, 4, 5, 6 and 7 but calls for strict proof thereof.

(2) In answer to paragraph 3 of plaintiff's Motion for Judgment, counsel for the defendant, Montgomery Ward, is without sufficient knowledge to admit or deny the extent of any warranty made by Montgomery Ward or the effect thereof and calls for strict proof thereof.

(3) Montgomery Ward denies the truth of the allegations contained in paragraphs 8 and 9 of plaintiff's Motion for Judgment.

(4) In answer to paragraph 10 of plaintiff's Motion for Judgment, the defendant, Montgomery Ward, denies that it was negligent in any way or that it proximately caused the plaintiff to suffer any injury; and answering further, the defendant is without sufficient knowledge to admit or deny the extent of any injuries suffered by the plaintiff or the effect thereof and calls for strict proof thereof.

AFFIRMATIVE DEFENSES

(5) Montgomery Ward says that it is not guilty of any negligent act which proximately or efficiently contributed to the alleged accident and the alleged injuries to plaintiff.

(6) Montgomery Ward says that any injury plaintiff may have sustained at the time and place alleged in the Motion for Judgment was directly and proximately caused by the negligence of Dorothy Logan in failing to exercise ordinary care for her own safety; and, in any event, whether or not said defendant was negligent, which is denied, the negligence of Dorothy Logan in failing to exercise ordinary care for her own safety proximately or efficiently contributed to whatever injuries the plaintiff may have sustained. It bars any recovery by her in this action.

(7) Montgomery Ward says that whatever injuries the plaintiff may have sustained at the time and place alleged in the Motion for Judgment were the result of an unavoidable accident so far as defendant Montgomery Ward & Co., Inc. is concerned.

(8) Montgomery Ward says that the alleged injuries sustained by plaintiff at the time and place alleged in plaintiff's Motion for Judgment were the result of a risk which plaintiff assumed.

(9) Montgomery Ward says that the sole, proximate cause of whatever injuries plaintiff may have sustained at the time and place alleged in plaintiff's Motion for Judgment was the act or acts of a person or persons over whom Montgomery Ward had no control or duty to control.

(10) Montgomery Ward reserves the right to amend its answer and grounds of defense at any time if and as it may be so advised.

WHEREFORE, the defendant Montgomery Ward prays that this action be dismissed.

* * *

GROUNDS OF DEFENSE
OF
BOTTLED GAS CORPORATION OF VIRGINIA

[Filed September 14, 1971]

This defendant, by counsel, files the following as and for its grounds of defense:

1. This defendant is unadvised as to the allegations contained in paragraphs 1, 2 and 3 of the motion for judgment and neither admits nor denies the same but calls for strict proof thereof.

2. This defendant admits that it made a hookup at the plaintiff's home in September of 1969, and this defendant denies the remaining allegations contained in the motion for judgment, paragraphs 4, 5, 6, 7, 8, 9 and 10 inclusive.

3. This defendant denies that it was guilty of any negligence at the time and place set forth in the motion for judgment and further denies that it violated any duty owed the plaintiff herein and further denies that it was guilty of any breach of warranty as alleged in the motion for judgment.

4. This defendant avers that the plaintiff was guilty of negligence which proximately caused the alleged accident and which bars any recovery by the plaintiff herein.

5. This defendant denies that the plaintiff was damaged in the amount or injured to the extent alleged in the motion for judgment.

6. This defendant avers that the alleged accident or occurrence occurred through the negligence of others for whose acts this defendant is not responsible.

7. This defendant denies that the alleged explosion was occasioned by fuel gas as alleged in the motion for judgment.

8. This defendant will rely upon all properly provable defenses to this action and reserves the right to add to or amend this its grounds of defense if it may be at any time so advised.

* * *

COPY

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

DOROTHY LOGAN

vs.

MONTGOMERY WARD & CO., INCORPORATED
and
BOTTLED GAS CORPORATION OF VIRGINIA

TRANSCRIPT of proceedings in the above, when heard on June 25, 1974, before Honorable A. Christian Compton, Judge, and a Jury.

[FILED AUGUST 26, 1974]

APPEARANCES

HILL, TUCKER & MARSH, Room 202, 214 E. Clay Street, Richmond, Virginia,
By: S. W. Tucker, Esquire, and James W. Benton, Jr., Esquire, Counsel for the Plaintiff;

McGUIRE, WOODS & BATTLE, 1400 Ross Building, Richmond, Virginia
By: Rosewell Page, III, Esquire, Counsel for Defendant Montgomery Ward & Co., Incorporated;

MONCURE & CABELL, 921 Ross Building, Richmond, Virginia,
By: Michael W. Moncure, III, Esquire, Counsel for Defendant Bottled Gas Corporation of Virginia.

NOTE: Court convenes at 10:00 o'clock a.m. The court reporter is being sworn, a jury is selected, opening statements are made by counsel, whereupon the taking of testimony is begun, viz:

DOROTHY LOGAN, the plaintiff, called in her own behalf, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. TUCKER:

Q Please, state your name and age and where you live.

A My name is Dorothy Sue Logan. My age is 51. I live in Brunswick County.

Q And that is near what place?

A Warfield, Virginia.

Q Prior to your becoming Mrs. Logan, you were Dorothy Sue Wallace, is that correct?

A Yes.

Q When did you marry Mr. Logan?

A I married Mr. Logan on November 6, 1971. Yes, that is 1971 -- or '70?

Q Was it the same year that this stove exploded?

A No.

Q All right. In August of 1969, did you make a purchase of a stove?

A Yes.

Q Where?

A In Baltimore, Maryland, at Montgomery Ward on Monroe Street.

Q At that time, where were you living?

A At that time I was living, well, partially in Baltimore and partially in Virginia with my aunt, in Dolphin, Virginia.

Q Where were you born?

A Brunswick County.

Q That is home to you, that is your native home?

A Yes.

Q Now, when you went to the store of Montgomery Ward & Company, Incorporated, in Baltimore, did you go there for the express purpose of buying a stove?

A No. I went there because I usually go to Montgomery Ward quite often, and I didn't have an idea that I was going to really buy a stove that day.

Q What does Montgomery Ward deal in?

A They have clothing and furniture, approximately something of everything.

Q Household appliances?

A Yes.

Q Including stoves?

A Yes.

Q They had them on sample on the floor, and you purchased from those samples?

A Yes.

Q Anyhow, you did purchase a stove there, did you not?

A Yes, I did.

MR. PAGE: Your Honor, I believe we are prepared to stipulate that Mrs. Logan purchased a stove from the store in Baltimore, I believe on August 29th.

THE COURT: Do you want her to identify this?

MR. TUCKER: I will put it in just the same, if Your Honor please.

THE COURT: Plaintiff's Exhibit 1, the customer's receipt and a check dated August 29, 1969.

Q Is that the sales slip you were given from the store and the check with which you paid for it?

A Yes.

MR. TUCKER: We offer that in evidence.

THE COURT: Plaintiff's Exhibit 1.

Q Do you remember without looking at it what the price was that you paid for the stove?

A Pardon?

Q Do you remember without looking at it what the price was that you paid for the stove?

A Yes.

Q How much was it?

A $187.00.

Q Now, this stove that you bought, according to that exhibit, it shows it was a Signature Gas Range, Model No. 38-55. Does the word Signature mean anything to you?

A That is the name of the stove.

Q Are there other Signature products like Signature Stove, Signature Freezer or Ice Box, do you know?

A You mean in other stores?

Q No, in the Ward Store.

A Oh, yeah.

Q What does that name, Signature, mean to you?

A The refrigerator?

Q When you see it on a household appliance, what do you know from that?

A I know it came from Montgomery Ward.

Q Montgomery Ward are the only people you know that put out the product marked Signature?

A As far as I know.

Q I take it this was a brand new stove?

A Yes.

Q Do you know how the stove was transported from the Montgomery Ward Store to your home in Warfield, Brunswick County?

A We borrowed Eugene's truck, which he runs a market and gas station right there at the opposite side of 643 where I live, which is a relative of mine, and we borrowed his truck to go up to Baltimore to pick up the stove and the refrigerator and the kitchen set.

Q Who drove the truck with the stove on it to your home in Brunswick County?

A I am thinking -- I think that Godfrey Logan which was my boyfriend at the time, Godfrey Logan drove the truck up to pick the stove up.

Q Was your son or was anybody else with him?

A Yes, my son, Armistead.

Q There had been other occasions when you also had gone up into Maryland or sent up to Maryland for equipment, have there not been?

A Oh, yes, pretty often, because that is where

we had to move all our furniture.

Q The same person didn't drive the truck all the time?

