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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

Record No. 8184

PHILIP P. NELSON

Appellant

v.

ELEANOR H. PENDLETON

Appellee

APPENDIX TO APPELLANT'S BRIEF

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TABLE OF CONTENTS

	Page
Motion for Judgment	1
Grounds of Defense	4
Plea of Contributory Negligence	5
Plea of Assumption of Risk	5
Instruction No. 6	5
Instruction No. 7	6
Instruction No. 1-D	7
Instruction No. 1-E	7
Instruction No. 1-E1	8
Order	8
Final Order	10
Notice of Appeal	12
Assignments of Error	12
Defendant's Exhibit A, Partial Floor Plan	14
Transcript, Philip P. Nelson	15
Transcript, Bessie W. Nelson	30
Transcript, Lee Schwertfeger	44
Transcript, Eleanor Hotchkis Pendleton	62

IN THE

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PHILIP P. NELSON

Appellant

v. Record No. 8184

ELEANOR H. PENDLETON

Appellee

[1] MOTION FOR JUDGMENT

Now comes the plaintiff, Eleanor H. Pendleton, and moves the Court for judgment against the defendant in the sum of Fifty Thousand Dollars ($50,000.00), for that:

1. On the 3rd day of February, 1970, the defendant was the owner of a private residence located on the west side of Roebling Street, in Stuyvesant Acres, Warrenton, Virginia. On that date, the plaintiff was upon the said premises as a business invitee.

2. There was upon the said premises a stairway leading from the first floor of the home to the basement, which stairway did not have any protective handrail and

which accordingly constituted a hazard to persons entering upon the said stairway, and particularly to infant children on the premises. To guard against such recognized hazard, the door at the head of the said stairway was customarily kept closed and latched.

3. On the 3rd day of February, 1970, the defendant, or his agent, servant, and employee, permitted the said door at the head of said stairway to be and remain open and, as a result thereof, the infant grandchild of the defendant, a child too young to exercise any discretion for her own safety, was enabled to enter upon the said stairway and subject herself to the substantial danger of falling and suffering injuries or death.

[2] 4. In an effort to prevent injury to or the death of said infant child, the plaintiff attempted to rescue her from her plight but, in entering upon the said stairway in an effort to save said child, was in turn caused to fall from the said stairway to the floor of the basement as a proximate result of the hereinafter specified negligence of the defendant.

5. The defendant was negligent, which negligence proximately caused injury to the plaintiff, in the following respects:

(a) The defendant permitted a hazardous and dangerous condition to exist upon the premises in obvious disregard of the danger to others in that the stairway had

no protective railing.

(b) Although the defendant relied upon the door at the head of the stairs being closed as the sold protection against the hazardous stairway, the defendant failed to provide any adequate system to assure that the said door would be closed when not in use by responsible persons.

(c) The defendant, or his agent, servant and employee, negligently permitted the doorway to be left open at a time when his infant grandchild had access to the said stairway.

6. As a proximate result of the said negligence of the defendant, and the accident resulting therefrom, the plaintiff suffered serious, grevious and painful bodily injuries, was forced to incur and will incur substantial medical expense in an effort to be healed, lost substantial amounts of wages, and has had her capacity for gainful employment destroyed, and has suffered permanent injury.

WHEREFORE, the plaintiff moves the Court for a judgment as aforesaid against the said defendant.

ELEANOR H. PENDLETON

By: /s/ Thomas V. Monahan
Counsel

[Filed 16 April 1971]

* * *

[5]

GROUNDS OF DEFENSE

The Defendant, Philip P. Nelson, herewith states his Grounds of Defense to the Motion for Judgment filed against him by Plaintiff in this action.

1. Defendant admits that on the 3d day of February, 1970, he was the owner of a private residence located on the west side of Roebling Street, in Stuyvesant Acres, Warrenton, Virginia. Defendant denies that on that date the Plaintiff was on said premises as a business invitee.

2. Defendant admits that on the 3d day of February, 1970, there was upon said premises a stairway leading from the first floor of the home to the basement, which stairway did not have a handrail. Defendant denies the rest of the averments contained in paragraph 2 of the Motion for Judgment.

3. Defendant denies the averments contained in paragraph 3 of the Motion for Judgment.

4. Defendant states that he does not know whether the averments in paragraph 4 of the Motion for Judgment are true, nor does Defendant have sufficient knowledge or information upon which to base a belief as to their truth.

[6] 5. Defendant denies the averments contained in paragraph 5 of the Motion for Judgment.

6. Defendant denies the averments contained in

paragraph 6 of the Motion for Judgment.

7. Defendant denies the Plaintiff is entitled to recover fifty thousand dollars ($50,000.00), or any other sum from the Defendant in this action.

PLEA OF CONTRIBUTORY NEGLIGENCE

While not admitting that he was guilty of negligence, but expressly denying the same, Defendant avers the Plaintiff was guilty of contributory negligence barring a recovery in this action.

PLEA OF ASSUMPTION OF RISK

Under all of the circumstances and conditions known to the Plaintiff at the time she was on the premises owned by the Defendant she assumed all of the attended risks, and the Plaintiff is barred of recovering in this action because she did in fact assume the risks that were known to her, or in the exercise of reasonable care should have been known to her.

[7] PHILIP P. NELSON

By: /s/ J. Sloan Kuykendall
Counsel

[Filed 7 May 1971]

* * *

[45] INSTRUCTION NO. 6

The Court instructs the jury that, by undertak-

ing to secure the door to the basement by a hook and eye device, Mr. Nelson established the standard of care necessary with respect to that door and, if you believe from the greater weight of the evidence that the hook and eye were permitted to be unlatched by Mr. Nelson or his agent, other than Mrs. Pendleton, then he was negligent under the facts and circumstances of this case.

[Filed 6 March 1972]

* * *

[46] INSTRUCTION NO. 7

The Court instructs the jury that if you believe from the greater weight of the evidence that Mr. Nelson had employed Mrs. Pendleton to take those steps reasonably necessary during his absence to provide for the safety of his granddaughter, Sandy Nelson, and if you further believe from the greater weight of the evidence that because of negligence of Mr. Nelson, his agents or employees, in permitting the door to be unlatched and without negligence on the part of Mrs. Pendleton, Sandy Nelson had been placed in such a position that it reasonably appeared to Mrs. Pendleton that she (Sandy) was in peril, and for this reason Mrs. Pendleton went to the rescue of Sandy Nelson, then you shall find your verdict for the plaintiff, Mrs. Pendleton, unless you further find from the greater weight of the evidence that her acts in

doing so were rash and reckless.

[Filed 6 March 1972]

* * *

[64] INSTRUCTION NO. 1-D

In connection with Mr. Nelson's duty of care, the Court instructs the jury that the negligence, if any, of Annie or Janie, the two Nelson servants, or of any other member of the Nelson family in leaving the door unlatched is not the responsibility of Mr. Nelson and you may not find Mr. Nelson liable if you believe the door was left unlatched by any of them.

[Filed 6 March 1972]

* * *

[65] INSTRUCTION NO. 1-E

The Court instructs the jury that Mrs. Pendleton assumes all the risk incidental to her employment when she entered the services of Mrs. Nelson -- among them the injuries caused by the carelessness of fellow servants; and if the jury believes from the greater weight of the evidence that Mrs. Pendleton's injuries were caused by the negligence of either of the two servants on the premises the morning of the accident the negligence of those two servants cannot be imputed to Mr. Nelson, those servants and Mrs. Pendleton being fellow servants in the

service of Mr. Nelson.

[Filed 6 March 1972]

* * *

[66] INSTRUCTION NO. 1-E1

The Court instructs the jury that if they believe from the greater weight of the evidence that the premises had passed into Mrs. Pendleton's responsibility and that Mrs. Pendleton had been directed to keep the basement door latched, and if you further believe from the greater weight of the evidence that in the exercise of ordinary care she had sufficient opportunity and should have seen that the door was latched or, in the exercise of reasonable care, Mrs. Pendleton should have kept the children under observation and intervened to prevent Sandy from opening the basement door so as to prevent Sandy from entering the stairway and that there was a sufficient opportunity for Mrs. Pendleton to do so, you must return a verdict for Mr. Nelson in this case.

[Filed 6 March 1972]

* * *

[73] ORDER

The 6th day of March, 1972, came again the parties, in person and by counsel, upon the pleadings heretofore filed in this cause, the same having been set

for hearing, and came a civil venire of thirteen, who being first duly sworn were then examined under oath by the Court and counsel concerning their qualifications. Thereafter, counsel for plaintiff and counsel for defendant alternately exercised their rights of pre-emptory challenge, leaving a jury of seven persons, as to which neither party had objection, who were then duly sworn to well and truly try the case.

Thereafter, counsel for the plaintiff and defendant respectively made opening statements and the plaintiff proceeded to introduce evidence in support of her case. The plaintiff having rested, the defendant advised the Court that the defendant desired to present no evidence and the defendant moved the strike the evidence of the plaintiff and for summary judgment on the grounds that the plaintiff had failed to establish primary negligence on the part of the defendant and that her own evidence established contributory negligence on her part, which motion the Court denied, the defendant objecting and excepting.

Thereafter, separate and apart from the jury, the Court considered the instructions offered by plaintiff and defendant, granting certain [74] instructions and denying certain instructions as is reflected in the record. The Court then instructed the jury in accordance with the instructions granted and the jury retired to consider of its verdict. After due deliveration, the jury

returned into the presence of the Court and returned its verdict as follows:

"We, the jury on the issues joined, find in favor of Mrs. Pendleton and fix the damages at $20,000.00.

Kermit H. Wagner, Jr., Foreman"

After the jury was dismissed, counsel for the defendant moved the Court to set aside the verdict of the jury on the grounds that the same was contrary to the law and the evidence and without evidence to support it and for errors previously objected to in the record in the granting of instructions, which motion the Court set for argument on the 20th day of March, 1972, at 12:00 o'clock Noon, the Court then sitting in the Courtroom of the Circuit Court of Loudoun County.

