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State Farm Mutual Automobile Insurance Company v. Marie H. Justis

Virginia Reports Citation

168 Va. 158

68-158

Record No. 1743

1097

In the Supreme Court of Appeals of Virginia at Richmond

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

v.

MARIE H. JUSTIS

FROM THE CIRCUIT COURT OF THE COUNTY OF NORFOLK

"The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements."

The foregoing is printed in small pica type for the information of counsel.

M. B WATTS, Clerk.

168 Va 158

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1743

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff-in-Error,

versus

MARIE H. JUSTIS, Defendant-in-Error.

PETITION FOR WRIT OF ERROR AND *SUPERSEDEAS.*

To the Honorable Justices of the Supreme Court of Appeals of Virginia:

The petition of State Farm Mutual Automobile Insurance Company respectfully represents unto the court that it is aggrieved by a judgment of the Circuit Court of Norfolk County, Virginia, rendered against it on the 7th day of October, 1935, for $7,000.00 with interest from August 6th, 1934, and costs, in an action at law in which Marie H. Justis was plaintiff, and your petitioner, State Farm Mutual Automobile Insurance Company, hereinafter called the insurance company, was defendant. The transcript of the record is herewith presented.

THE FACTS.

One V. J. Arnold was the owner of a certain Ford automobile. He was the holder of a certain liability insurance policy issued by the defendant insurance company to him, by which the insurance company agreed to insure V. J. Arnold against certain perils arising from the use of the said automobile.

Wade Arnold was a brother of V. J. Arnold. On November 4th, 1933, Wade Arnold, with the permission of V. J. Arnold, was driving the said automobile and while doing so had an accident in which Mrs. Marie H. Justis was injured. Mrs. Justis thereafter brought an action against V. J. Arnold and Wade Arnold for damages for her personal injuries received in that accident. That action was tried, resulting in a judgment in favor of Mrs. Justis for $7,000.00, with interest and costs against Wade Arnold alone (driver), and in favor of V. J. Arnold (owner).

Thereafter the present action was brought by Mrs. Justis against the said insurance company to make the insurance company pay the judgment against Wade Arnold.

The policy sued on is in evidence and has been certified as original Exhibit #1. It is a limited coverage policy, issued by a mutual company at a very reduced premium, and covers only the owner, V. J. Arnold, and no one else. It does not contain the so-called "Omnibus Coverage", or "Additional Assured" clause that is usual to the old line companies' policies. We skeletonize the policy in the case at bar as follows:

INSURING CLAUSE.

The insurance company * * * "*does hereby insure V. J. Arnold* of the City of Fox Hall, State of Virginia, *hereinafter called the 'Assured'*, against the perils arising from the ownership, maintenance or use of an automobile as *hereinafter specified* * * * *subject to the terms and conditions* of this policy * * * ".

Then follows the description of car.

Then follows a statement of the perils insured against as follows:

PART I.

Clause A—Fire.
Clause A-1—Transportation.
Clause A-2—Tornado, etc.
Clause B—Theft.

PART II.

Clause D—Public Liability.

"This coverage protects the *Assured* against legal liability imposed upon the *Assured* resulting solely and directly from an accident by reason of the ownership, maintenance or use

of said automobile, on account of bodily injury and/or death suffered, or alleged to have been suffered by any person, * * * ."

Clause E—Property Damage.

Turning over we find the terms and conditions to which the insuring clause above quoted says the *obligation to insure V. J. Arnold are subject.* Then follows 15 paragraphs of those terms and conditions. Sub-paragraph (D) of Paragraph (1) and Paragraphs (9) and (10) are the parts with which we are especially concerned.

TERMS AND CONDITIONS FORMING A PART OF THIS POLICY.