A No.

Q Now, when you bought the stove, were there any instructions given you as to how to transport or how not to transport it?

A No.

Q When you bought the stove, were any instructions given to you that you could or could not use certain kinds of fuel gas?

A No.

Q When you bought the stove, were any instructions given to you as to how it should be hooked up or how not hooked up?

A No.

Q Do you know who loaded the stove on the truck?

A No.

Q Do you remember how you got from Baltimore to Brunswick on that occasion?

A Yes. I drove my car.

Q So you did not accompany the stove--

A No.

Q --to Brunswick?

A No.

Q But did you get to Brunswick on the same day the stove arrived?

A Yes.

Q What did you do with respect to having the stove hooked up to a gas line?

A Well, I called the bottled gas people to come and install the stove.

Q That is the Bottled Gas Corporation of Virginia?

A Yes.

Q Did they have an office in Brunswick County?

A Yes.

Q A representative?

A Yes, at that time they did.

Q And what happened as a result of your calling them?

A I called and two men came, and they looked at the stove, and so they told me that they had to change the stove over to their type of gas.

Q Do you remember the name of either of these men?

A I asked them their name. One of them's name was Robert, I believe, and Mr. Moseley.

Q Mr. Moseley?

A Yes.

Q Do you see Mr. Moseley here in court today?

A No-- yes.

Q Mr. Moseley is in court?

A Yes.

Q What did Mr. Moseley and whatever the other person that was with him do with respect to the stove, as far as you know?

A As far as I know, Mr. Moseley just proceeded in fixing the stove and arrange it where I wanted it, and hooked it up, and then, after he finished, he called me in the kitchen and he asked me if I know how to operate the stove, and I told him, no, because no one had demonstrated it to me. So, he said, well, it has an automatic oven, and he said before turning it on, you push the button in and you wait a little while, then it will come on. He said, you got it? And I said, yes. So, he turned all the buttons on and he said everything is burning, and I said, yes, and he said, okay, I am finished, and he went out.

Q Do you remember how much you paid for having the stove hookup made?

A I didn't have to pay anything that I know of.

Q Where does the gas come from according to that arrangement to burn in your stove?

A They put two tanks on the outside, and they told me it was a difference in the gas, it was a dry gas, different than the gas we used in the city. It didn't come under the ground or anything. They installed these two tanks on the outside, and had to run a copper line from the outside into the house to the stove.

Q Now, the evidence I expect to show is that the stove was hooked up on September 2nd, 1969, and I think the record will show that you were admitted to the hospital on September 21, 1969, and I am going to ask you whether from the time the stove was put in there until the day you were burned and went to the hospital, had you ever used the oven of the stove?

A No, I had never used the oven.

Q This morning of September 21 is the day on which you were burned. Did you use the oven that day?

A Yes.

Q Will you tell us how you used it? What did you do? What you used it for? Just tell us what happened in your kitchen on that day.

A Well, that particular day, I used it according to the direction that Mr. Moseley had told me. I pushed the button in. I had these little pre-cooked rolls to prepare. So, I pushed the button in and I turned it to broil, and from there the oven came on and the front of it,

it is a glass, a piece of glass part to the door part, it is like tin and the other part is glass. So, then I turned on a knob, which the stove has knobs on it. So I placed it to have this knob at 500, and the oven began to get hot, and as I had fixed the other food on the top of the stove for a few weeks, I just set those pre-cooked rolls in the oven. When I took them out, they were brown. I set them on the top of the stove, then I pushed the button back, turned the stove off, and it said bloop. So, I looked down at it, and it didn't nothing blow up at that time. It just gave a noise, and I closed the door.

Q When did you close the door before?

A I closed the door immediately after I took the rolls out. When I pulled the door down, it comes this way. So, I reached in and pulled the rolls out and set them on top of the stove and closed the door back up, and I pushed the button in and turned it to off.

Q All right. I assume you served your breakfast?

A Yes.

Q Now, what happened after breakfast?

A Well, after Armistead finished eating, which is my son, after he finished his breakfast, he got up from the table. So, I reached over and got the dishes off the table, and I moved the table sort of back from the sink.

It was just a little small glass-top table. So, I pushed it back and arranged the chairs around it, and went to wash the dishes, and after that, all I know, I was in a big flame of fire.

Q Did you finish washing the dishes, do you recall?

A I don't remember whether I finished the dishes.

Q Did you hear anything that you relate to the big flame of fire?

A I just heard something like a bam, just sounded like -- I really can't remember exactly what it sounded like. It just sounded like somebody would hit something, or it didn't sound like a bomb or nothing, it sounded like a hard hit against a wall or something of that sort. I really couldn't tell you what the noise was like.

Q What happened to you physically at that time?

A Well, at that time when I found myself, I was in a deep blaze of fire.

Q What was your position?

A I was on the floor and I was reaching out, and I was screaming, mercy.

Q About being on the floor, you mean your body, you, you were thrown on the floor, you were lying on the

1 floor?

2 A Yes, I was stretched out on the floor, and
3 this side of me was burning.

4 Q Is that your left side?

5 A My arm, yes. And my son came and grabbed
6 me, and he dragged me out of the place, out the door, and then
7 all I can remember is that my cousin told me, he said, you
8 have got to go to the hospital, and I said, no, can't I stay?
9 And he said, no, I am going to take you to the hospital. So,
10 he took me to South Hill Hospital, and from there I was admit-
11 ted at MCV in Richmond, Virginia.

12 Q Do you remember how long you stayed in the
13 hospital?

14 A Not the exact date, but I stayed in the
15 hospital some weeks, and really, I wasn't supposed to have
16 been discharged at that time, but the doctor said that he
17 would let me go home providing if I kept his laws, and that
18 was to be bedridden until he discharged me.

19

20

21

22

23 * * *

24

25

CROSS EXAMINATION/ BY MR. PAGE:

1 Q Do you happen to have the invoices with
2 you, ma'am, as to what you paid for getting your house fixed,
3 or any cancelled checks on that?
4 A No, I don't have it with me.
5 Q They are available, but you did not bring
6 them this morning?
7 A That is right.
8 Q Did your counsellor ask you to bring them?
9 A No.
10 Q Do I understand that prior to August 29,
11 1969, you were living in Baltimore? Is that correct?
12 A I was living in Baltimore.
13 Q And before August 29 of 1969?
14 A I was living in Baltimore for thirty-three
15 years.
16 Q For thirty-three years?
17 A Uh-huh.
18 Q And it was your intention after August 29th,
19 whenever you purchased this equipment at Montgomery Ward, to
20 move back to your home in Brunswick County, your own home, is
21 that correct?
22 A Yes.
23 Q And where did you live in Baltimore? With
24 whom did you live?
25 A I lived in my own house at 3701 Dorchester

Road.

Q Did you sell your house in Baltimore when you moved down here?

A No.

Q You still own that residence?

A Yes.

Q And is there any particular reason that you purchased this equipment in Baltimore to haul it down to Virginia rather than purchasing it from one of the Montgomery Ward stores in Virginia?

A I have been in Baltimore for thirty-three years. I knew where the stores were, and I have always gone to Montgomery Ward. Not for everything, but I was there and looking around, and I saw the stove that I wanted.

Q Now, it is my understanding that on the same day you bought the stove, you purchased a number of other items, including a kitchen set, a refrigerator. Is that correct?

A Yes.

Q And I take it that they were all hauled down in the same panel truck that hauled the stove down, is that true?

A Yes.

Q And would you refresh my memory a little bit on what individuals were responsible for bringing this

1 stuff down to Virginia?
2 A To bring it back, two of my sons brought
3 it back.
4 Q And which two are they?
5 A Armistead and Eric.
6 Q It is my understanding that Armistead was
7 residing with you at the time that the incident giving rise
8 to this lawsuit occurred, on the day you were burned?
9 A Right.
10 Q And was Edgar also residing with you at
11 that time?
12 A Who?
13 Q Who was the other son?
14 A Eric.
15 Q Was he residing with you at that time?
16 A No.
17 Q Now, you bought this stove on August 29,
18 1969, is that right?
19 A Yes.
20 Q Was it brought to Virginia on the same day
21 you purchased it?
22 A I cannot recall.
23 Q In any case, it was certainly in Virginia
24 and installed on September 2nd of 1969, is that correct?
25 A Yes.

Q I take it that it is also correct that beginning September 2nd, 1969, that you used the top part of the stove to prepare your meals, is that correct?

A Yes.

Q Now, on September 2nd, you indicated that the gentleman, I believe was Mr. Motley, who came to install the stove, turned on all the burners, is that right?

A Mr. Who?