And this cause is continued to March 20, 1972.

[Filed 21 March 1972]

* * *

[78] FINAL ORDER

This 4th day of August, 1972, came both parties by counsel, and the court having heard argument upon the Motion to Set Aside the verdict on March 20, 1972, the grounds being set forth in a written notation thereof filed in this case and in the written notations of argument of defendant also filed in this case, taken

time to consider the Memoranda of Authorities filed by both parties, doth now ADJUDGE and ORDER that the Motion be and it is hereby overruled and defendant duly objected and excepted.

Accordingly it is ADJUDGED and ORDERED that plaintiff do have and recover of and from the defendant a judgment in the sum of Twenty Thousand Dollars ($20,000.00) with interest from March 6, 1972, with defendant's objection and exception duly noted. Defendant having indicated his intention to apply to the Supreme Court for a writ of error and supersedeas, execution upon said judgment is suspended for a period of sixty (60) days and thereafter until the Supreme Court acts upon said appeal, provided defendant or someone for him shall post an appeal bond within twenty-one days with supersedeas provisions conditioned according to law in the penalty of Twenty-four Thousand Dollars ($24,000.00) with approved corporate surety.

The court having reviewed the transcript of the evidence of Philip P. Nelson, pages 1-18, Bessie Nelson, pages 18-31, Lee Schwertfeger, pages 32-49, Eleanor H. Pendleton, pages 50-87 and argument on the Motion to Strike and on the instructions, pages 87-153, taken on March 6, 1972, doth hereby direct that said transcript be and it is hereby made a part of the record with the corrections noted on pages 2, 107, 109, 113, 115, 123 and

135.

[Filed 4 August 1972]

* * *

[82] NOTICE OF APPEAL

Defendant gives notice of his intention to appeal the final order in the above case entered on August 4, 1972.

ASSIGNMENTS OF ERROR

Defendant assigns the following errors:

1. The Court erred in failing to sustain defendant's motion to strike plaintiff's evidence at the conclusion of the case on the ground that the evidence failed to show defendant's negligence as a matter of law.

2. The Court erred in failing to sustain defendant's motion to strike at the conclusion of the case upon the ground that the evidence showed contributory negligence on the part of the plaintiff as a matter of law.

3. The Court erred in granting Instructions No. 6 and 7 wherein the defendant was charged with responsibility for negligence on the part of two of the fellow servants of the plaintiff.

4. The Court erred in granting Instructions No. 6.

5. The Court erred in refusing to grant Instructions 1-D.

6. The Court erred in refusing Instructions 1-E.

[84] 7. The Court erred in refusing Instruction 1-E1.

[Filed 31 August 1972]

* * *

00014

CABINET
CABINET
REFRIG
RANGE
KITCHEN
CABINET
BASEMENT STAIRS
11 TREADS @ 9¼ EA.
3'-10½"
HALL
BASEMENT DOOR
CASEP OPENING
3'-0"
2'-8"
STEP
DRAIN BOARD
SINK
ENTRANCE HALL
4'-10½"
14'-1"

1
2 Whereupon,
3 PHILIP P. NELSON,
4 being first duly sworn, was examined and testified upon
5 his oath as follows:
6 DIRECT EXAMINATION
7 BY MR. WILLIAMS:
8 Q Please state your name, address and occu-
9 pation?
10 A Philip P. Nelson. My address is 204 Robling
11 Street. I am a general contractor.
12 Q And how long have you owned the property on
13 Robling Street?
14 A Since 1949.
15 Q And have you lived there continuously since
16 that time?
17 A I have.
18 Q At some point in time in 1969 or 1970 did
19 three of your grandchildren come to live with you?
20 A Yes, they did.
21 Q What was the exact date of that, sir?
22 A It was in April of '69. I don't remember the
23 exact date.
24 Q And they are children of your son William?
25 A Right.

Q And was he also living there with you?

A He was.

Q Now, leading off from the basement, off from the kitchen of your house, sir, is there a doorway that opens on to a staircase that leads to a basement?

A There is.

Q On Plaintiff's Exhibit 10 I ask you if that shows the doorway that leads to the basement that we are talking about?

A Yes.

Q And would you hold it around so that the jury can see it, sir?

And I will ask you if the hook and eye device on the right, above the doorknob, is a hook and eye that secures the door when you come out of the basement?

A No. It secures the door from going into the basement.

Q But in addition, you have a hook or latch device associated with the doorknob?

A Right.

Q And this is a second latch that you have doing the same purpose, is that correct?

A That is correct.

Q Now, I ask you if Plaintiff's Exhibit 9 shows

the door in a partially opened direction or is that a different door?

A No, this is a refrigerator here (indicating). That would be the same door.

Q And I hand you Plaintiff's Exhibit 5.

A Wait just a minute. Let me -- yes, this is the case, opening going to the left. Yes, that is the same door.

Q All right, sir. On Plaintiff's Exhibit 5 I ask you if that is a photograph of the staircase looking up from the bottom towards the door that would lead ultimately into the kitchen?

A Yes, it is.

Q And on Plaintiff's Exhibit 7 I ask you if that shows a shot of the staircase showing no railing of any sort on the right-hand side as you would go down the staircase?

A Well, this is a shot of the staircase taken from the basement towards the side of it, yes.

Q And on Plaintiff's Exhibit 1 I ask you if that shows the inside of the doorway looking from the basement out?

A It shows the inside of the opening. Of course, the door is back against the wall.

Q Now, there is a device on the left of the door facing as you look at it. I ask you if that was a hook and eye?

A Yes. This is the eye and this is the hook that you see here below the knob.

Q All right, sir. Thank you.

Is there any light directly above the staircase itself, Mr. Nelson?

A No, sir. The nearest light is on the basement ceiling perhaps eight feet from the stairwell.

Q Is there any sort of an automatic switching device that causes that light to come on when the door opens or must you manually manipulate a flip-flop switch on the wall?

A You manually turn the switch on.

Q Is there any sort of a spring device which causes the door to close once it has been opened?

A No, sir.

Q It has to be manually pulled and secured?

A That is right.

Q Mr. Nelson, at what point in time did you have the hook and eye latching device installed that is on the kitchen side of the door leading into the basement?

A I don't recollect that. My wife is of the

opinion that that has been there many years as a result of a previous problem with a child getting close to the door.

Q Who determined the level that that hook and eye latching device would be put at in the house?

A Well, it was put at an elevation to keep it above the child's reach.

Q What is it, approximately five feet?

A Something like that.

Q Now, who made the decision to put the hook and eye latching device on the basement side of the door?

A Well, I would say my wife probably thought of that.

Q And I take it that this was installed so that there would be another means of securing the door to keep children from getting on the steps, is that correct?

A Well, when anyone went into the basement, obviously, if the hook on the kitchen side was hooked they couldn't get out again without assistence. So, the idea was when you went down in the basement to operate the washing machine or something of that sort, the individual going down would leave the hook on the kitchen side unlatched but would latch the one on the

stairway side.

Q But did you devise this protective scheme so that the door could always be hooked in a locked position?

A Right.

Q And this was to eliminate the danger that the staircase presented for children in particular, is that correct?

A Right.

Q Now, as I understand it there is no railing on the wall side of the staircase as you go down into the basement?

A There is no railing.

Q And there is no railing or wall of any sort on the right-hand side of the stairway as you go into the basement?

A Well, the wall on the right-hand side extends down below the floor level of the kitchen about eight or ten inches. It extends about to the floor joist but from there down it is open.

Q And a child on those steps would have no protective railing or bar of any sort to keep it from going over the side?

A Once it got down about five treads it would not.

Q Now, I understand that you and Mrs. Nelson had made plans to go to California sometime in the first two weeks of February of 1970 on a vacation, is that correct?

A That is correct.

Q And that you had known Mrs. Pendleton for many, many years and needed someone to stay there with your grandchildren?

A Right.

Q And undertook to arrange with her for services in this capacity?

A Correct.

Q And in addition to Mrs. Pendleton who would be there with the children? You had other household help, did you not?

A That is correct.

Q And one of them was a lady named Janey who is now deceased that did some of the housecleaning and the laundry work?

A Right.

Q And on the particular morning of this incident there was a lady named Annie who was to stay with the children until Mrs. Pendleton arrived after you had left to catch your plane?

1
2 A Right.
3 Q And that your daughter Lee drove you and
4 Mrs. Nelson to the airport and then was to return to
5 your home and visit with Mrs. Pendleton for a while
6 and see how everything was going?
7 A Correct.
8 Q All right, sir. Now, what time did you leave
9 to go to the airport on the morning --
10 A About 7:00 o'clock. Might have been a few
11 minutes --
12 Q You went to Dulles?
13 A Right.
14 Q Now, prior to going to the airport did you
15 have occasion to go into the basement of your home?
16 A Yes, sir.
17 Q And what was the purpose of that, sir?
18 A We were going to take a Virginia Ham to
19 one of our hostesses on this trip and I went down the
20 basement to get it.
21 Q And when you went into the basement and came
22 out do you have any independent recollection as to
23 whether or not you secured the latch, the hook and eye
24 latch, on the kitchen side of the door?
25 A I don't recollect.

1
2 Q I take it that when you have to catch a flight
3 that hour of the morning the details and logistics of
4 it put a lot of things on your mind and you do a lot of
5 securing?
6 A I would say so.
7 Q Now, do you recall whether either you or
8 Mrs. Nelson at your request had given Annie and Janey
9 instructions on the procedure that was to be followed
10 when they used the door going into the basement for
11 whatever purpose they would have down there?
12 A I can't answer for Mrs. Nelson. I never gave
13 her any instructions.
14 Q Now, is it fair to say, sir, that while you
15 are the owner of the property that Mrs. Nelson as your
16 wife customarily has the authority to make arrangements
17 with household help?
18 A She had charge of the children's department.
19 Q And you relied upon her judgement in making
20 these decisions and had confidence in her doing it?
21 A Right.
22 Q And you focused on making a living through
23 your business and other things that husbands and fathers
24 and grandfathers do, sir?
25 A Right.