"(1) *Risks Not Assumed by the Company.*

"The Company shall not be liable, and no liability or obligation of any kind shall attach to the Company for losses or damage:

"(A) To robes, wearing apparel * * * under Part I above;
"(B) To any part of the body * * * of the automobile * * *;
"(C) Caused * * * by flood, invasion, insurrection * * * ;
"(D) Unless the said automobile is being operated by the Assured, his paid driver, members of his immediate family, or persons acting with the consent of the Assured;
"(E) Caused while automobile is being driven * * * by any person * * * under the influence of liquor or drugs * * * ."

Also see F, G, H, I, J, K and L.

Paragraph (9) says no suit shall be brought against the insurance company except by the Assured "after the amount of the damages for which the *Assured* is liable * * * is determined either *by a final judgment against the Assured* or by agreement between the Assured and the plaintiff, with the written consent of the Company * * * ".

Paragraph (10) qualifies paragraph (9) to the extent that after there has been a judgment against the *Assured,* and execution returned unsatisfied thereon, the judgment creditor, in the shoes of the assured, may then sue the insurance company, subject to the terms of the policy.

The case was tried in the Circuit Court of Norfolk County without a jury. The trial Court being of opinion that, because Wade Arnold was driving the automobile with the per-

mission of the assured, V. J. Arnold, there was an obligation under sub-paragraph (D) of paragraph (1) of the Terms and Conditions above set forth, on the part of the insurance company to pay the amount of the judgment against Wade Arnold. Accordingly, the lower court rendered judgment against the insurance company for the amount of the judgment recovered by Mrs. Justis against Wade Arnold, with costs, to which the defendant insurance company excepted.

ASSIGNMENT OF ERROR.

The trial court erred in rendering judgment for the plaintiff against the defendant insurance company, and erred in refusing to render judgment in favor of the insurance company, and erred in holding that the insurance company was obligated to pay the judgment against Wade Arnold.

THE ARGUMENT.

It is clear under paragraphs (9) and (10) of the terms and conditions above referred to, that the right of the plaintiff to sue the insurance company depends upon whether she has a judgment against the *Assured*. She has a judgment against Wade Arnold; but not against V. J. Arnold. Therefore, the question of liability of the defendant insurance company in this action resolves itself into the question of whether Wade Arnold is an Assured under the policy. It seems equally clear that V. J. Arnold is the only Assured recognized as such in the policy, and that Wade Arnold is not an Assured. The insuring clause states that the insurance company

"does hereby insure V. J. Arnold * * * hereinafter called the 'Assured' against the perils * * * hereinafter specified * * * ".

The peril thereafter specified with which we are concerned is Clause (D)—Public Liability. The obligation therein is:

"This coverage protects the *Assured* against legal liability imposed upon the *Assured* resulting solely * * * ."

Since then the insuring clause states that V. J. Arnold is thereafter called the "Assured", we read his name where the word "Assured" appears in Clause (D) as follows: This

coverage protects V. J. Arnold against legal liability imposed upon V. J. Arnold. Therefore, it is clear that there is nothing there to recognize any one but V. J. Arnold as an Assured.

The lower court held that Condition (1) (D) makes Wade Arnold an additional assured under the policy because he was driving the car with V. J. Arnold's permission. But such claim is not consistent with the framework or language of the policy. Let us examine the policy with this claim in view. Going back to the insuring clause we find that the Company "does hereby insure V. J. Arnold * * * hereinafter called the 'Assured' * * * *subject to the terms and conditions of this policy*". V. J. Arnold then is the person insured. He is the Assured. He is the only person against whose liability the insurance protects. But even the protection or insurance against his liability is subject to certain conditions. The Company agrees to protect V. J. Arnold and only him; but it agrees to protect him only under certain conditions. The wording of the insuring clause makes this clear: The insurance company "does hereby insure V. J. Arnold, hereinafter called the Assured, subject to the terms and conditions of this policy". What, then, are the conditions imposed upon the right of V. J. Arnold to protection? The one with which we are concerned is found in paragraph (1) wherein we find that there is no protection to V. J. Arnold (D) "unless the said automobile is being operated by the Assured, his paid driver, members of his immediate family, or persons acting with the consent of the Assured".