Q What was the name of the gentleman?

A From Bottled Gas Company?

Q Yes.

A From what they told me, I think his name was Mr. Moseley. I don't know whether that is the first name or last name.

Q I am sorry, Moseley, whoever was there from the Bottled Gas Company, he turned the stove burner on for you, is that correct?

A Yes.

Q Did he turn them all on?

A Yes.

Q Did he show you how to turn the oven on?

A Yes, he did.

Q Did he turn the oven on?

A Yes, he did.

Q And did the oven come on and light up as well

as you could tell?

A Yes.

Q All right. Now, it is my understanding, then, that your testimony was, you did not use that oven to cook anything in from that day until the day that you were burned, is that right?

A That is right.

Q Did you have any other cooking apparatus in your house, anything else to cook bread in, or to cook anything in other than that stove?

A No, I had a toaster there, and we used sliced bread.

Q You didn't have any occasion to bake anything or broil anything for that particular period of time?

A Right.

Q And the only thing you did was to turn on the top burner to cook whatever you put on the top of the stove?

A Right.

Q You didn't have any other utensil that would serve the purpose of the top burners, is that correct?

A No.

Q Now, I take it that you had a gas stove prior to the time that you purchased this one, had you not?

A Yes.

Q And I take it, it was a different kind of gas stove, is that right?

A Well, yes.

Q Was it a Norge, is that what it was? Do you know what make it was?

A You mean the type of stove?

Q Yes.

A Yes, it was a Norge, N-o-r-g-e.

Q And you were familiar with how to operate that particular stove, were you not?

A Right.

Q And what was the difference in how you operated that stove and operated the stove that was ultimately placed in your home in Brunswick County?

A There was no difference.

Q It operated the same way?

A Other than the oven, and he told me I had an automatic oven. Now, the stove I had in Baltimore, I had to light my oven.

Q You had to turn the gas on in that stove, wait a few minutes, and then light it?

A Light it, right.

Q And I take it then that you were basically familiar with what gas smells like, were you, from having gas with that stove up there?

1 A Yes, but it does not smell like this gas
2 down in Virginia.
3 Q Well, were you familiar with what that gas
4 down in Virginia smells like?
5 A No.
6 Q You were not?
7 A No, because my aunt that I was living with,
8 she had a wood stove.
9 Q She had a wood stove?
10 A Uh-huh.
11 Q Are you familiar now with what Virginia gas
12 smells like?
13 A Somewhat, yes.
14 Q And is that the result of your having used
15 and purchased another identical stove to the one that was in
16 your home on the day you were burned?
17 A I did not purchase that stove. Mr. Logan
18 bought the stove. He said that when he bought the stove, he
19 just went and bought another stove. I didn't buy the second
20 stove.
21 Q Now, Mrs. Logan, I will call your attention
22 to April 13, 1972, and ask you if you recollect having your
23 deposition taken on that date in the presence, I believe, of
24 Mr. Moncure and Mr. Sanderlin of my office, and I believe Mr.
25 Tucker. Do you recollect that?

A Yes, I do.

Q All right. Now I call your attention to Page 10 of this deposition, and I will call your attention to Line 15. The question Mr. Sanderlin asks: "Is it the same kind of stove?" And your answer was, "Yes, I went right back to Montgomery Ward and bought another stove and another refrigerator." Was that your answer at that time?

A It could have been. Well, what I was meaning at that particular time was that I still have the same type of stove and refrigerator in my home, but I did not purchase it.

Q When you said, "I went right back", you didn't mean you went -- somebody else went back?

A Well, he did, Godfrey Logan was the one that went back and bought the stove.

Q Now, it is my understanding from your deposition, Mrs. Logan, on the day prior to the time that you were burned, that a relative of yours was present in your home and told you that he smelled gas in there, is that correct?

MR. TUCKER: If Your Honor please, I want to interpose an objection, on the grounds that he is calling for hearsay, but also that it is not proper testimony as to the ultimate facts. I mean, the question is whether a relative said he smelled gas,

1 and the answer to the question would not be proba-
2 tive of the ultimate fact.
3 THE COURT: Mr. Page?
4 MR. PAGE: Your Honor--
5 THE COURT: Do you want to respond to the
6 objection? Do you care to respond to the objection?
7 MR. PAGE: The only thing I would say with
8 respect to that, we introduce it to the fact that it
9 happened and not for the truth of anything. I think
10 this line of questioning is pursued in the same depo-
11 sition. I will rephrase the question. I don't think
12 the objection is a valid one. I do think it has pro-
13 bative value, and I don't think it is asking for hear-
14 say. It is basically a question of whether a relative
15 told her he smelled it.
16 THE COURT: Isn't the question whether or
17 not she herself was aware that there was an odor of
18 gas at this particular time, then expounding upon her
19 answer to that question. It may be that your first
20 question will be proper.
21 MR. PAGE: I will ask it the other way.
22 Thank you, Your Honor.
23
24 Q Mrs. Logan, were you ever aware at any time
25 prior to the time that you were injured, that there was any

odor of gas in your home?

A No.

Q At no time prior to the Sunday morning on which you allege you were injured, did anybody tell you there was the smell of gas in your home?

A No. That Saturday they did. Is that what you are speaking about?

MR. TUCKER: I still have the same objection, Your Honor.

THE COURT: All right. The objection is overruled. As I understand her answer to the first question, whether she was aware if there was an odor of gas in her home, or perhaps you said kitchen, Mr. Page, I have forgotten, prior to the day of the incident, and she answered no, and now Mr. Page, you propose to show that at some prior time Mrs. Logan has indicated she was made aware of that by a relative?

MR. PAGE: Yes, sir, Your Honor.

THE COURT: The objection is overruled.

Q Now, would you recount for me, please, Mrs. Logan, what occurred in your kitchen between yourself and Butler Peterson on the Saturday before this incident occurred?

I assume that would be September 20th?

A Well, Butler Peterson is a relative of mine. He came in and he was sitting there at the table, and he was admiring how my kitchen was looking, and then he said to me, he said, sweetheart, he said, do you smell gas? And I said, no. So, I went to have a check, and I turned all the knobs and I turned them back, and I said to him, all of the knobs are in their places. It says off, and we left it at that.

Q And is that all that occurred?

A Yes.

Q Did you make a personal check for gas or the smell of gas at that time? Did you try to smell it yourself?

A Did I try to smell it?

Q Yes, ma'am, did you sniff for it?

A Like that, yes.

Q You did. Did you smell anything?

A No.

Q Now, I call your attention to the same deposition on Page 12. The question that Mr. Sanderlin put to you on the line is: "Did you observe anything unusual about the operation of the gas range prior to the incident?" Do you remember him asking you that?

A Did I remember anything different?

Q Do you remember him asking you that question

on that day?

A No.

Q Do you deny that he asked you that question?

A I don't deny it, no.

Q Now, I am going to read what the court reporter has for your answer, and ask you if you remember that being your answer, your answer to the question, "Did you observe anything unusual about the operation of the range prior to the incident?" Answer, "Well, me myself, I didn't, but at that Saturday I had a cousin to visit me from New York, and he was sitting in the kitchen because that was the only space I had at that particular time, and he said, he was talking, you know, as conversation, he said to me, Dot, you don't have some gas off or something, he said, I can smell gas. I said, no, and so I went and tried all the knobs on my stove, and I turned them all, and they were as far as they would go. He said, well, you better have that thing checked." And then you said you sniffed, "I did look at that, and I said, I can smell a little bit, and I said, well, maybe I used that oven today, maybe that is all there is to it."

Do you remember giving that answer?

A No, not like that. I didn't use the oven on the Saturday, I used the oven on a Sunday. I hadn't used the oven on Saturday.