Q And you had no personal conversation with Mrs. Pendleton in explaining to her the manner in which the door was to be secured or anything of that sort?

A No, sir.

Q You relied totally upon your wife to make those arrangements, is that correct?

A That is correct.

Q Now Mr. Nelson, as I understand it you had known Mrs. Pendleton and her husband for many years here around Warrenton, is that correct, sir?

A That is correct, sir.

Q And when she came back to Warrenton to live in the latter part of '69 or early '70, just through friendship and one thing or another you had occasion to see her and find out she had returned to this area?

A That is correct.

Q And you knew that although she was 68 she was sufficiently active and vigorous to where you would feel comfortable going on a vacation and entrusting your grandchildren to her for supervision?

A Right.

Q And as far as you were concerned the extent of her engagement was to look out for the children and you had other help around to manage the other affairs

1
2 of the house?
3 A Well, again, the details of that were arranged
4 between my wife and Mrs. Pendleton.
5 Q All right, sir. Now, you were not personally
6 on the premises at the time the accident occurred?
7 A No, sir.
8 Q Had your son Bill left that morning before
9 you had gone?
10 A I am sure he had.
11 Q What was his customary time for going to work?
12 A He usually left about 7:00 o'clock.
13 Q All right, sir. And was your impression that
14 he left that morning around 7:00?
15 A I am sure he did. Perhaps left a few minutes
16 after we did.
17 Q Where did he work, Mr. Nelson?
18 A At that time he was working in Culpeper.
19 Q So, he had to commute to his job and get there
20 by a time certain to get to work?
21 A Right, sir.
22 Q But you weren't making any demands on him to
23 help you pack the car or help you pack your bags or
24 anything that would have delayed him in getting away
25 that morning to go to his job?

A Well, if he was still there I am sure I called on him to carry bags.

Q Do you recall, sir, whether he was there?

A No, sir, I don't recall.

Q Did you at any time see him go into the basement that morning and come out?

A No, sir.

Q Did you have breakfast with him at home that morning?

A No, sir. He many times doesn't eat breakfast. We really --

Q You have no independent recollection of eating breakfast with him and saying goodbye with him when you went off to the airport?

A No, sir.

Q Now, your daughter Lee came by to pick you up that morning?

A Yes, sir.

Q Do you recall what time she arrived?

A I suppose about quarter of seven, thereabouts.

Q After she got there I take it you used one of your automobiles to go on up to Dulles and she brought that car back?

A That is correct.

Q Now, you have no firsthand information on how the accident occurred directly?

A No, sir. Only hearsay.

Q Only information that comes to your attention since it did occur?

A Right.

MR. WILLIAMS: That concludes my adverse examination, Your Honor.

One further question. Mr. Nelson, Sandy, I believe, was your granddaughter who actually got on the steps?

THE WITNESS: Yes, sir.

BY MR. WILLIAMS:

Q When she called out to Mrs. Pendleton?

A That is correct.

Q Now, was Sandy tall enough to reach the hook and eye latch that you referred to as being about five feet?

A No, sir.

Q And the height of that hook and eye had purposely been set to get it above the reach of teeny-tinies like Sandy and William and even Debby?

A Right.

MR. WILLIAMS: All right, sir. That concludes

1
2 my examination at this time, Your Honor.
3 CROSS EXAMINATION
4 BY MR. WHITING:
5 Q Mr. Nelson, are there other hook and eye
6 latches around your house?
7 A Yes, sir. When the children first arrived to
8 live with us, after a few really hectic weeks finding
9 them in everything, we put hooks and eyes on various
10 cupboards, bathroom door and so on to keep them out of
11 places where they weren't supposed to be.
12 Q Were they arranged in similar fashion?
13 A They were put up high so they couldn't reach
14 them.
15 MR. WHITING: I believe that is all.
16 REDIRECT EXAMINATION
17 BY MR. WILLIAMS:
18 Q But this particular hook and eye on the door
19 that leads into the basement was installed so the kids
20 wouldn't be in danger of falling down the stairways, is
21 that correct, sir?
22 A Well, it was placed at a height that they
23 could not reach so they could not go down the stairs
24 unless an adult --
25 Q But other people had had misfortunes on the

stairway before?

A Yes, sir. One adult that I know of and then my wife -- you should ask her about this, but my wife says that the child of her friends many years ago either was about to go down the stairs -- anyhow, frightened my wife and that is when she had this hook put on.

Q But that situation was dangerous enough to where you thought and Mrs. Nelson concurred with your thinking that there should be a hook and eye latch device to secure it so the kids could not get into those steps, isn't that correct?

MR. WHITING: I will object to that. That is asking for a conclusion.

THE COURT: Objection sustained.

BY MR. WILLIAMS:

Q That adult actaully fell down the steps, had she not, Mr. Nelson?

A Yes, sir.

MR. WILLIAMS: All right, sir. No further questions.

RECROSS EXAMINATION

BY MR. WHITING:

Q Will you please state in the case of that adult whether or not that was not after a party?

1
2 A That was at the end of a cocktail party
3 and the adult was one of the late stayers and became
4 confused as to where the coat closet was.
5 Q And she had been attending the cocktail
6 party?
7 A She had been at the cocktail party.
8 Q And the latch, of course, was high enough
9 so that she could have easily removed it?
10 A I don't believe the latch was there at that
11 time.
12 Q It was put on later, wasn't it?
13 A Yes.
14 MR. WHITING: That is all.
15 THE COURT: You may step down, please.
16 (Witness steps down.)
17 MR. WILLIAMS: Mrs. Nelson as an adverse
18 witness.
19 Whereupon,
20 BESSIE W. NELSON,
21 being first duly sworn, was examined and testified upon
22 her oath as follows:
23 DIRECT EXAMINATION
24 BY MR. WILLIAMS:
25 Q Mrs. Nelson, please state your name for the

gentlemen of the jury?

A Bessie W. Nelson.

Q And you are the wife of Mr. Philip Nelson?

A Yes.

Q And live with him at his residence here in Warrenton?

A Yes.

Q Mrs. Nelson, your husband has suggested that on affairs of running the house that you play a very prominent role in engaging people to look out for children and other services that may be needed around the house, is that a fair statement?

A Yes.

Q And specifically, that when your vacation came up in February of 1970, did you make arrangements to have Mrs. Pendleton come in and stay with your grandchildren?

A Yes.

Q Now, had you been social friends with Mrs. Pendleton for a number of years?

A Yes.

Q And knew her well, is that correct?

A Yes.

Q And had confidence in her judgement and sense

of responsibility?

A Yes.

Q And knew that she was energetic enough to keep up with three children of the ages of your grandchildren?

A Yes.

Q And I believe that the twins were two, going on three and Debby was five, is that correct, at the time?

A The twins would have been two going on three; she would have been four, going on five.

Q Now, when had those three grandchildren come to live with you, Mrs. Nelson?

A April of the year before which would have been '69.

Q Now, those three grandchildren had the run of the first floor of the house, is that correct?

You didn't have any particular rooms that were blocked off that they couldn't go into?

A I am not sure I understand exactly what you mean by that. Of course, we did not -- we tried to keep them from going upstairs because of the stairs. They were so young, and there are hooks on the doors which we could use at any time to keep them from going into

1
2 other parts of the downstairs but yes, they did go down
3 there, the whole downstairs.
4 Q But you didn't tell Mrs. Pendleton that there
5 was any area of the downstairs portion of the house that
6 the children should not be allowed to freely go into?
7 A I don't recall anything like that, no.
8 Q Now, the basement was blocked off from the
9 children, was it not?
10 A Yes.
11 Q And even though there was a door that lead
12 from the kitchen down to the basement you had a hook and
13 eye latching device that was supposed to be secured at
14 all times?
15 A Yes.
16 Q To avoid the children getting on the steps
17 that led into the basement, isn't that correct?
18 A Yes.
19 Q Had you been responsible for getting that hook
20 and eye installed at the level of five feet so the small
21 children couldn't reach it?
22 A Well, yes, I was the one who asked for it.
23 Q Because that door opens right into the Stair-
24 case, does it not?
25 A Yes.

Q And it is a dark staircase. There is no direct light on the staircase?

A No, except coming from the kitchen and the light, if you turned on the light in the basement.

Q Now, what other household help did you have at the time of your vacation, Mrs. Nelson, besides the services that Mrs. Pendleton was to render?

A Janey Smoot and Annie Gray. Between them, they were there five days a week from nine until five.

Q And what services did they render?

A Cleaning and general cleaning and laundry.

Q During the time that you were at home did you basically look out for the grandchildren?

A Yes.

Q Fix their meals and put them down for their naps?

A Yes, when I was at home, yes.

Q So, in effect, Mrs. Pendleton was engaged to fullfill the role that you did around the house with the grandchildren while you were away?

A Yes.

Q And you had enough confidence in her to feel that she could measure up to that sort of assignment?

A Yes.

Q But she wasn't to do any cleaning or check on the other help, her function was to look after the grandchildren?

A That was her main function. I left that to her discretion.

Q Now, what sort of a specific instruction had you given to Janey and Annie in the years that they had worked for you prior to the time that Mrs. Pendleton came to stay with your grandchildren about keeping the door that led into the basement secured?

A Well, after the grandchildren came there we were much more careful about keeping the door locked. They knew it was supposed to be locked.

Q But when they came out of the basement they were supposed to hook it at the five foot level?

A Yes.

Q And when they went down in the basement they were to turn around and hook the lower level so the door at all times stayed hooked, is that correct?

A Yes.