Therefore, consolidating the insuring clause with Condition (1) (D) we have the following as the substance of the agreement: *The Company agrees to insure V. J. Arnold, hereinafter called the assured, subject to this condition, that there is to be no obligation to protect V. J. Arnold unless the automobile is being operated by V. J. Arnold, his paid driver, members of his immediate family, or persons acting with the consent of V. J. Arnold.* Paragraph (1) is clearly a limitation of liability to V. J. Arnold rather than extension of coverage to Wade Arnold, so declared by the heading of the paragraph: *"Risks Not Assumed by the Company."* Let us assume that Smith makes an agreement to pay Brown's debts thereafter contracted, subject to the condition that Smith is not to be liable unless such debts of Brown are incurred with the consent of Jones. Does that agreement make Smith liable for a debt of Jones? Clearly not; because the obligation of Smith was to pay the debts of Brown, not the debts of Jones. The condition that the debt must be incurred with the consent of Jones is a condition or limitation upon Smith's obligation to pay Brown's debts, and not an enlargement or

extension of Smith's obligation to debts of Jones. Therefore, it seems to us clear that Condition (1) (D) is a limitation upon the obligation of the insurance company to protect or insure V. J. Arnold rather than an enlargement or extension of such obligation to members of his family or to persons driving with his consent. Hence V. J. Arnold is the only Assured recognized in the policy, and is the only person who is insured or entitled to protection under the policy.

Most of the old line companies' policies do extend coverage to any person who is driving with the permission of the named assured by the incorporation in their policies of what is generally termed the "Omnibus Coverage", or "Additional Assured", clause, which is generally expressed in one or the other of the following forms:

"The unqualified word 'Assured', wherever used in this Policy, shall be construed to include, in addition to the named assured in this Policy, any person or persons while riding in or legally operating any automobile, insured hereunder and any person, firm or corporation legally responsible for the operation thereof with the permission of the named assured, or if the named assured be an individual, with the permission of an adult member of the Assured's household * * * ." (Copied from Policy of Union Indemnity Company.)

"This policy is extended to cover as an additional assured any person while operating any automobile described in the Declarations, or any person, firm or corporation legally responsible for its operation where the disclosed and actual use of the automobile is for 'Pleasure and Business' or 'Commercial' purposes as defined in Item 8, and the automobile is being so used with the permission of the named assured, or if the named assured is an individual with the permission of any member of the assured's household * * * ." (Copied from Policy of Hartford Accident and Indemnity Company.)

As heretofore stated the policy in the case at bar does not contain any "Omnibus Coverage" or "Additional Assured" clause. Therefore, as heretofore stated, V. J. Arnold is the only person recognized as an assured in the policy at bar; and inasmuch as the plaintiff does not have a judgment against V. J. Arnold, the lower court should have rendered judgment in favor of the defendant insurance company.

The policy at bar as written gives adequate coverage to the named Assured, V. J. Arnold. If there had been a judg-

ment against V. J. Arnold, the insurance company would have had to pay it. But the judgment was not against V. J. Arnold, but only against Wade Arnold. The policy does not extend coverage to Wade Arnold or to any one except V. J. Arnold. It is possible that Your Honors may disapprove the issuance of policies that do not extend the coverage beyond the named Assured. However, if you will consider the high premium rates charged by the old line companies that do extend the coverage, and will consider the smallness of the premium charged on the policy at bar, and compare such with the premium that it is likely that Your Honors pay, I think that you will realize the reason for the limitation, and conclude that the actual coverage extended in the policy at bar is worth the premium charged. Such is really beside the point. If the policy as written is reasonably subject to disapproval, the remedy lies in the power of the legislature and not the courts. The courts have no right to make new contracts for the parties. Certain it is the lower court, by holding that Wade Arnold was an assured under the policy, has done violence to the language of the policy, and written an omnibus coverage clause into the policy where none existed.