Q And you went on to say, "So, I didn't pay

1 any more attention to it." That was that Saturday, and are
2 you telling us now that you did smell some gas on Saturday, or
3 you didn't smell any gas?
4 A I didn't smell any gas, because I cannot
5 smell that well if I want to, but I didn't smell any gas.
6 Q And I call your attention to Page 14, Line 2.
7 "Question: And you noticed there was some odor of gas in the
8 house yourself?" That was the question, and your answer was:
9 "Just a little bit. Like I said, my smellers aren't too good,
10 but he kept telling me and reminding me it was gas." Do you
11 remember giving that answer?
12 A What date was that?
13 Q The same deposition. Do you remember that?
14 A Like I can remember just saying what I said
15 in the beginning, what I told him when he told me to go, that
16 I had gas smelling. So, I walked over to the stove and checked
17 the knobs on it, and I said to him, all of the knobs are on off.
18 So, I didn't pay it any more attention because I still couldn't
19 smell any gas.
20 Q Do you deny giving these answers that the
21 court reporter took down on the date of the deposition?
22 A I don't deny giving them, but I do deny
23 not being correctly as to what I was being asked or what I
24 was saying, because I am telling the truth. That is what I
25 did when he told me he could smell gas odor, or he could smell

1 gas, and I checked the stove, and that was all I did do.
2 Q These depositions were taken roughly two year
3 closer to the day. Are you saying you can remember actually
4 better today than you could remember it on the day these depo-
5 sitions were taken?
6 A It isn't that I could remember, I guess it is
7 just the time when things had come to you more.
8 Q Thank you, ma'am. Now, had this stove been
9 hooked up prior to the time it was hooked up by Virginia
10 Bottled Gas Company? Had it been hooked up in any other resi-
11 dence?
12 A No.
13 Q It was brought directly from Baltimore to
14 Brunswick County, is that right?
15 A Yes.
16 Q Now, on the day of the event in question, I
17 take it that you were the only person in the kitchen, isn't
18 that correct?
19 A That is correct.
20 Q So, as far as you know, there was nobody
21 else that witnessed what occurred, is that correct?
22 A You mean just in the kitchen?
23 Q Yes, ma'am.
24 A Right, just in the kitchen.
25 Q And there was nobody in the house who could

actually observe what happened until after the incident or incidents occurred, is that right?

A That is right.

Q And I think it would be fair to say that your son was watching television in the living room?

A No, in the dining room, the room next to the kitchen. We were using that room at that particular time.

MR. PAGE: That is all the questions I have.

REDIRECT EXAMINATION

BY MR. TUCKER:

Q Mrs. Logan, this stove had been in there about nineteen days before the incident happened, isn't that right?

A Yes, something like that.

Q And you had been using the top part of the stove everyday, hadn't you?

A Yes.

Q You hadn't had any problems with them?

A No.

Q The first problem you had with it was when the incident took place, when you put the rolls in the oven that morning for breakfast?

A Right.

Q When your relative was visiting you on Saturday before this occurrence and mentioned the odor of gas, you told us you sniffed to see if you could smell it?

A Right.

Q Is that when you say you were concerned that gas was escaping?

A Right.

Q If you smelled gas, you would have called the Bottled Gas Company, isn't that right?

A I certainly would have.

* * * * * * * * *

[63]

* * * * * * * *

ARMISTEAD GREEN, a witness called by the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TUCKER:

Q Please, state your name and age, and where you live.

A Armistead Green. I live in Brunswick County.

1 Q You are Mrs. Logan's son, are you not?
2 A Yes, sir.
3 Q Armistead, do you recall 1969, August 29th,
4 when your mother bought a stove from Montgomery Ward in
5 Baltimore, Maryland?
6 A Yes, sir.
7 Q Who carried the stove from Baltimore to
8 your home in Virginia?
9 A My brother Eric, and myself.
10 Q Your brother Eric and you?
11 A Yes.
12 Q What was the transportation?
13 A By truck.
14 Q Now, who loaded the stove on your truck?
15 A Montgomery Ward.
16 Q Did you go directly from Montgomery Ward's
17 store in Baltimore to your home in Brunswick County?
18 A Yes, sir.
19 Q Did any incident happen on the way?
20 A There was incidents, but we wasn't in them.
21 Q But there was no incident that happened to
22 your truck?
23 A No, sir.
24 Q Who was driving, you or your brother?
25 A My brother.

Q What kind of road did you have to travel on to get to Virginia?

A Interstate.

Q An all paved road?

A Yes, sir.

Q A paved road. How close does the paved road go to your mother's house in Brunswick County?

A It goes approximately to the door almost. It goes right up and then at the driveway it changes.

Q Were there any ruts in your driveway at that time?

A No, sir.

Q Who unloaded the stove when you got home?

A There were my brother and myself, and another fellow.

Q Do you know the other fellow's name?

A I know his first name is Kent.

Q All right. Was the stove dropped at any time between the time you tried to take it off the truck to the time it gotten to its resting place in the kitchen?

A No, sir.

Q What else did you do to the stove?

A I didn't do anything to it but sat it in the kitchen.

Q Was it in a carton or crate, or anything?

A As far as I remember, it was in a box and in a delivery box.

Q Did you take it out of the box, or take the box off of it?

A I took it out of the box.

Q You took it out of the box?

A Yes, sir.

Q How did you do that?

A Well, as far as the box is concerned, I just took the top off and took the siding off of the box.

Q Was the stove assembled, or did anybody have to put it together? Was it in pieces, or all in one piece?

A It was substantially as one piece. It was one piece.

Q Did you or your brother do anything to the stove, tamper with any of the controls, or anything?

A No, sir.

Q There was nothing you had to put together?

A No.

Q You didn't have to adjust anything with a screw driver, pliers, or a wrench?

A No, sir.

Q Were you at the home when the stove was hooked up by the Bottled Gas people?

A No, sir, I was in school.

1 Q Now, I want to direct your attention to
2 Sunday, the 21st day of September. Your mother has testified
3 that you were in the living room when she was cleaning up the
4 kitchen. Is that correct?
5 A In the dining room.
6 Q Dining room, excuse me. What came to your
7 attention that was unusual?
8 A The scream.
9 Q You heard who scream?
10 A My mother.
11 Q What else did you hear?
12 A I heard, you know, like a crash, like a
13 car or something.
14 Q Like what?
15 A It was a crash like a boom thing.
16 Q I see. What did you do upon hearing this
17 boom and hearing your mother scream?
18 A I heard her scream, I was in the next room
19 from where she was at, and there was a blaze of fire over her,
20 and I pulled her out. She was on the floor and I pulled her
21 out.
22 Q You went into the kitchen where she was,
23 into the place of fire. What was her position, standing,
24 sitting, kneeling?
25 A She had fell down.

1 Q She was lying on the floor?
2 A Yes, sir, trying to get up.
3 Q Go ahead.
4 A Trying to, you know, trying to survive
5 for herself, but she couldn't make it.
6 Q What did you do?
7 A I pulled her out and ran and grabbed her
8 and pulled her outside and put the fire out.
9 Q You put the fire out?
10 A Yes, sir. The fire was still on her.
11 Q You mean her clothes were burning and
12 you extinguished the fire from her clothes?
13 A Yes.
14 Q Can you describe or give us some picture
15 of what that kitchen was like when you went in there to get
16 your mother?
17 A Like a -- I don't know. It was like a
18 ball of fire.
19 Q Will you tell us what the house looked like
20 after the fire? What rooms were damaged and to what extent
21 and the like.
22 A It was the bedroom, the kitchen, the back
23 porch, and the dining room. The dining room and the kitchen
24 was demolished and half of the bedroom was burned, and the
25 whole back porch was demolished.

Q What happened to the stove?

A What do you mean?

Q After the fire?

A It was removed with the rest of the burned material.

Q Did you help to remove it?

A Yes, sir.

Q Where was it physically when the fire was all over?

A It was to the far side of the room, you know, just down in the floor boarding of the house on the ground, the floor had burned out.

Q It was right down under where it had been sitting?

A Yes.

Q When you say where it was sitting, what do you mean?

A Under the position it had.

Q It dropped right straight through the floor, is that what you are saying?

A The whole thing.

Q The stove itself?

A The stove and the door was not together. The door wasn't on the stove.

Q Did you see where the door was?

A It was away from the stove. As far as to the

1 exact place, all I know is it was off.
2 Q And where did you carry the stove?
3 A There is a junk yard in Alberta, Virginia.
4 It is a sanitation sort of thing.
5 Q A public dump?
6 A Right.
7 Q Was this done before or after your mother
8 came out of the hospital?
9 A It was all done before.
10
11 MR. TUCKER: Your witness, Mr. Page.
12
13
14 CROSS EXAMINATION
15 BY MR. PAGE:
16 Q Did you help take your mother to the
17 hospital?
18 A No, sir.
19 Q You stayed on the scene where the fire
20 occurred?
21 A Yes, sir.
22 Q And do you know whether the stove was still
23 hooked up to the gas line after the fire occurred?
24 A No, sir.
25 Q You don't know whether it was or not?

A I didn't check, you know.

Q How long after the fire occurred did you notice what position the stove was in?

A The stove?

Q Yes.

A Or the door of the stove?

Q The stove.

A The stove was in the same position, and it fell through the floor that had burned out. Everything had dropped through the floor.

Q How long after the fire started was it that you noticed where the stove was sitting?

A I beg your pardon?

Q Well, I will go at it this way: When the fire first started, you ran in and got your mother out of the kitchen, isn't that right?