Q Now, you say that a special situation arose when the grandchildren came there. I take it that at the ages your three grandchildren are there is a lot of movement of them around the house and it takes a lot of

1
2 looking to keep up with their ages and sizes?
3 A Yes.
4 Q And they were like squirrels and monkeys,
5 they climb over everything and it is a pretty full-time
6 assignment to keep up with them?
7 A Yes.
8 Q And you knew that the most dangerous area in
9 the house was this door and set of steps that led into
10 the basement?
11 MR. WHITING: I would object to that.
12 THE COURT: Objection sustained.
13 BY MR. WILLIAMS:
14 Q What was the reasoning you had the double
15 hooking arrangement leading into the basement?
16 A So that -- well, if someone went down into
17 the basement, unless there was a way to lock it from the
18 inside, then the door could be opened by anybody that was
19 still upstairs. So as to keep the door from being
20 possibly opened.
21 Q But who were the people around the house on a
22 day to day basis that you were really concerned about with
23 the basement steps?
24 A The grandchildren.
25 Q Yes, the three that Mrs. Pendleton --

1
2 A Yes.
3 Q Now, as I understand it, Mrs. Nelson, when
4 Mrs. Pendleton agreed to come in and stay with the grand-
5 children you had her come out, I believe the day before
6 you were to catch your flight to California to show her
7 around, is that correct?
8 A I think it is -- I mean, she was out there.
9 Of my own recollection I couldn't say whether it was the
10 day before or two days before but she had been out there.
11 Q And the purpose of that was for you to show
12 her the general arrangement of the house and to familiar-
13 ize her with things in the kitchen so she could do those
14 functions that needed to be done with the grandchildren
15 that she was supposed to do, is that correct?
16 A Yes.
17 Q Now, had you gone into the basement on the
18 morning that you left to get your flight?
19 A I don't think so. That would have been -- I
20 can't recall any reason for my going into the basement
21 that morning.
22 Q Did you tell Mrs. Pendleton that the arrange-
23 ment on the door was to always keep it hooked?
24 A Do you mean hooked on the kitchen side?
25 Q Kitchen side or the other side, if you were

down there?

A It should be hooked on one side or the other and I assume that I told her that. I can't recall any date or hour.

Q But I mean, this would have been the sort of thing that you would have wanted her to know before you left to go on your trip, would it not?

A Yes.

Q Do you recall whether you told her that the other employees there in the house knew that this was the policy that you followed?

A Again, I can't say as to hour or date and I can't say that I definitely recall telling her but I feel I must have.

Q Now, Lee, your daughter, she didn't live at home at the time this occurred, did she?

A No.

Q But did she know about the rule in the house of keeping the hooks latched?

A I am sure she did.

Q How about your son, Bill, whose children actually were there? Did he know the rule on keeping the door latched?

A I am sure he did.

Q Now, on the morning that you left to catch your flight had your son gone to work before you left?

A I really don't recall.

Q What time did he customarily leave?

A He usually left, oh, fairly early because he was working at Culpeper and he liked to get over there well before 8:00 o'clock but he left early. That is all I could say.

Q You did not see him go in or out of the basement on the morning that you caught your flight, did you?

A Not that I recall.

Q But he had no reason -- his bedroom wasn't in the basement or anything, was it?

A No.

Q And he normally had a room either upstairs or on the first floor? Is his room on the first floor?

I believe he shared a room with William, did he not?

A Yes.

Q Your grandson. Now, I believe you had arrived in California before you knew that this incident had occurred?

A Yes.

Q And you have no first-hand knowledge of how

1
2 it did occur?
3 A No.
4 Q I believe that your granddaughter, Sandy,
5 called Mrs. Pendleton Dee-Dee? Do you know how that
6 came about?
7 A Yes. We felt that Mrs. Pendleton -- I
8 promised I wouldn't say, but Mrs. Pendleton or any other
9 use was too complicated and some of her grandchildren
10 called her Dee-Dee so we called her -- we had the
11 children call her Dee-Dee.
12 Q So, this was not just an accident that they
13 use that name?
14 A No. They had called her that so long as they
15 knew her, you know.
16 Q And they had known Mrs. Pendleton, I guess,
17 most of their lifes, had they not, through social visits
18 and one thing or another?
19 A Well, they didn't come to live with us until
20 they were almost two. When they did know her, they,
21 of course, they didn't know her well. They didn't see
22 so much of her because she was in and out of Warrenton
23 but when she came and or when we went for her we were
24 going to pick up Dee-Dee and so on. So, they just
25 think of her as Dee-Dee.

Q You had departed before Mrs. Pendleton arrived that morning?

A Yes.

Q And I believe that Annie had come in just to go for the hour after you left, before Mrs. Pendleton arrived?

A Yes. She came in before we left and she was to stay there with the children, get Debby ready for school or do what had to be done before Mrs. Pendleton came.

Q All right. If the door isn't hooked and the doorknob latch isn't secured, if a child walked up to that door and pushed on it, it would swing over the stairwell, would it not?

A Yes, if it weren't closed.

Q Yes. So, they wouldn't have to pull it to them or anything of that sort to get it opened?

A No, it opens inward.

Q Plaintiff's Exhibit 13, does that show fairly how it swings in?

A Yes.

Q Mrs. Nelson, at the time Mrs. Pendleton was staying with your grandchildren did Sandy, the one who ultimately wound up being on the staircase, have

sufficient judgement and discretion to know that that was a dangerous thing to do?

A I don't -- I mean, no.

Q It didn't make any difference how many times you told her, don't go there, you wouldn't feel confident that if you turned your back she still wouldn't do it, would you?

A No.

Q The arrangement that you had made with Mrs. Pendleton for her services, I believe, was to pay her $10 a day during the period of time that she was there?

A Yes.

MR. WILLIAMS: All right. Thank you. That concludes my examination, Your Honor.

CROSS EXAMINATION

BY MR. WHITING:

Q Mrs. Nelson, there were other latches on some of the doors then on the ground floor, were there not?

A Yes.

Q Where were these, generally?

A On the outside of the bathroom and the lavatory the door leading from the dining room to the kitchen, from the dining room to a little room that goes into the back room. On all the closets in which cleaning material

1
2 was kept, and I think on both sides of the door from
3 the kitchen to the hall. That is the hall that would
4 go upstairs, and, of course, the basement, on both sides.
5 I don't know whether there was a latch on the -- now,
6 that is where the latches are now. We did not have all
7 of them put on on the same day so I don't know how many.
8 Q Now, these latches were latches that were
9 similar to this, high enough so a child could not reach
10 them?
11 A Yes.
12 Q The same sort of construction, hook and eye,
13 is that correct?
14 A Yes.
15 Q And those latches were put on to keep the
16 children from going into those areas, were they not?
17 A Yes.
18 MR. WHITTING: I believe that is all.
19 MR. WILLIAMS: No further questions, Your
20 Honor.
21 THE COURT: You may step down, Mrs. Nelson.
22 (Witness steps down.)
23
24
25

Whereupon,

LEE SCHWERTFEGER,

being first duly sworn, was examined and testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q What is your name?

A Lee Schwertfeger.

Q Your occupation?

A Housewife.

Q And where do you live?

A Here in Warrenton, on Elm Street.

Q And I believe you are the daughter of Mrs. Philip Nelson, is that correct?

A Yes, I am.

Q On the morning of February 3, 1970 did you have occasion to go to your father's home here in Warrenton?

A Yes, I did.

Q And what time did you arrive there?

A I don't know. I don't remember.

Q What was your purpose in going?

A I dropped my parents off at the airport and I went back to see Mrs. Pendleton and the children.

Q Before you dropped them off you had to pick

1
2 them up?
3 A I don't remember if I -- I don't know how I
4 got to the house that morning.
5 Q Did you go to the house before you left for
6 the airport?
7 A I don't remember if they picked me up or if
8 I went to the house.
9 Q I see. But you drove, however you got
10 together?
11 A I got with my parents.
12 Q And you knew they were going to California,
13 is that correct?
14 A Yes. I was to drive the car back from the
15 airport.
16 Q And you were to go with them up to Dulles
17 Airport where they were leaving from?
18 A Yes.
19 Q And after they got off you were to take the
20 car and bring it back to their home?
21 A I believe I was to keep the car but I was
22 to pick Debby up from school.
23 Q Now, Debby would be your five year old niece
24 or four year old niece?
25 A Yes.

Q And she was in kindergarten at the time?

A Yes.

Q She was one of your three nieces or nephews with Mrs. Pendleton at your father's house?

A The little girl and the little boy, they are twins.

Q Sandy and William?

A Right.

Q And what time did you arrive back at your father's house from Dulles Airport?

A I don't know. I got lost. I don't know when I got back.

Q By the time you arrived and when you went to their house, was Mrs. Pendleton there?

A Yes, she was there.

Q You don't recall whether you seen her earlier that morning or not?

A No, I don't.

Q And in the house with her were your niece and nephew, the twins, Sandy and William?

A Yes.

Q And did you have lunch with them?

A I didn't eat.

Q But you were there?

A But I was there while the children had lunch.

Q And you went into the dining room area and sat with them, did you not?

A Yes, I did.

Q During lunch and you exchanged pleasantries and chit-chatted back and forth?

A Yes, I did.

Q You had known Mrs. Pendleton before?

A I don't remember when I first met her. I think I was little but I had met her on one of her visits prior to the vacation.

Q All right. Had you visited in your father and mother's home from time to time after the grandchildren came to live with them?

A Oh, yes.

Q What frequency, can you estimate?

A I just popped in and out.

Q Did you know about the existence of the doorway that led down to the basement?

A Yes, I know the door.

Q Did you know what policy they followed insofar as keeping it latched with a hook and eye?

A Yes, I did.

Q And what was that policy?

A To keep it hooked, to keep the hook on the door hooked.

Q Did they explain to you why that was necessary?

A I never remember them explaining it. I knew it was there, to hook it. I don't remember them telling me, hook it.

Q But when did the grandchildren come to live there, do you recall?

A No, I don't know exactly when.

Q Now, after the children finished their lunch where did you go?

A I took William, the little boy, and we went into the back room.

Q And that left Mrs. Pendleton in the dining room with Sandy, is that correct?

A That left Mrs. Pendleton -- when I left, I was in the dining room. I don't know if she stayed in the dining room or not.

Q Did she go back into the family room with you and William?

A Not after lunch.