As hereinbefore pointed out, the only insuring clause is that the insurance company "does hereby insure V. J. Arnold of the City of Fox Hall, State of Virginia, hereinafter called the 'Assured' ". This establishes the policy as a named Assured policy, as it is the only insuring clause that it contains; and the insuring clause is the only place in the policy where insurance is granted. The said insuring clause states that the insurance *granted to V. J. Arnold* is "subject to the terms and conditions of this policy". On page 2 under the heading,

"TERMS AND CONDITIONS FORMING A PART OF THIS POLICY",

are stated the terms and conditions under which the insurance granted to V. J. Arnold is effective. Paragraph (1) of the Terms and Conditions is entitled:

"RISKS NOT ASSUMED BY THE COMPANY."

Then follows:

"The Company shall not be liable, and no liability or obligation of any kind shall attach to the Company, for losses or damage * * * (D) unless the said automobile is being

operated by the assured, his paid driver, members of his immediate family, or persons acting with the consent of the Assured."

Stated another way, the Company is not liable and does not "hereby insure V. J. Arnold" (the named assured) unless the said automobile is being operated, etc. In other words, the Terms and Conditions, and particularly paragraph (1) thereof, limit and restrict the coverage theretofore granted to V. J. Arnold, rather than extend it to others. Extension of coverage to others than the named Assured cannot be found in an exclusion clause; and any extension of the coverage to Wade Arnold by referring to paragraph (1) of the Terms and Conditions is in effect getting an extension of coverage out of an exclusion, and does violence to the plain, clear language of the policy. Yet just that is what the trial court did. It is, therefore, clear that the judgment of the lower court is plainly wrong and should be reserved, and that final judgment should be rendered in favor of the defendant insurance company, your petitioner.

CONCLUSION.

From what has been said, it is submitted that Wade Arnold is not an assured under the policy, and that there is no obligation under the policy sued on for the insurance company to pay the judgment against Wade Arnold, and that the Circuit Court of Norfolk County, to the prejudice of your petitioner, clearly erred in rendering judgment against your petitioner and in refusing to render judgment in favor of your petitioner, and that said judgment is contrary to the law and the evidence and without evidence to support it, and is plainly wrong.

Wherefore your petitioner prays this Honorable Court to grant it a writ of error and *supersedeas* to the judgment aforesaid, and review and reverse said judgment and render final judgment in favor of your petitioner, and render such other relief as the nature of its case may require.

Copy of this petition was delivered to Mr. A. O. Lynch, opposing counsel in the trial court on the 21st day of November, 1935. Petitioner desires to adopt this petition as its brief. Counsel desires to state orally the reasons for reviewing the decision complained of.

The attention of the Court is invited to the fact that the petitioner has given a bond in the penal sum of $9,500.00, conditioned as required for a *supersedeas* in Section 6351,

Code of Virginia, and that the Clerk of the lower Court has affixed to the transcript of the record a certificate to that effect as provided in Section 6338 of the Code.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
By RIXEY & RIXEY,
its attorneys.

C. C. SHARP,
RIXEY & RIXEY,
Attorneys for Petitioner.

I, John S. Rixey, an attorney-at-law practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion it is proper that the judgment and decision complained of in the foregoing petition should be reviewed by said Court.

JOHN S. RIXEY.

Received Nov. 26, 1935.

J. W. E.

January 29, 1936. Writ of error and *supersedeas* awarded by the court. No bond.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Circuit Court of Norfolk County at the Courthouse of said County, on the 21st day of October, 1935.

BE IT REMEMBERED, that heretofore, to-wit: On the 26th day of February, 1935, came the plaintiff, Marie H. Justis, and filed her Notice of Motion against State Farm Mutual Automobile Insurance Company, a foreign corporation doing business in Virginia, defendant, in the words and figures following, to-wit:

To the State Farm Mutual Automobile Insurance Company:

Take notice that Marie H. Justis, the undersigned, will on the 26th day of February, 1935, at 10 o'clock A. M., or as

soon thereafter as she, or her counsel, may be heard, move the Circuit Court of Norfolk County, Virginia, at its Courthouse in the City of Portsmouth, Virginia, for judgment against you, State Farm Mutual Automobile Insurance Company, defendant, in favor of Marie H. Justis, plaintiff, for Seven Thousand Dollars ($7,000.00) due upon a certain judgment rendered in favor of Marie H. Justis against Wade Arnold in the Circuit Court of Norfolk County, Virginia, on the 6th day of August, 1934, together with interest thereon from the 6th day of August, 1934, until paid, and the costs recovered in said judgment, as well as the costs incident to these proceedings, and which is due and owing to the undersigned, Marie H. Justic by State Farm Mutual Automobile Insurance Company, for this, to-wit:

page 2 } That the said defendant, State Farm Mutual Automobile Insurance Company, a foreign Insurance Company doing business in the State of Virginia, issued for value its automobile insurance policy No. 237516—Va. in favor of V. J. Arnold a resident of Norfolk County, Virginia insuring the assured among other things against perils arising from the ownership, maintenance and use of a certain Ford standard coupe model A automobile, engine No. V 18-184097 from the 9th day of August, 1933, from 12 o'clock noon standard time to the 1st day of January, 1934, at 12 o'clock noon standard time, and against liability resulting solely and directly from an accident by reason of the ownership, maintenance and use of the said automobile, on account of bodily injuries and/or death suffered by any person, other than the assured, or persons in the same household as the assured, or those in the service or employment of the assured, to an amount not exceeding Ten Thousand Dollars ($10,000.00) on account of the injuries or death of one person, and when said automobile was being operated by the insured, his paid driver, members of his immediate family, or persons acting with consent of the insured; and while said policy was in full force and effect, to-wit: on the 4th day of November, 1933, in the County of Prince George, in the State of Virginia, Wade Arnold, with the knowledge, authority, permission and consent of the said V. J. Arnold, and in legal possession of the said automobile, by his wanton negligence in driving and operating said automobile covered by said insurance policy, injured and damaged the said Marie H. Justis, and the said Marie H. Justis, the plaintiff, obtained a judgment in the Circuit Court of Norfolk County, Virginia, against the said Wade Arnold on the 6th day of August,

1934, for the sum of Seven Thousand Dollars
page 3 } ($7,000.00) with interest thereon from the 6th day of August, 1934 until paid, and the costs incident to the prosecution of the said action, and execution was issued thereon, and placed in the hands of the Sheriff of Norfolk County, Virginia, on the 8th day of December, 1934, and by the said Sheriff returned on the 5th day of January, 1935, "no effects" and unsatisfied, and said judgment remains unsatisfied and no part thereof has been paid, and which said judgment, and the costs incident thereto, you justly owe to the plaintiff, Marie H. Justis, under and by virtue of the terms and conditions of your policy aforesaid.

Wherefore, Judgment therefor will be asked against you at the hands of the said court at the time and place hereinabove set out.

MARIE H. JUSTIS,
By counsel.

MILTON P. BONIFANT,
A. O. LYNCH,
Counsel for the plaintiff.

And the return of the Sheriff of the City of Richmond, Virginia, on the foregoing notice of motion is as follows:

Executed in the City of Richmond, Va. February 9, 1935, by delivering in duplicate a copy of within Notice of Motion to Peter Saunders the Secretary of the Commonwealth of Virginia and as such Secretary of the Commonwealth the Statutory Agent for State Farm Mutual Automobile Insurance Company. Place of residence and place of business of said Saunders being in the City of Richmond, Va.

Fee of $2.50 paid the Secretary at time of service.

page 4 }

J. HERBERT MERCER,
Sheriff of the City of Richmond, Va.
By W. M. LUCK, D. S.

Sheriff Fee $1.00 Paid.

And at another day, to-wit: On the 4th day of March, 1935, the following order was entered:

This day came the plaintiff by her Attorneys, and the defendant appeared by C. C. Sharp and Rixey & Rixey, its Attorneys, and pleaded "*non-assumpsit*", to which the plaintiff

replied generally and on which plea issue is joined; thereupon on motion of the defendant, the plaintiff is required to file a bill of particulars of her claim, and on motion of the plaintiff, the defendant is required to file the grounds of defense.