A True.

Q And did somebody call the fire department?

A Yes.

Q Did the fire department come?

A Yes, they came.

Q Did they get there in time? Obviously, they got there in time to put some of the fire out before it consumed the whole house, is that correct?

A True.

Q How many firemen came, do you remember?

A Maybe three.

Q And were there a number of other neighbors that came at the time the fire occurred?

A Yes. Excuse me, are you saying to put the fire out?

Q To help put it out.

A You mean with a bucket?

Q I am sorry?

A You mean with a bucket or something of that sort? It wasn't.

Q Let me ask you this: Did they come down there while the fire was going on?

A People came.

Q Right. People came, and how long was it between the time that you got your mother out of the kitchen and the time that you noticed where the stove and where the door was? Was it an hour? Was it ten minutes?

A No, sir, about two days.

Q Two days before you gave any notice to it, is that right?

A I was unsteady, sort of.

Q Shaken up by all that had gone on?

A Right.

Q You didn't notice the position of the stove

1 or the door until two days after the fire occurred?
2 A Until we started moving it.
3 Q And you don't know who had been around there
4 between the time the fire occurred and the time you went back
5 to move the stove?
6 A I know no one had been inside, because I
7 was still there. I made sure no one went in to look.
8 Q Was the kitchen still standing where the
9 stove had been located?
10 A The kitchen had been burned down.
11 Q I'm sorry?
12 A The kitchen was burned down.
13 Q That is what I thought. So, you don't know
14 who was in the neighborhood of this stove for these two days?
15 A Well, like I said, I was still going to
16 school.
17 MR. PAGE: All right.
18
19 Q You don't know who was in the neighborhood
20 of this stove. As I understand it, you were going to
21 school during the week days?
22 A True.
23 Q Did any people come in and out of the
24 house during the period of time you were there?
25 A While I was there?

1 Q Yes. During this two-week period, do you
2 know of any other people that visited the home?
3 A My uncle.
4 Q Your uncle?
5 A Yes, and his family.
6 Q Who was that?
7 A Richard Hicks.
8 Q And you say his family came with him?
9 A Yes.
10 Q What does his family consist of?
11 A His wife and his son.
12 Q How old was his son at that time?
13 A Approximately -- I don't know. I don't
14 know.
15 Q Do you know whether or not the kitchen had
16 been cleaned during the period of time between September 2nd
17 and September 21st?
18 A Was it cleaned?
19 Q Yes.
20 A Yes, it was cleaned.
21 Q And do you know who did the cleaning in
22 the house?
23 A My mother.
24 Q Your mother did?
25 A She worked in the kitchen.

MR. PAGE: Your Honor, if you can bear with me for one second.

I have no further questions.

BY MR. MONCURE:

Q I just have a couple. The fire department finally got the fire out, didn't they?

A Yes.

Q And by the time they got through, you told us the kitchen was burned out?

A Right.

Q Everything in it was charred up and burned to pieces, the stove, refrigerator, kitchen set and everything?

A Everything.

Q All charred and torn up. Everything in a mess, and the firemen in there trying to see how to get the fire out?

A Yes.

MR. MONCURE: That is all.

* * * * * * * * *

WITNESS STOOD ASIDE

1
2 RICHARD HICKS, a witness called by the
3 plaintiff, first being duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. TUCKER:
6 Q Will you state your name, age and where
7 you live?
8 A Alberta, Virginia.
9 Q What is your name?
10 A Richard Hicks.
11 Q How old are you, Mr. Hicks?
12 A I will be 66 this coming month.
13 Q Mr. Hicks, you are related to the plaintiff,
14 are you not, Mrs. Logan?
15 A My wife's niece.
16 Q I beg your pardon?
17 A My wife's niece.
18 Q She is? Directing your attention to the
19 fire that took place at Mrs. Logan's house on Sunday, Septem-
20 ber 21, 1969, were you there?
21 A No, I wasn't there, but I came there.
22 Q When you got there, what was the condition
23 of things? Was the fire still going on?
24 A Yeah, and the fire department was shooting
25 water all around, and I looked in the window, and I seen all

this fire up in the top, and I said, well, I am going in there and get some of her clothes out.

Q Wait a minute. Did you go into the house?

A Yes, sir.

Q By way of what door the first time?

A I went through the front door, and I grabbed the ax out there the fire department had hanging, and when the smoke was about this high from the floor, and I grabbed the ax out of his hand, and goes in there, busted the back window out, and after I busted the back window out I goes in the back room there where I knew where her clothes was hanging, and I reached in the closet and got some, and I went to the window and threw them out, and then I came outside and on the way out I stumbled over this door. I didn't know what it were, but I know it was something I stumbled over when I come out.

Q Did you later find out what it was?

A I found out afterward what it was.

Q What was it?

A The gas stove door.

Q Now, did you know where the gas stove was in the house?

A The gas stove was sitting over right, facing that door where I seen it, where the door come out.

Q Let's get down this far. This was the door

leading from what to what?

A The door where it was leading to the kitchen it was, and the door, it was under a place like that.

Q A door space?

A Yeah.

Q An archway?

A More a space about four feet wide arch in it, you know.

Q And how was the door leading from what to what?

A Leading from the kitchen.

Q Leading from the kitchen back to what?

A Back over on the other side.

Q Using north, south, east and west, Mr. Hicks, which side of the house is the kitchen on?

A It would be on the north side -- east side going that way.

Q The kitchen would be on the east side?

A Facing east.

Q Which way does the house face?

A I didn't get you?

Q Which way does the front door face?

A The front door faces south.

Q All right. Now, as you go in the front door, you are walking north, right?

A Yes.

Q And to go to the kitchen, then, which way do you turn?

A Turn right.

Q Does that carry you immediately to the kitchen, or does it carry you into another room?

A It carries you into another room and you turn down the hall.

Q When you turn right after coming in the front door, you turn right and what room do you go into?

A The dining room.

Q Then you are going east. Right?

A Yes.

Q You go across the dining room and what is the next room?

A The kitchen.

Q Which side of the kitchen was the gas stove, north, south, east or west?

A On the east side.

Q So the stove was all the way across the room from the dining room, all the way across the kitchen from the dining room?

A Yes.

Q Tell me where it was you saw this door?

A Out in the hallway. Out near the front door.

Q That is before you come back into the house?

A Come back from the kitchen back in past through the dining room.

Q From the kitchen you would pass through the dining room?

A The door did.

Q The door did?

A Uh-huh. It was right in the hall. I don't know where it come from.

Q It was in the hall you entered. When you got into the house, from that point you have to go through the dining room and across the kitchen.

A That's right.

Q Do you have any idea how wide the dining room and kitchen are?

A I would say about 12 by 14, something like that.

Q Each one of those rooms are about 12 feet wide?

A The kitchen ain't quite 12. Maybe 10 by 10, I reckon. I don't know.

Q All right. Did you ever go over -- After you had thrown the clothes out the room, what did you do when you got outside, went back out of the house?

A When I went back outside, the fire depart-

1 ment was shooting water up in the top, and the fire was
2 spreading over, all over the roof. I told him to give me
3 a line. Went up on the top and chopped a hole and went down
4 and got the hose and lay down on the roof and put the fire
5 out on the ceiling.
6 Q When you went out of the house the first
7 time, did you go into the kitchen?
8 A No.
9 Q When was the first time that you went back
10 into the kitchen?
11 A After putting the fire out on the top.
12 Q When you went into the kitchen then, what
13 was the condition of the things you saw?
14 A Everything was down in the hole.
15 Q Down in a hole? You mean that --
16 A The whole floor had burned out.
17 Q It was down in the hole?
18 A Yes.
19 Q Was there anything that you noticed for
20 any particular reason other than the things were down in the
21 hole?
22 A No. I didn't pay it any mind. Looked down
23 in the hole and seen that and then I come around to the corner
24 of the wall and looked over there. The top part of that stove
25 door was sticking in the wall, in a diamond-shape in the side

of the wall, like the end was on there was sticking in that, but the big door on the bottom, that come on out I would say a good, maybe from about here to that door over yonder to that door.

Q The larger door was in the hall beyond the living room?

A That's right.

Q And the smaller door --

A Was sticking in the corner of the wall in the diamond-shape.

Q Was that in the kitchen?

A In the kitchen wall.

Q Which wall, north, south, east or west wall?

A South.

Q Which wall of the kitchen was this smaller door sticking in?

A It was on the south side.

Q That is the side that the front door is on?

A Yes.

Q Which side was the stove on before the fire?

A East side.

Q Where was the kitchen sink?

A That was in the hole.