Q Do you know whether she undertook to clean up the debris that was left from lunch?

A I don't know because I was back with William.

Q From the time that you went back to the living, family room I guess it is, with the television set, with William --

A Yes.

Q -- did you see Mrs. Pendleton anymore up until the time that you found out that she was on the floor of the basement?

A No.

Q How did that get called to your attention?

A I heard a cry out and I went to see what it was and I stopped at the kitchen door.

Q In order to get from the dining room into the family room did you go through the kitchen?

A Yes.

Q And go by the door that leads to the basement?

A Yes.

Q Now, when you left the dining room area where you sat and watched Mrs. Pendleton eat and went on in to the family room with William, did you notice whether the basement door was opened or closed?

A I don't know.

Q But you went right by it, didn't you?

A Yes.

Q Had it been opened would you have seen it?

A I don't know.

Q Well, if you had seen it opened what were your instructions from your mother?

A I would have shut it and locked it.

Q But you didn't observe anything out of the ordinary about it?

A I didn't notice it at all.

Q Was your attention to the accident attracted by an outcry of some nature?

A Yes. I heard Sandy scream.

Q And what did you then do?

A I went into the kitchen to see what Sandy was screaming at and I saw down the steps.

Q And Mrs. Pendleton and Sandy were on the floor of the basement, were they not?

A Yes.

Q Looking off to the right of the steps?

A Yes, and Sandy was on top.

Q And did you go down to render them some assistence?

A Yes. I ran down and picked Sandy up.

Q Sandy was on top of Mrs. Pendleton?

A Part of her. I don't remember which part but she was mainly on top.

Q And Mrs. Pendleton handed Sandy to you?

A I just grabbed her.

Q And took Sandy upstairs?

A Yes, I ran upstairs.

Q And then what arrangements did you make to see that her injuries were taken care of?

A I called Janey. I ran upstairs to call Janey to come down and told Janey to stay with Mrs. Pendleton and Sandy was bleeding so much it really scared me -- called the hospital and called the ambulance for Mrs. Pendleton.

Q It turned out she had a cut on the head, did it not?

A Yes.

Q And after repairing that, cleaning her up, she wasn't in bad shape, is that correct?

A No.

Q But you took Janey on to the hospital in your car?

A No.

Q I mean Sandy, on to the hospital in your car?

A Yes.

Q And then after getting there -- before you went there arrangements were made to get an ambulance

1

2 for Mrs. Pendleton, is that correct?

3 A Somewhere along the line I told Janey to

4 call an ambulance but I don't know whether it was while

5 I was running out and she didn't hear me or what but

6 then as soon as they took care of Sandy I called the

7 house back to make sure Mrs. Pendleton was all right.

8 She hadn't called so I hung up and called the ambulance.

9 Q At the time you left with Sandy you didn't know

10 anything about the severity of any injuries of Mrs.

11 Pendleton?

12 A I had asked her if she was hurt because

13 Sandy's head scared me so much. She said no, get the

14 baby. So, I just ran with Sandy.

15 Q Her concern was to see that the baby was

16 properly administrered to?

17 A Yes. She said, "Get the baby".

18 Q Now, while you were at the hospital did Mrs.

19 Pendleton ultimately, immediately, get brought in?

20 A Yes. The ambulance brought her in and Sandy

21 was sewen up and I was sitting with her.

22 Q Did you ever see your brother William at the

23 home of your father on the morning of the accident?

24 A No.

25 Q You never went into the basement yourself and

left that latch unhooked on the day of the accident?

A No, I never went in the basement.

Q You never saw Janey go down into the basement and leave the latch unhooked?

A No, I never saw Janey.

MR. WILLIAMS: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. WHITING:

Q Were there a number of other latches like that over the doors?

A Yes, there were.

Well, there are two kitchen doors and each of those have latches and two bathroom doors have latches and all the closet doors that have detergents and poisons and things have latches.

Q Are they similar latches to this one that is so high that the children could not reach them?

A They are out of the reach of the children.

Q Lee, I have a drawing here of the -- I want you to explain to the jury -- I want you to orient yourself first. This purports to be a drawing of your father's place. This is a portion of your father's house. Here is the recreation room and there is the kitchen.

1
2 There is the entrance hall from the garage and those are
3 the steps and there is the hall leading down.
4 Are you familiar generally with the layout?
5 A Yes.
6 Q Now, first I want you to show -- take my pencil
7 here and show the jury here -- can you all see this?
8 All right. Look at it and pass it around and then I am
9 going to get her to point some things out here.
10 All right. Now, if you will, Lee, if you
11 stand up and I will hold it here, point out first the
12 kitchen where you were with that pencil?
13 A That is the kitchen.
14 Q Now, where is the sink?
15 A The sink is right in here (indicating).
16 Q All right. Now, where is the refrigerator?
17 A The refrigerator is right there (indicating).
18 Q All right. Now, then I believe this is the
19 entrance hall that goes down into the basement, is that
20 correct?
21 A Yes.
22 Q Is that right?
23 A Yes.
24 Q And then, if you turn left as you proceed
25 for the basement you take a step down and you go into

1
2 an entrance hall out into the garage?
3 A Yes.
4 Q But if you don't go down the entrance hall
5 but proceed straight a bit you go into the recreation
6 room, is that right?
7 A That is right.
8 Q Now Lee, just before you heard the scream
9 you heard Sandy scream, you said you were in the
10 recreation room with William, the other children, and
11 first you said you were looking at television?
12 A And playing.
13 Q And playing. And point out to the jury here
14 if you will where the television set is located?
15 A The television is this wall.
16 Q Built up against the wall there?
17 A Yes.
18 Q So, if you are looking toward the television
19 you are looking toward this wall?
20 A Yes.
21 Q Now, I believe there is a fireplace along in
22 here (indicating), is there not?
23 A That is right.
24 Q And where were you seated?
25 A Just at the end of the fireplace.

Q You were seated in a chair? Which direction was the chair facing?

A Sort of catty-cornered to the wall, turned just a little bit.

Q Catty-cornered this way (indicating), looking toward that wall, is that correct?

A A little bit.

Q Now, as you you seated in that chair could you look down and see these two open doors?

A Yes.

Q I also want to ask you, Lee, if you were standing here watching television, if you could turn to your right and see the cellar door?

A Yes.

Q All right. Now, before lunch I believe you and Mrs. Pendleton had been visiting for a little bit?

A Yes.

Q And you were seated where?

A I believe we were on the sofa on the far side of the room.

Q There is a sofa along right in here (indicating)?

A Yes.

Q You all sat there and talked before lunch?

A Yes.

Q Now, while you were all sitting there talking where were the children?

A They were playing around us.

Q In the room?

A With us, yes.

Q Do you know how long you all visited?

A No.

MR. WHITING: I believe that is all.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Lee, you didn't draw this floor plan of your father's house, did you?

A No.

Q Are you seeing it for the first time?

A Yes.

Q I will show you a picture that has been identified as Plaintiff's Exhibit 11 and ask you if that doesn't show the door leading into the basement?

A Yes, that is the door.

Q That is the door there (indicating).

Now, immediately to the right of that door is a --

A Closet.

Q -- closet door. Now, I will ask you if you can look at this floor plan of your house and find that second door?

A The closet door?

Q Yes.

A It would be against that door.

Q But it doesn't show as a door?

A No.

Q So, whoever drew this plan left off one door that is immediately at right angles to the door that leads into the basement?

That door doesn't show on there?

A That is right.

Q But when you come out of the kitchen you don't just see one door, you see two, don't you?

A You go into the kitchen, yes, there are two doors.

Q All right. Thank you.

Had you been asked by your mother or had you volunteered on the morning that they were to leave to go on their vacation to come back and work with Mrs. Pendleton to sort of get the children settled down over the excitement and used to her being around?

A I don't remember that she asked me. I usually

1 just --

2 Q You were going to do anything you could to

3 help out?

4 A I wanted to make sure she knew where things

5 were.

6 Q The kids knew you well?

7 A Oh, yes.

8 Q And you were familiar with their little

9 personal habits, whether they jumped over the back of

10 couches and sofas and --

11 A Yes, I knew the children well.

12 Q And were they active youngsters?

13 A Yes. Sandy much more than William.

14 Q But they had the run of the rooms there on

15 the first floor, didn't they?

16 A Yes, their bedroom was on the first floor.

17 Q You didn't put them in a playpen or tethered

18 them to a doorknob so they couldn't go so many feet in

19 one direction?

20 A No.

21 Q I believe at some point after you were there

22 at lunch you were going to go and pick up Debby and bring

23 her back there from school?

24 A Right.

25

Q Was this to be a daily assignment for you?

A I don't remember. I don't remember if it was true every day.

Q But on that day --

A I was to pick her up.

Q Did you take her to kindergarten that morning?

A No.

Q She didn't go until sometime after you left to go to the airport?

A I don't remember if Debby was there but I didn't take her to school.

MR. WILLIAMS: All right. Thank you. No further questions.

MR. WHITING: If the court please, I would like to please ask this be marked Defendant's Exhibit A.

MR. WILLIAMS: We have no objection, Your Honor.

THE COURT: It will be admitted.

(The document was marked as Defendant's Exhibit A and received in evidence.)

MR. WHITING: If the court please, I will not want this witness back. If the other side doesn't object, I think she would like to get back to her

children.

MR. WILLIAMS: Henry, before we introduce this, you don't disagree with me in saying that there is a door.

MR. WHITING: No. I am going to prove it by Mr. Nelson.

THE COURT: May this witness be excused? You may go. Thank you.

(Witness steps down.)

Pendleton vs. Nelson 3/6/72

Fols tem of Eleanor Pendleton Monahan

Whereupon,

ELEANOR HOTCHKIS PENDLETON,

being first duly sworn, was examined and testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Please state your name?

A Eleanor Hotchkis Pendleton.

Q And your address?

A Warrenton now.

Q Occupation?

A I don't have any occupation, I am afraid.

Q And how old are you, Mrs. Pendleton?