Q Before the fire, on which side of the room was the kitchen sink?

A On the same side, the east side, I think. No, south side, on that side.

Q The sink was on the south side?

A Yes. On the same side as the front door.

Q Right. Now, Mr. Hicks, as you went into the kitchen, leaving the doorway, leaving the dining room into the kitchen, that doorway is in what wall of the kitchen?

A It ain't much of a wall.

Q But would it be on the north side, south side, or east side of the kitchen?

A That would be the north side.

Q And what side would the stove be on?

A On the east side.

Q As you walk through that doorway, was the door to your right, or to your left in front of you or where?

A Well, when you walk -- what do you mean, come in the front door?

Q The doorway between the dining room and the kitchen.

A When you walk in there, the doorway would, say,be about four feet wide.

Q Yes.

A And you walk in a space facing like I am

1 facing the stove.

2 Q Where was the door that you saw stuck in

3 the wall?

4 A It was stuck in the east side, but it would

5 be over there. And the other big door was up at the end of

6 the hall.

7

8 MR. TUCKER: All right. Your witness.

9

10 CROSS EXAMINATION

11 BY MR. PAGE:

12 Q Mr. Hicks, I take it that there was an

13 entrance from the dining room into the kitchen, and that is

14 the door you are talking about being four feet wide?

15 A Sir, I didn't get you.

16 Q You have talked about a door being four

17 feet wide. Could you tell me whether that is the door from

18 the dining room into the kitchen?

19 A Yes.

20 Q If you walk into the kitchen from the

21 dining room, in which direction are you facing, north, south,

22 east or west?

23 A Facing the stove.

24 Q No, sir. Which direction, if you walked

25 into the kitchen from the dining room, which direction would

you be facing?

A East.

Q You would be looking directly east?

A Yes.

Q Which side of the kitchen was the stove on?

A East side.

Q And it is my understanding that you have testified that one of the small doors on the front of the stove --

A That's right.

Q -- which is facing west was embedded in the wall on the east side?

A One stuck on the wall, was on the south side facing the same as the front door. And the other one was blowed up the hall beyond that door.

MR. PAGE: I have no further questions.

MR. MONCURE: No questions.

* * * * * * * * *

WITNESS STOOD ASIDE

1
2 THOMAS S. MOSELEY, a witness called by
3 the plaintiff, first being duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. TUCKER:
6 Q Would you give us your name and where you
7 live?
8 A Thomas S. Moseley, Lawrenceville, Virginia.
9 Q What is your business, Mr. Moseley?
10 A Business now?
11 Q Yes.
12 A Working for Building Supply.
13 Q In 1969, where did you work?
14 A Bottled Gas Corporation of Virginia.
15 Q What were your duties?
16 A Service.
17 Q Among your duties, did you install bottled
18 gas?
19 A Yes, sir.
20 Q Did you, on September 2nd, 1969, make an
21 installation and hookup at Mrs. Logan's residence?
22 A I did.
23 Q Essentially what did you do?
24 A Well, we sat two tanks outside and run a
25 line from the regulator into the house and put a tester on it

and checked for leaks, set the pressure.

Q This line is a tubing or pipe, is it not?

A That's right.

Q What material is it made of?

A Copper.

Q Now, I want to direct your attention, I want you to tell me the point on the stove to which you connected your line. I believe the pipe that comes from the stove is called a manifold?

A Right.

Q You carried your line to the manifold, right?

A Right.

Q Is that manifold located within the stove, or does it connect out from the stove?

A It's up under the top.

Q It's up under what?

A Up under the top, right under the back burner on that stove.

Q Do you bring your line into the back through the back of the stove, or through the side of the stove?

A No. You bring your line through the floor and up to the back and right around, right under the back burner. Most of them connections, some of them comes through the front, but this particular one was a back burner right on the back side.

Q Does the manifold stick out beyond the stove itself?

A No, sir.

Q So you have to bring your line in through the outside of the stove?

A That's right.

Q To the manifold?

A Through the back of the stove.

Q Now, did you have to pick up something, pick up the top of the stove or something?

A Just a little grate on top where your burner sits on.

Q What is your connection to the manifold made with, rigid tubing or flexible tubing?

A Flexible tubing.

Q Did you, in lifting up the grate for the top -- and is that the top burner that would be to the right or left as a person is facing the stove?

A To the right.

Q All right. When you lifted up that grille, you had complete access to the manifold?

A Right.

Q Did you have to go into the oven on the stove?

A For checking it out, we did, yes, sir.

Q Did you make any adjustments, if any, in the oven?

A The stove come through for natural gas. We converted it to what we call LP.

Q Tell us how you made that conversion?

A It has, you just take them and screw them into converters and into your flame.

Q And this is the hole through which the air comes to mix with the gas?

A No. The middle thing is what the gas itself comes out of.

Q And you have to make this space larger or smaller?

A Smaller.

Q For natural gas you have to make it smaller?

A For LP you make it smaller. For LP you make it smaller.

Q So you had to make the aperture larger for the bottle gas?

A I had to make it smaller.

Q Did you in your work there have anything to do with the thermostat or the pilot or anything that makes the oven come on or off?

A No more than cutting a little screw off to run a pressure check on it for leaks. Just a little position

where you turn it to on and off position and cut your tanks off and it will tell you if you have a leak.

Q Are you talking about the controls of the oven?

A Yes, sir.

Q Do you do the same thing for the controls on the top burners?

A No, sir.

Q Where you cut this, or where you tested for the leak of the oven, is that on the top part of the stove or did you do that with the oven door closed?

A Yes, sir, you can do it with the oven door closed.

Q That is up near the top part of the stove, where the control is to turn the oven on and off?

A That's right.

Q Is there any control on the stove that the customer can get to without taking something apart other than the knobs with which you turn the four burners and the oven on and off?

A Well, for the customer to get in any of the controls, all they have to do is lift the buttons off and all the screws are there where he can get them.

Q I don't understand.

A To get to your controls, your screws or

adjustments, all you have to do is lift the button off. They are very accessible.

Q What controls are these?

A That is your oven control. That's the stove.

Q Mr. Moseley, I am going to hand you, or have you handed what has been marked as Logan Exhibit 1.

THE COURT: That will be Plaintiff's Exhibit 3.

Q I will just hand him this and ask him, do you recognize that as being a picture of the stove?

A I wouldn't be positive, but I think it is.

Q Now, that stove has five knobs that are accessible to the user?

A That's right.

Q Is there anything else there that is accessible to the user that controls that stove?

A No.

Q The middle knob, I assume, controls the oven, does it not?

A That's right.

Q And you showed Mrs. Logan how to turn off and on the oven, did you not?

A Yes, sir, I did.

Q What were your instructions to her?

A Well, as on all the stoves that have come out in the last five or six years have an oven control and down below it has an MF valve or MC valve, whatever you want to call it.

Q Down where?

A Down in the bottom of the oven. And when you turn the oven control on it takes about a minute to a minute and a half for one oven burner to come on.

Q Excuse me. If I open the door, can I see that FM control?

A Not unless you take the bottom out.

Q You have to take something out. On the top of the stove, the only thing the customer can get to without taking something out are these five knobs that are shown on that picture, are they not?

A That's right.

MR. TUCKER: I would like to have that marked.

THE COURT: Plaintiff's Exhibit No. 3.

Q Now, we have been talking about this FM valve, that you have to move something. Did you do anything

1 to that FM valve?
2 A No, sir.
3 Q Did you take out what has to be taken out
4 to get to it?
5 A No, sir. I did not take the bottom out.
6 Q You made no adjustment to that at all?
7 A I made an adjustment to the oven orifice.
8 Q Where is that oven orifice located?
9 A Right at the burner.
10 Q How do you get to that?
11 A Through the bottom compartment door. Broiler
12 door.
13 Q Do you have to take something out?
14 A You have to take the broiler door out, yes.
15 Q Is there anything else you adjusted?
16 A I adjusted the air to the burner after we
17 had checked the stove for leaks and all.
18 Q Do you have to take something out to do
19 that?
20 A No, sir. You do it right through the
21 broiler door.
22 Q So there is nothing that you did to that
23 stove, or did you light the pilots?
24 A Yes, sir.
25 Q Is that the type of stove that has a continu-

ing pilot?

A Yes, sir.

Q The only way to light it is by the pilot, the only way to light the burners?

A That's right. You have a pilot that burns all the time, and when you turn the oven control on, this FM valve there feeds a little tube that runs back down there and has to get to so many degrees before the valve will open.

Q So the customer never has to strike a match or carry a fire to that stove?

A No, sir.

Q All the customer has to do is to turn the knob on or off. Those knobs that are visible on that picture?

A That's right.

Q If he wants fire or to put the fire out?

A Yes, sir.

Q And that is what you told Mrs. Logan?

A That's right.

Q So then I take it that whatever is made into that stove that keeps the pilot light going, adjusts the pilot light, or shuts the gas off or lets the gas flow go through, whatever that was, you didn't have anything to do with it?

A No more than on the oven control we turned it off and pressure tested it for leaks. And after it didn't

have any leaks on it, we turned it back on.

Q What you turned on was the same thing that the customer, Mrs. Logan, can turn on, the knob that you see at the front of the stove?

A No, sir, it is a little screw back behind the control button.

Q You mean you lift that control button off that is visible in the picture?

A That's right.

Q And is there a screw behind that?

A That's right.

Q I think you had better explain that to me. When you turned that screw, what happens?

A Well, the screw is put down there to regulate the amount of gas. Like we said, the stove comes for natural gas. And to convert it to LP we come through the top, and halfway over is off, checking for leaks, and down is LP. One little screw.

Q But you left it --

A Three positions.

Q You left it in the position that it should be for LP gas?

A That's right.

Q And that screw doesn't have anything to do with the pilot light coming on or going off?

A No, sir.

Q And the position in which you left it is the position that it is customary, that it is supposed to stay there?

A That's right,

Q You did not explain any of this to Mrs. Logan, did you?

A No, sir.

Q It wasn't necessary?

A No, sir.

Q All she had to concern herself with was the knob that turned the oven on and off?

A That's right. We explained to her the operation of the oven, but not setting the controls.

Q The position in which you left it for LP gas is the position that the controls stay in as long as it is burning LP gas, is that right?

A That's right.

Q Did you do anything to that stove that would cause it to have an explosion to have occurred in it?

A No, sir.

Q Did you do anything in that stove that would cause an accumulation of gas build-up in the oven and broiler?

A No, sir.

Q Where you connected to the manifold, is that in or outside of the oven?

A That's outside the oven.

Q Did you check the manifold for leaks?

A Yes, sir.

Q But even if the manifold had been leaking where you connected it to the manifold, would this gas go into the oven or out in the room?

A It would go out into the room.

Q It would not, there is no direction --

A If it was leaking at the manifold, it would go out into the room.

Q I beg your pardon?

A If it was leaking at the manifold, it would go out into the room.

Q It would not go into the oven or broiler?

A No, sir.

Q All right. And nowhere else that you worked with reference to the flow of gas except at that manifold?

A That's all.

Q So then if your work had caused a gas leak, that gas would have gone out into the room and not into the oven?

A That's right.

1 MR. TUCKER: All right. Your witness.
2
3 CROSS EXAMINATION
4 BY MR. PAGE:
5 Q Mr. Moseley, with reference to the fact
6 if gas leaks from the manifold, it goes directly out into
7 the room, that is a fact, isn't it?
8 A That's right.
9 Q It tends to hover around the floor. It
10 is heavier than air. It tends to get low down on the floor?
11 A That's right.
12 Q It's true that when that oven is turned on
13 and the air in there gets hot, that there is a draft in which
14 the hot air goes out the top just like a chimney on a fireplace,
15 is it not?
16 A Yes, sir.
17 Q That is what keeps the oven burning, isn't
18 that right?
19 A That's right.
20 Q When that draft gets going, it sucks air
21 into the bottom of the oven, isn't that right?
22 A Yes, sir.
23 Q If there is any gas out there around the
24 floor, what is going to happen is, when that draft gets going,
25 it is going to suck that gas up in there, isn't it?

1 A That's right.
2 Q Now, when you went out there to Mrs. Logan's
3 house to install the stove, you had a helper with you?
4 A Yes, sir.
5 Q And what was his name?
6 A Hank Turner.
7 Q It is my understanding on this particular
8 day you sent Hank Turner underneath the house to run the
9 tubing from the tanks and back up to the place where you cut
10 a hole in the floor to get the tubing up through, is that
11 right?
12 A That's right.
13 Q Who bored the hole in the floor?
14 A I did.
15 Q And Hank was under there. And what sort of
16 tubing do you use? Is it a copper tubing?
17 A Copper tube.
18 Q And is it 3/8's inch?
19 A 3/8's.
20 Q It has a threaded end on it that you can
21 turn and hook up to the manifold on a stove so that you can
22 screw it up and the tube becomes tight up against the manifold,
23 isn't that right?
24 A It is a flare fitting.
25 Q I'm sorry?

A It is a flare fitting.

Q Flare fitting, is that what you call it? Thank you, sir. I take it you were up in the room where the stove was and Hank was down underneath passing the tubing up to you?

A That's right.

Q And it was also his job, as I understand it, to attach the tubing to the beams underneath the house so it won't just flap around?

A That's right.

Q What sort of tools do you do that with?

A Copper clamps.

Q How do you put them into the wood?

A They are driven into the joists.

Q With a hammer?

A With a hammer.

Q Now, that copper tubing is flexible to a degree, but you can't take it and bend it double and have it snap back or anything, can you?

A Make that a little clearer, will you?

Q You indicated it was done with a flexible tube. If you take a piece of copper tube, it doesn't bend back straight or anything?

A Oh, no, sir. No, sir.

Q Now, at the time you installed this stove, I

take it that you did check for leaks, is that right?

A Yes, sir.

Q How did you go about doing that?

A We have a little gauge we call a pressure gauge, or some people call it a pressure gauge. You cut the pilot off on the stove. You cut the tanks off, your tank valve, and you run a five minute check on it to see if any pressure on the line would lose at all.

Q When you ran this check on this stove, did you lose any pressure?

A No, sir.

Q It would be fair at the time to say when you checked it on September 2, 1969, it was not leaking, is that right?

A That's right.

Q If it leaks, you lose pressure, don't you?

A That's right.

Q Now, it is my understanding while you were there you actually turned the oven on, did you not?

A I did.

Q And got it heated up enough so it would light, is that correct?

A Yes, sir.

Q And Mrs. Logan testified you did that to show her how it was operated?

A That's right.

Q Did you also turn on the top burners?

A Yes.

Q Mrs. Logan has testified that she turned the stove on or the oven on on the morning of the 21st of September and that it lit all right, lit normally. As I understand it, the pilot light would have to be burning in the orifice at the time she lit it for the stove to light, is that correct?

A Yes, sir.

Q It would be fair to say at the time she turned the oven on on the morning of September 21st, the pilot light came on and caught properly, the light was lit and it was functioning properly, wouldn't it?

A Yes, sir. Functioning properly.

Q As I understand it, all of the bottled gas that Virginia Gas Company sells also has an agent in it that you put into it -- well, let me ask you this. Bottled gas in the natural state does not smell bad, does it. It doesn't have any smell?

A No, it is odorless.

Q It doesn't have any odor?

A None at all.

Q How does the gas come to your company, do you recall?

A Some comes by railroad, or some comes by pipe line.

Q When you get it, is there anything that Bottled Gas did to give it an unnatural odor?

A It has methylamine in it. They add it to give it an odor.

Q When you hooked these bottles up, do you know whether they had an odor to them or not?

A Yes, sir.

Q I take it it was your standard procedure to tell all your customers at the time that you hooked this stove up that this gas had been charged with something that made it smell sort of like cabbage, didn't you?

A Yes, sir.

Q Did you tell that to Mrs. Logan?

A I might not have, in the exact words, but one way or the other, we did.

Q So you are satisfied in your own mind that you got that message across?

A Yes, sir.

MR. PAGE: I don't believe I have any further questions.

1 CROSS EXAMINATION

2 BY MR. MONCURE:

3 Q Just one, Mr. Moseley. After you hooked
4 it up and ran all your pressure tests on the line and
5 showed Mrs. Logan how the stove was operated, when you left,
6 it was operating properly, is that correct?

7 A That's right.

8 Q No leak in the line and everything in the
9 stove was perfect?

10 A That's right. Did I understand her to say
11 that the oven was off when it blew up?

12

13 [105]

14

15 * * * * * * * * *

16

17

18 JURY OUT

19

20 MR. TUCKER: I just wanted to ask the
21 Court to particularly notice at or before the
22 time of the purchase of this stove that Maryland
23 had the uniform commercial code that I am prepared
24 to pass to the Court a photographic copy of the
25 Maryland section of the Code to indicate that they

JURY OUT

did have a commercial code and that the goods are warrantied to be fit for the purpose of which such goods are used, and also with respect to the buyers in regard to a breach of warranty of fitness.