A I am 70 now.

Q And you were approximately 68 when the accident occurred?

A That is right.

Q Mrs. Pendleton, you are now a widow, is that correct?

A That is right.

Q And how long have you been a widow?

A Around seven years.

Q From the time that you became widowed up until the time of the accident tell the gentlemen of

jury the type of activities that you engaged in?

A Well, immediately after my husband died I went abroad with my other daughter for a while to London and after I came back I decided that I wanted something to do and I was in school work first in Baltimore and then in Washington, D. C.

Q Now, the school work, was that a full-time assignment?

A Yes. The first school I had charge of 15 young children and that was the one in Baltimore and I had full charge of all of these 15 children from morning until the afternoon except when they were in their school room. They were boarders in the school.

Q And you were sort of a housemother?

A Housemother in charge of them.

Q And then it was Holton Arms?

A At Holton Arms I had the older girls. I had charge of 50 seniors and I was in the dormitory with them to chaperon them at all of the places and all of the activities requiring chaperons outside of the school.

Q Would this entail getting 50 teenage girls on buses and things to go from place to place?

A Yes. They often wanted to go to places in Washington and I went and arranged for the bus and

arranged for the seating and checked them in and out to be sure I had all of them with me when we left and when we returned.

Q Now, when did you end your employment with Holton Arms?

A It was in June, '69.

Q And what was your rate of compensation from that job?

A Well, the salary was 3,000 and then I had an apartment suite of rooms with all meals and board and laundry and everything, all incidentals taken care of in addition to salary.

Q Were you physically able in that time of life to do those functions and responsibilities at Holton Arms expected of you with these girls?

A Yes, I was. I don't think I could have taken them out into Washington unless they felt I was able to do that.

Q Well now, after you left that job you came back to Warrenton, is that correct?

A Yes. I decided that I would like to make Warrenton my home because my husband was buried here and I wanted to find a place and settle here and then find something to do, employment in town.

Q Have you ever done any typing or shorthand sort of work, Mrs. Pendleton?

A Yes, I have, several different places.

Q But did you have any specific type of employment in mind here in Warrenton when you moved back?

A Well, I have been told that I could get any kind of work as a hostess or receptionist in a doctor's office, the library, things of that kind where I had interviews.

Q And was it your intention to accept a suitable job of that nature?

A Yes, I planned to.

Q When you first moved back to Warrenton in '69, Mrs. Pendleton, where did you live here in town?

A I had a friend who has a double house, a two-apartment house.

Q And what is that address?

A It is 124 Lee Street.

Q All right.

A And I now live on the first floor of that house because later on her apartment became vacant.

Q When you first returned to Warrenton was part of the house available for you to live in?

A No, it was not. So, I visited with her and

stayed in her house when she went away.

Q And then the second part of it became vacant?

A Yes, and she notified me that it was available. In the meantime I had located another house because it was not ready for occupancy until later on. So that this one was the first that was available.

Q Do you drive, Mrs. Pendleton?

A No, I don't.

Q Have you ever driven?

A Well, I gave my car to my grandson after my husband died.

Q And you have not driven since that time?

A No, I never drove very much at all.

Q Prior to the time of your injuries how did you get about here in the town of Warrenton?

A I could walk anywhere. I walked all over town. I walked to the cemetery many times because that was one of my main reasons for coming back here, so I could be independent enough to walk around and without having to depend on taxis and friends to transport me.

Q How about in going to church and to visit friends and do your shopping, could you do that by walking?

A I could do that then but now it is a little difficult.

Q Now, after you moved back to Warrenton in '69, at some time after that, did you see the Nelsons socially or in a business way?

A Yes. I met the Nelsons at a party and that is when we made the arrangements about staying at their house.

Q Prior to that time had you known that they were contemplating a vacation?

A No. That was the first time I heard about it but we both were interested in the idea at the time. I particularly on account of the little children because I always have been fond of children and they seemed to have confidence in my ability to stay with them.

Q You had known the Nelson family for a number of years, had you not?

A Yes, I had.

Q Now, do you recall, in a general way, when this preliminary conversation with the Nelsons occurred?

A It was at a party at Dave Warrens. I think it was during Christmas week. It was before I moved over here but I had already made arrangements for moving. I was to move the first of January and I think this

1

2 party was in December when we had made the arrangements.

3 Q Did you know when the two weeks would be at

4 the time you first talked to them?

5 A When?

6 Q Did you know whether it would be in February

7 or March or January?

8 A Yes, yes.

9 Q Now, after did you generally agree at that

10 time that you would stay with their grandchildren while

11 they were away?

12 A We just talked about it casually at that

13 time but later on we talked about it in a business way.

14 Q Now, when you say "we talked about it", did

15 you talk to Mrs. Nelson or Mr. Nelson?

16 A I talked to Mrs. Nelson.

17 Q And she made the arrangements with you

18 personally --

19 A Yes.

20 Q -- for this undertaking, is that so?

21 A Yes, she did.

22 Q Now, at some point prior to the time that

23 they left to go on their vacation did you go to the

24 Nelson home to be shown around and get your bearings

25 on what you were supposed to do?

A Yes, I did. Mrs. Nelson went over everything very thoroughly.

Q When did you go, Mrs. Pendleton?

A It was either the day before or two days before. It was close to the time they were leaving because at the time she took me to the basement and showed me where the food was kept, the deep freeze and so forth.

Q Now, in getting to the basement is the only means of getting into the basement to go through the door that leads down from the kitchen?

A That is right, that is the only one that I knew about.

Q Was that the only one that was shown to you?

A Yes.

Q Did you have any conversation about latching devices that were used on that door?

A Yes. Mrs. Nelson told me exactly about the door, that they were always kept latched.

Q Did she point them out to you and explain their purpose?

A Yes, she did.

Q And what were they, as best as you recall?

A A latch on the door leading from the kitchen to the basement and one leading from the basement to the

1
2 kitchen, the reverse way.
3 Q Did she make any statement about when the
4 family went in and out of the basement whether they
5 secured the doors with those latches?
6 A She said everybody locks the door when they
7 go through this door to the basement and everybody has
8 been told about keeping it fastened at all times.
9 Q And she told you the same thing?
10 A Yes.
11 Q And it was your understanding that during the
12 two weeks that you were to be on the premises, that if
13 you went in and out of the basement that this same
14 routine must be observed by you?
15 A Yes, that was pointed out.
16 Q Now, when you went down to the basement with
17 Mrs. Nelson and came back up do you recall whether she
18 brought anything with her?
19 A Yes. She brought a roast. She said it would
20 be for dinner when Bill, her son, came home. I was to
21 have dinner for them. That was the next night and I
22 am sure it must have been the day before because I don't
23 think she would have brought the roast up.
24 Q It would have been aging some?
25 A Yes. She put it in the refrigerator and said

1
2 this will be ready for dinner when Bill comes home
3 tomorrow night.
4 Q What time were you supposed to report for
5 duty?
6 A I was supposed to be there at 8:00 and they
7 were going to leave earlier, an hour earlier. She had
8 somebody come in, Annie, who was a substitute maid.
9 Q Who was her regular maid?
10 A Janey.
11 Q Smoot?
12 A Smoot was the regular maid.
13 Q What were Janey's functions around the house
14 as best as you recall?
15 A Janey had been with them for a number of
16 years and she knew everything connected with the children
17 and the house and she knew all the requirements about
18 both the children and their laundry, cleaning the house.
19 Q But your specific assignment was the
20 children, is that correct?
21 A That is right, and kind of to take the place
22 of the mother who was away.
23 Q Now, when you arrived on the morning of the
24 accident did you do so by taxi cab?
25 A Yes.

Q And then went on in to the house, is that correct?

A Yes, and the little girl, Debby, was to go off and get off to school at 9:00.

Q And she was there when you arrived?

A She was there.

Q What arrangements had been made for her transportation to school?

A One of the men from the office was supposed to come and take her to school. He came and met her and sent her off to school and then I took over the little ones.

Q That left you with the twins, Sandy and William, is that correct?

A That is right.

Q And from 8:00 o'clock on to the vicinity of lunchtime what did you do with them?

A Well, we played around the house and they showed me some of their toys. William is an active little boy. In the meantime he went up and locked the door. So, we had a little problem there about how we would get in to get my shoes and things to change my clothes.

Q Was this your bedroom that he locked?

A Yes.

Q Were these children of a size that they could reach a door knob and turn it?

A Only a very low one because he was very small. Evidently, their own bedroom door had a lower knob than others because in some way he had closed that door so I couldn't get in. So, Janey and I spent a little time trying to get in that bedroom.

Q Janey had come on the premises after Annie left or were both of them there when you first arrived?

A Annie was there and a few minutes later Janey arrived by taxi and then Annie left soon after that.

Q Now, during the course of the morning did Mr. Nelson's daughter, Lee, come to the house?

A No. She didn't come until after 11:00 when she came back from the airport.

Q Were you getting ready to have lunch at that time or had you already had it?

A It was lunchtime but soon after that we had lunch. I think it was around 11:00. I think when she came in and after 11:00 we started thinking about lunch. The children got a little restless and we decided to take them into the dining room and let them make their

1
2 own peanut butter sandwiches.
3 Q After lunch was it the custom for the two
4 smaller children to take a nap?
5 A Yes.
6 Q Now, where was lunch served, in the kitchen
7 or in the dining room?
8 A Dining room.
9 Q You would take the peanut butter, bread,
10 whatever was necessary --
11 A You-have-to-do-it-yourself lunch. They
12 were spreading the peanut butter and jelly.
13 Q How long a span of time, would you say,
14 lunch took?
15 A Oh, it was, I guess, about half an hour,
16 maybe not more than that.
17 Q Was Lee with you all during the luncheon
18 period?
19 A Yes, she was.
20 Q And after you finished lunch what happened
21 to Lee and William?
22 A Well, Lee and William went off into the
23 family room or T.V. room together and Lee usually went
24 in and smoked a cigarette, and I went on in the kitchen
25 and little Sandy followed me in and was playing around

in the kitchen while I was straightening up after lunch.