THE COURT: All right. Hand me that. I will mark that as Plaintiff's Exhibit 4, but it will not go to the jury room. I think it is a matter of which the Court takes judicial notice.

[107]

* * * * * * * * *

THE COURT: Gentlemen, the motions to strike are sustained and summary judgment is hereby entered in favor of each defendant.

The Court feels that after reviewing the evidence of the plaintiff and considering the authorities that you gentlemen have provided, that the evidence is insufficient as to the manufacturer, Montgomery Ward, to establish a prima facie case that there was a defect in the stove or a breach of the implied warranty at the time that the stove

1 JURY OUT

2 left the hands of the defendant in Baltimore.

3 Of course, as counsel have recognized, the
4 crux of the case is whether the evidence at this point
5 is sufficient to infer that the explosion which re-
6 sulted was due to either faulty design or manufacture
7 of the stove. I certainly think it's proper to infer
8 that an explosion did occur in the oven, Mr. Tucker,
9 as you pointed out; but the evidence leaves to pure
10 speculation, in the Court's view, as to what caused
11 the accumulation of gas to ignite. Of course, I
12 understand the plaintiff's argument that there being
13 evidence at this point of proper installation of the
14 stove and there being evidence from which could be
15 inferred the fact that gas collected in the oven as a
16 result of which an explosion possibly did occur
17 causing the damages sustained; nevertheless, what
18 caused the explosion is left to pure speculation and
19 I think the Court views the matter pointed up by an
20 analysis of this case with the facts of the Chestnut
21 case which both the plaintiff and Montgomery Ward have
22 cited, 445 Fed 2d Page 967.

23 As you recall in that case there was a jury
24 verdict for the defendant which was vacated and re-
25 manded to the District Court for a new trial. And

1 JURY OUT

2 as you also recall, the facts of that case, the 1967
3 Mercury Cougar was equipped with an automatic head-
4 light closure system, and twenty-four hours, less
5 than twenty-four hours prior to the accident, the
6 vehicle was purchased. The testimony was that while
7 the vehicle was being driven at a reasonable speed
8 and in a proper manner and that, without touching
9 the dashboard, the light suddenly went out -- Page
10 971 -- the evidence was that Grady Chestnut was
11 driving at a reasonable speed and in a proper manner
12 and that, without touching the light switch on the
13 dashboard, the lights suddenly went out. After
14 examining the automobile, experts both plaintiff and
15 defendant agreed that the headlights were burning on
16 low beam at the time of the accident and a stipula-
17 tion to that effect was entered at the trial. Of
18 course, the accident happened at one o'clock.
19 In response to a hypothetical question, one
20 of plaintiff's expert witnesses testified that the
21 only way light projection could be lost if the head-
22 lights remained on was for the headlight cover to
23 close over the burning headlights. We think a jury
24 would be entitled to conclude from this testimony
25 that the headlight closure system was defective and

1 JURY OUT

2 could infer from the fact that the automobile was
3 purchased less than twenty-four hours prior to the
4 accident that the defect was present at the time
5 the automobile left the Ford plant.

6 You will recall that the District Judge
7 in his charge to the jury stated that the law of
8 the 4th Circuit required that the jury find proof
9 of a specific defect, that is, a defective solenoid
10 switch, and the 4th Circuit held that that was
11 error. The jury, based on that testimony, could
12 infer that the cover on the headlight was defective.

13 Now, it seems to me that there is a
14 great deal of difference between the Chestnut case,
15 inferring defective manufacture or design of a head-
16 light cover as a result of its unexplained closure
17 during operation, there is a great deal of differ-
18 ence between an inference in that regard and an
19 inference here of defective manufacture or design
20 of the stove from an explosion which occurred in the
21 oven. There is no testimony here, expert or other-
22 wise, which would take it out of the realm of specu-
23 lation -- any, not a specific defect in the stove
24 but any defect at all which would cause the explosion.
25

1 JURY OUT

2 The plaintiff argues that, well, if all of
3 the valves or if the stove had been operating pro-
4 perly that gas would not have escaped into the oven,
5 as the plaintiff argues that it did, and that's
6 where the explosion occurred. However, here, any
7 number of causes could have occurred, even with a
8 layman's knowledge of gas stoves, and based on the
9 testimony in this case, for example, the testimony
10 of the bottled gas representative that he not only
11 installed the line but he put in the copper tubing.
12 Now, he checked it, cut the stove completely off --
13 I think is the proper conclusion from his testimony
14 -- to make sure that there were no leaks. He put a
15 pressure test on it some two or three weeks before
16 this explosion occurred. So at that time, there was
17 certainly no, according to the evidence, no leaks
18 of gas either from outside the stove or inside the
19 stove.
20 So based on this evidence at that time,
21 and after the stove had left the hands of the
22 manufacturer, not only the outside attachments to
23 the stove were working properly, as I understood the
24 evidence, but certainly the stove itself was func-
25 tioning properly.

1 JURY OUT

2 The oven was used for the first time on t
3 day this accident occurred, which was some several
4 weeks after the test was made. The evidence compl
5 ly leaves for question and speculation whether the
6 copper tubing, the metal relaxed for some reason,
7 that's one cause that occurs to me; or whether the
8 regulator caused a malfunction, that is another
9 cause that may have contributed to it -- there may
10 be an answer to that -- evidence does not show how
11 far away from the home the tanks were installed,
12 whether they were right against the home itself or
13 whether they were half a mile out in the yard.
14 It is conceivable that with proper design
15 and manufacture that there was failure of one of
16 the parts in the stove, either a gasket or, as I s
17 I am just purely speculating and perhaps none of t
18 speculation really relates or makes any mechanical
19 difference insofar as the cause of the explosion i
20 concerned, but there is no theory that has been
21 offered under the evidence, as I say, by expert
22 testimony or otherwise, as to what caused the igni
23 tion, what caused the explosion to occur. Even if
24 we assume that the -- and I think it is a proper
25 inference at this stage of the evidence -- that th

1 JURY OUT

2 gas did collect in the oven and that's where the
3 ignition occurred, and so under the statute law of
4 Virginia where there is a provision -- in the Pepsi
5 Cola and Yates case where certainly res ipso does
6 not apply here, this, in the Court's view, is an un-
7 explained accident. It may have been attributable
8 to one of several causes for some of which the
9 defendant manufacturer is not responsible. That
10 having been said and the evidence being clear at
11 this stage that there was no failure in the installati
12 of the stove by Bottled Gas, then the plaintiff's case
13 against it must fail, too. So, summary judgment will
14 be entered in favor of both defendants with the
15 objection of the plaintiff noted.
16 MR. TUCKER: May I make one inquiry, Your
17 Honor? And that is, does the Court remember the
18 evidence that the regulator or the tubing placed by
19 Bottled Gas was inside the stove?
20 THE COURT: Not at all. I understand the
21 regulator, if I heard the testimony, that the regu-
22 lator was installed outside of the stove and even
23 outside of the home and, of course, the tubing, as I
24 understand the testimony, running from the tank on
25 the outside of the home at some point, which is un-

1 **JURY OUT**

2 determined by the evidence, and up through the house,
3 up through the floor, that the installer testified
4 that he had assistance in connecting it to the stove
5 and connected it to the manifold, which is inside
6 the stove itself.
7 MR. TUCKER: Very well, I wanted to guard
8 against the misinterpretation of the evidence.
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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

* * *

JUDGMENT ORDER

[Entered June 25, 1974]

This day came the plaintiff, in person and by her attorney, and came also the defendants, by their attorneys, and thereupon came the jury, to-wit: Miss Judith A. Bennett, James Y. Newton, Robert G. Nixon, James C. Park, Anderson Terrell, William R. Turner, and Richard L. Verna, who were sworn well and truly to try the issues joined in this case, and having fully heard the evidence of the plaintiff, the Court doth sustain the motion for the defendants, by their attorneys, to strike the plaintiff's evidence and enter summary judgment in their favor, and the jury is altogether discharged from rendering its verdict herein.

Therefore, it is considered by the Court that the plaintiff recover nothing of the defendants but that they recover of the plaintiff their costs by them about their defense in this behalf expended.

To which action of the Court the plaintiff, by her attorney, objected.

* * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

[Filed July 25, 1974]

The plaintiff gives notice that she will apply to the Supreme Court of Virginia for a writ of error to the order of the Circuit Court of the City of Richmond, Division I, made by the Honorable A. Christian Compton, Judge, on the 25th day of June 1974 by which judgment was entered for the defendants in the above captioned action.

Error is assigned to the ruling of the court sustaining the motion of the defendant Montgomery Ward & Co., Incorporated, to strike the plaintiff's evidence.

A transcript of the testimony is to be filed.