Q You brought the dishes, peanut butter --

A Bread and the peanut butter.

Q To put everything away?

A To put everything away.

Q Now, after you cleaned up from the luncheon outing, then, were you going to take the kids up for the nap?

A Then, it was nap time and I was about to collect them to go put them to bed when I heard "Dee-Dee, get me; Dee-Dee, get me".

Q Where were you at the time you heard that cry?

A I was in the kitchen.

Q Did you know where the child was?

A I was headed in that direction, evidently, because I was close enough to the voice to spot where it was coming from.

Q And where did you determine that that voice was coming from?

A It was through the door that was forbidden property.

Q I hand you Plaintiff's 6, which is the stairway going down into the Nelson's basement, and ask you if

1
2 you recognize that?
3 A Yes.
4 Q When you once determined where the voice
5 was coming from where was it on those steps?
6 A Around the second or third step down.
7 Q All right.
8 What did you do immediately upon hearing the
9 voice and how did you go about doing it?
10 A I just grabbed for the child. That is all I
11 had in mind.
12 Q Did you determine that the child was
13 actually on the steps?
14 A Yes.
15 Q And what was your concern at that time?
16 A To get it as quickly as possible.
17 Q Why did you want to get it?
18 A Because it could have fallen off and crushed
19 its head on the cement. There was a cement floor.
20 Q What movement did you make to get Sandy?
21 A Well, it was all so instantaneous. I just
22 grabbed.
23 Q And what happened?
24 A Sandy is an emotional little thing. She
25 threw both arms around my neck as if she was going to

1
2 hug me and then with hugging me we both went overboard
3 on the concrete floor.
4 Q You went over the side where there was no
5 railing?
6 A Yes.
7 Q Now, had Sandy ever cried out "Dee-Dee, get
8 me", more than once?
9 A No, I got to her immediately.
10 Q Now, in going down what happened to you, if
11 you can tell us?
12 A It was all so fast. I can't remember any-
13 thing except that Sandy cried, screamed, because I heard
14 her on the steps and as we fell she was holding --
15 Q Where did she land in relationship to you on
16 the concrete floor?
17 A I was on the floor and she was on my lap on
18 the floor on top of me.
19 Q Were you ever rendered unconscious?
20 A No.
21 Q And what did you do to try to take care of
22 what had happened to you and Sandy after the fall?
23 A Then, Lee heard the cry and she came running
24 and I said, "Take the baby, I am all right" because I
25 didn't feel anything then and I thought I was all right.

So, she either took her in her car or an ambulance, I am not sure.

Q Did Lee take Sandy and go on up the steps?

A She took Sandy and went on up the steps.

Q And you were left there alone, then?

A And they went on to the hospital. Then, I crawled up the steps. When I got up I found I couldn't stand on my foot but evidently I didn't know I couldn't stand up when she left me. So, I just told her to go on and I then crawled up the steps and laid on the floor in the kitchen until Janey called the rescue squad.

In the meantime, Lee had called up to ask what about Mrs. Pendleton and she had told her that she had called the rescue squad to come for me and I would be on out to the hospital because I couldn't stand on my foot.

Q Now, you were taken to the hospital and then received treatment from Dr. MacNay, an orthopedic surgeon, at some point in time after that?

A Yes. First Dr. Iden admitted me. That is the Nelson's family doctor was there. He had seen Sandy and bandaged up her head and she was still there and I talked to him and asked him if I couldn't go on back to the Nelson's home because I wanted to look after the

1
2 children. I could stay on the sofa and read to them, if
3 nothing else, and he said, no.
4 Q Now, prior to the time that you undertook
5 to get Sandy off of the basement stairway, had you ever
6 gone into the basement that morning?
7 A No. I had no reason to go to the basement.
8 I hadn't really had time to think that far ahead even
9 about the basement because there was no reason for it.
10 We hadn't gotten that far into the day.
11 Q Now, after you received treatment there at
12 the hospital and the cast was placed on your arm and leg,
13 I believe you were admitted as a patient, were you not?
14 A Yes.
15 Q And some three or four days later you then
16 asked to be discharged or were discharged and went and
17 stayed with the Parkinsons?
18 A That is right.
19 Q And at this time you still had a cast on
20 both your arm~~s~~ and your leg?
21 A Yes.
22 Q Now, you said that immediately upon your
23 fall you were numb and had no feeling of pain or anything.
24 Did there come a time when pain did start
25 affecting you?

A Well, in the night before the nurses left they said if you have any pain just ring the bell, and the doctors left orders for pain pills. Well, I did have to call for some pain pills during the night.

Q And then you went on out to the Parkinsons and stayed a couple of weeks, approximately that amount of time?

A Yes.

Q And then went on to Winchester to stay with your daughter, Eleanor?

A Yes. I was there until the middle of May. Then, I went to another daughter's in Boston. I was met with wheel chairs at both air planes.

Q Now, from the time your arm and leg, arm and foot I should say, once started hurting has the pain continued since that time?

A Yes. I am always conscious of the broken foot and if I exert myself very much it swells terribly.

Q What do you do for the pain in the foot now, Mrs. Pendleton?

A Dr. Troop told me I could take Aspirins at regular intervals. So, I always take some before I start to walk to church or walk for grocery shopping or take any extra exertion.

Q Has Dr. Troop or Dr. MacNay given you any sort of an orthopedic shoe or buildup in your shoe to help you out in this condition?

A Yes. I have prescription intersole arch supports in all my shoes.

Q Does that give you some relief?

A Yes. I think it keeps my foot from bending out of shape too much but there is always pain. I could feel the pressure of the arch supports. It makes it more painful but I feel that it is keeping my foot from getting out of shape.

Q Let's talk about the arm for the moment.

What effect does the injury that you received in your wrist have on you, Mrs. Pendleton?

A Well, I don't have any dexterity for use in typing or things that I used to do.

Q Could you sort of hold it out for the gentlemen of the jury and maybe explain?

A There is a stiffness. So, for instance, if I try to reach, if I try to type with any accuracy, which was what I do to get work, I make mistakes. I can't count on it. It stiffens, from time to time.

Q Now, does that cause you any pain, Mrs. Pendleton?

A Not particularly any pain. It is just the consciousness of not being able to use it as much as I used to.

Q Now, let's now talk about the foot.

With what frequency do you experience pain in your foot?

A Whenever I step on it at all. When I step on the floor in anything but a very soft shoe it is painful.

Q How do you get relief from the pain?

A Well, I have to elevate it as much as possible. If I go for any length of time without elevating it my ankle swells and it is very painful.

Q In bed at night, how do you get along there?

A Well, I often have to get up in the night and take Aspirins to relieve the pain.

Q Do you elevate it in any way?

A Yes. I use two small pillows, foam rubber pillows, to elevate it.

Q In going up and down steps and walking on uneven surfaces does this cause you any difficulty?

A I could never count on my foot on an uneven step. If I step on a little rock, a little pebble, it would throw me.

Q Now, do you get around town if you want to go to the cemetery, to the church or shopping or --

A I count on my friends or taxis most of the time. I could walk up as far as the grocery store but I have to be very careful for unevenness everywhere.

Q If the weather is bad and things of that nature do you feel more restricted?

A Very much restricted and especially when I was very much independent before.

Q At the time your wrist was operated on by Dr. Troop, Mrs. Pendleton, were you suffering any pain with it then?

A Yes, I was in terrible pain until the second operation.

Q But they put a cast on and they took the cast off and then you went through a program of exercises that I believe were prescribed by Dr. Troop?

A Yes.

Q At what point in time did this pain develop that ultimately led to the second operation?

A Well, immediately after exercising I could tell that it was getting worse instead of better and I started getting a numbness in my hand. So, I had a burning and tingling. So, I couldn't just -- it felt

numb all the time.

Q When did that burning sensation occur?

A In the morning if I wake up or wake up in the night I felt the numbness.

Q Hold the arm up to the jury and point to the area where you were getting the sensation of pain.

A It was right through here and through here (indicating).

Q And was that an intense pain?

A Yes, it was.

Q That was very disagreeable?

A Like a toothache.

Q And how long did that last before you had the corrective operation performed?

A I would say the first operation was in February and then the second, oh, it was in July, and I got almost immediate relief after the second operation on the hand. The pain then disappeared but it has never felt quite as easy. There is a stiffness in it still.

Q While you were living with your daughter in Winchester was there any special device in the way of a ramp that had to be put in for you?

A Yes. In order to get me into the house after I left the Parkinsons there had to be a ramp built

for me to get me into my bedroom which was one step down from the hall of the first floor and a ramp was built for them to get me in the wheel chair in and out of the house. That is the only way I could get back and forth, the ramp, to get me in the wheel chair.

Q And you used the wheel chair from time to time while you were with your daughter?

A Everywhere. They would roll me into the dining room.

MR. WILLIAMS: That concludes my examination, Your Honor.

1 12

CROSS EXAMINATION

BY MR. WHITING:

Q Mrs. Pendleton, the day before, I believe now you have concluded was the day before that, Mrs. Nelson took you out there and showed you what your duties would be?

A Yes.

Q And she took you around the house, didn't she, Mrs. Pendleton?

A Yes.

Q And I believe she showed you the various doors that were latched or to be latched?

A Yes.

Q And were there any other doors besides this door in question that was to be latched?

A Yes, there were several doors.

Q Did she show you those?

A Yes.

Q Where were they?

A They were different parts of the house. They were towards the bathroom and the utility closet and, I believe, a door going to the outside where the little ones might escape.

Q Did she say why those doors were to be latched?

1
2 A Well, she may have said but I naturally would
3 have known for the protection of the children.
4 Q Now, did she tell you, when she showed you
5 all these doors, that were latched, did she tell you
6 to check and be sure the doors were latched?
7 A Well, if she had confidence in me to ask me
8 to tend to the children I don't think she would have had
9 to say that but I think maybe in her conversation that
10 she did say to keep all these latched.
11 Q So, you intended to check them to be sure
12 they were latched?
13 A I certainly did, I did.
14 Q Now, when did you intend to do that?
15 A Well, the children had always been allowed
16 to run around the house. There was no suspicion of
17 anything in that length of time. There was not time to
18 be unaware of things that were going to happen and my
19 main point was to get the little children to bed. Then,
20 I might have taken time to check but there wasn't
21 sufficient time for me to go around and make sufficient
22 check of all the doors in the house otherwise I probably
23 would have done it.
24 Q When was it you said you got there?
25 A I got there at 8:00 o'clock.

Q In the morning?

A Yes.

Q And what time did this accident happen?

A It was between 11:30 and 12:00, I believe, or around 12:00. I don't know that I watched the clock for everything like that.

Q Sure.

A But it was after lunch which meant it would be afternoon, I expect.

Q All right. Now, Where were you and the children when they were showing you their toys?

A In the family room.

Q In the family room?

A Yes.

Q Mrs. Pendleton --

A I left my glasses at home. I don't believe I could read.

Q You can't make that out at all?

A Well, not in detail. If I could use --

Q I am not going to ask you to read anything.

A Well, show it to me. I want to see it.

Q All right. Can you make that out, the diagram?

A Sort of.

Q Mrs. Pendleton, that is a diagram that is supposed to represent the area of the Nelson's house --

A Yes.

Q -- where this accident occurred and here is the area designated as the kitchen.

A I can see that.

Q And here is the area designated as the recreation room. Could you see that?

A Yes.

Q Now, I am pointing out to you here, I am going to sort of do it this way so you and the jury -- here is the area designated as the entrance hall from the garage. You recognize that, don't you?

A Yes.

Q And here is the little entrance hall down from the kitchen towards the basement steps. Do you recognize that?

A Yes, I guess. I am not good on these drawings particularly.

Q You are not an engineer.

A I am not architect or engineer.

Q But this does represent the area accurately as far as you can tell? I believe there is a door here; there is a door leading off that little hallway to a

kitchen closet on your right as you pass toward the basement?

A Yes, there are doors from all around.

Q That is right. There is a door in every corner of this except where you come from the kitchen, is that right?

A No, there is an entrance down into the entrance without a door.

Why don't you ask me what you want to know instead --

Q Mrs. Pendleton, you were standing by the sink, weren't you, just before Sandy called you?

A I can't swear that I was standing by the sink. I was in the kitchen and I heard the voice. The sink is where you would be when you are straightening out from lunch, isn't it?

Q Yes, ma'am.

A I can't say. I think I was on the way for the child when I heard the voice, looking for the child but I can't say I was standing by the sink.

Q Where were you on the way from?

A From the kitchen to where the voice was coming from.

Q And I take it from that, then, that you had

been at the sink in the kitchen, that was the last thing you had done, straightening up the dishes?

A Could have been.

Q Is there any other place in the kitchen you would have been before the child called you?

A I don't know; why?

Q Pardon?

A What difference does that make, how many times I turned around the kitchen?

Q I see. Well, then you don't know exactly where you were in the kitchen when the child called you?

A The main thing I was thinking about was getting to the child when she called. I would have gotten to her if she had been anywhere, in any spot. That was my main idea, to get the voice that was calling for help.

Q Now, the child had been with you just before she called you, hadn't she?

A Yes. The children were not in the habit of being watched. The house was made, apparently made, safe for them and they knew that and they were allowed to run around the house. There was no reason whatsoever for me to watch those children every single minute.

Q That was because you understood the doors

1 were all latched?

2 A That is right, because that was the idea in

3 that house, that was the rule of the house, that those

4 doors were always locked. If I had unlocked the door

5 I would have been conscious of the fact that those

6 children were around and could open the door but I

7 hadn't touched the door so there is no reason for me to

8 have any suspicion of the fact that there was any

9 danger for the children.

10 Q Was there anyone else who could have touched

11 the door after you got there?

12 A Yes, there were other people.

13 Q Who?

14 A Well, Janey could have touched the door. It

15 was her privilege because she was in charge, really, of

16 the house.

17 Q You say she was in charge of the house?

18 A She was in charge of the housework which was

19 part of her duty.

20 Q Well --

21 A She was in charge of keeping the house clean

22 and keeping the laundry and looking after the children

23 whenever they were around.

24 Q Well now, so Janey could have gone down there,

25

is that your testimony, Janey could have gone down there and unlocked the door?

A Well, why couldn't she? If she was in the house she could have. I didn't say she did but she certainly could have because it was certainly her right to. She had been in the house longer than I had and she knew all of the rules of the house.

Q Now, she hadn't been around in the area, had she, while you were giving the children lunch, had she?

A No.

Q She was upstairs?

A She went up to prepare the bedroom for me the Nelsons had left unmade. She went to make that ready for me.

Q I see. Now then, Mrs. Pendleton, just what did you understand your responsibilities to be?

A To look after those children no matter what happened, in every detail.

Q All right.

A And to look after the meals for them, and when Bill came home in the evening, their son --

Q Yes, ma'am.

A -- we would have dinner all together.

Q And did you understand that you had any other

1
2 responsibilities other than those?
3 A Well, I understood that I was to take Mr. and
4 Mrs. Nelson's place in taking care of the house and the
5 children.
6 Q And did you?
7 A And Janey was going to help with the work.
8 Q Janey was?
9 A Janey was going to help with the work because
10 she was accustomed to it.
11 Q Did you understand that you were more or less
12 to supervise the household with the help of Janey?
13 A Well, yes, naturally.
14 Q Now, when you got there, Mrs. Pendleton, the
15 children had already had their breakfast, hadn't they?
16 A Yes, they had breakfast early.
17 Q And so then, you were in the house with the
18 children. You all didn't leave the house that morning,
19 did you?
20 A No.
21 Q Now Mrs. Pendleton, when you started for
22 Sandy, you heard the voice cry and you started for Sandy;
23 did you see her there on the steps as you came towards
24 her?
25 A I must have seen her or I couldn't have grabbed

her.

Q How far away was she from you when you first saw her?

A This was all instantaneous. All I was thinking about was getting the voice when it was crying for help, the baby on the steps which was evidently in a spot of danger and my responsibility was to get that child regardless of what happened and I didn't count the minutes or the steps either. I was just looking for the child to save her from being hurt.

Q Where was she on the steps?

A I didn't have a tape measure with me because I didn't know this was going to happen but I know that she had gotten through the door and was down on either the second or third step when I grabbed her but I am not sure that she could have been in that exact same measurement. If you want to go back and measure the distance; I couldn't swear that was it exactly, that spot.

Q Now, where was Sandy facing when you first saw her?

A I don't know how she was facing. All I know is that I got the child and that she grabbed me around the neck. Whether she was facing me or facing north, east, south or west, I am not sure but all I wanted to

do was to save Sandy, and I did get her in time, to grab her.

Q Did she look like she was about to fall over when you saw her?

A I didn't look that closely. All I did was to get her.

Q Well now, what did you think was the problem when you heard the voice cries and saw her?

A I didn't stop to think. All I did was get the child.

Q What danger did you think she was in?

A She was in danger of falling off of that step on to a concrete, high distance.

Q Now, was the child crying, Mrs. Pendleton?

A She wasn't crying when she called for help. She was calling but she cried when she was hurt.

Q All right. Now, had you gone down any of the steps when Sandy put her arms around you?

A No. I went down the steps before I reached her because she wasn't on the top steps.

Q That is what I am asking you. Now --

A I had to get through the door to reach her.

Q Yes, ma'am. How many steps had you gone down?

A I didn't count the steps, how many I went down. I know that I got there just as quickly as I could and that was my main idea, was to get the child but I didn't count the steps. It happened instantaneously.

Q Well, how many -- you leaned over, didn't you, to get her?

A Why, I don't believe I could have got her if she was down below me.

Q Now, when you leaned over and you put your arms down how many steps were you above her?

A No, I didn't count the steps, no. I know I wasn't on the top steps.

Q I see. Well now, Mrs. Pendleton, Lee came back and did you all sit down and visit after Lee got back?

A Yes.

Q Whereabouts were you when you visted?

A We were in the family room.

Q In the family room?

A Yes.

Q To get into the family room from the kitchen you had to pass right by this door, didn't you?

A Well now, at what point are you talking about?

Q When you pass from the kitchen through the

hall down into the family room you go right by this door, don't you?

A Yes.

Q How many times do you suppose you had been by that door that morning?

A I don't suppose I had been by it -- I haven't any idea. I wasn't aware of any danger or I hadn't been checking that morning for the routine of the household. I hadn't looked for danger. I hadn't looked for that door. I hadn't attended -- the duties at hand was getting the little girl off to school and taking care of the children when they were with me and then having lunch.

Q Were the children with you at all times that morning except just before Sandy fell?

A I am not sure that they were. They weren't required to stay under surveillance every moment. They played around all over the first floor.

Q That is because of the locks, isn't it? Is that why you didn't have to have them under surveillance?

A I hadn't thought about the locks. I hadn't thought anything except doing the routines of the family as they would if the family had been at home.

Q Well, what things did you do besides supervise the children that morning and visit with Lee?

A Well, there wasn't very much time when Lee got back before lunchtime.

Q I see. All right. Now, Mrs. Pendleton, you could see the door, couldn't you, this door from where you were standing washing dishes?

A I wasn't looking for trouble so I don't know that I was even looking towards the door.

Q But if you had looked at the door you could have seen it, couldn't you?

A If I looked at the door I could have seen it? It was a good size door.

MR. WHITING: I see. I believe that is all. Thank you.

THE COURT: Any redirect?

MR. WILLIAMS: No further questions, Your Honor.

Your Honor, may we have about a five minute recess? We have reached a point where we may be closing.

THE COURT: Court will take a five-minute recess.

(Short recess taken.)

MR. WILLIAMS: Your Honor, counsel has entered into a stipulation as to medical expenses that I would like to tender ask that it would be come part of the record.