And the plea of *non-assumpsit* referred to in the foregoing order is in the words and figures following, to-wit:

The Defendant, State Farm Mutual Automobile Insurance Company, comes and says that it did not undertake or promise in any manner and form as the Plaintiff hath in this action complained. And of this the said Defendant puts itself upon the Country.

C. C. SHARP,
RIXEY & RIXEY, p. d.

And at another day, to-wit: On the 7th day of March, 1935, the following bill of particulars was filed by the plaintiff:

(1). V. J. Arnold, a resident of Fox Hall, Norfolk County, Virginia, before and on the 4th day of November, 1933, owned, kept and maintained for the use of himself and his family a certain Ford standard Coupe 1932 Model A au-
page 5 } tomobile.

(2). The defendant, State Farm Mutual Automobile Insurance Company, on the 9th day of August, 1933, issued for value its certain automobile insurance policy No. 237516—Va. to the said V. J. Arnold insuring the said V. J. Arnold among other things, against the perils arising from the ownership, maintenance and use of the automobile aforesaid, from the 9th day of August, 1933, at 12 o'clock noon standard time to the 1st day of January, 1934, at 12 o'clock noon standard time, and against liability resulting solely and directly from an accident by reason of the ownership, maintenance and use of the said automobile, on account of bodily injuries and/or death suffered or alleged to have been suffered by any person other than the assured, or persons in the same household as the assured, or those in the service or employment of the assured whether occurring during the hours of such service or employment or not, to an amount not exceeding $10,000 on account of the injuries or death of one person, and subject to the same limit as to each person to an amount not exceeding $20,000 on account of two or more persons suffering bodily injuries and/or death as a result of any one accident, the said insurance being of full force and effect when said automobile was being operated by the in-

sured, his paid driver, members of his immediate family, or persons acting with the consent of the insured, and while said policy was in force.

(3). Wade Arnold, a brother of said V. J. Arnold, and a member of the said V. J. Arnold's immediate family, and with the consent of the said V. J. Arnold, on the 4th day of November, 1933, while said policy was in full force and effect, did drive and operate the said automobile upon a public highway in Prince George County, Virginia, in a careless, reckless, and gross and wanton and negligent manner, and

page 6 } at a gross, wanton, reckless, negligent and excessive speed, thereby causing said automobile to capsize and turn over and injure and damage the plaintiff, Marie H. Justis, who was then and there riding in said automobile as an invited guest.

(4). For which said injuries the said Marie H. Justis instituted in the Circuit Court of Norfolk County against V. J. Arnold and Wade Arnold an action at law for $10,000 damages, upon the trial of which said action at law, the jury returned a verdict in favor of Marie H. Justis for the sum of $7,000 damages for her said injuries received and suffered by her as aforesaid, and upon which said verdict the Circuit Court of Norfolk County entered judgment for the sum of $7,000 and costs in favor of Marie H. Justis against said Wade Arnold on the 6th day of August, 1934.

(5). The said policy issued as aforesaid or a copy thereof is in the possession of the defendant, State Farm Mutual Automobile Insurance Company, and is material evidence for the plaintiff, and should be by said Company produced before the Court.

(6). The said judgment of the Circuit Court of Norfolk County entered on the 6th day of August, 1934, in favor of Marie H. Justis against Wade Arnold for $7,000 bears interest from the 6th day of August, 1934, until paid, and carries a recovery of costs incurred in said action.

(7). Execution on said judgment was duly issued out of the clerk's office of the Circuit Court of Norfolk County, and placed in the hands of the Sheriff of Norfolk County, Virginia, on the 8th day of December, 1934, and by the said Sheriff duly returned on the 5th day of January, 1934, "no effects" and unsatisfied, and said judgment yet remains unpaid and unsatisfied.

page 7 } (8). Under the terms of the said policy the State Farm Mutual Automobile Insurance Company is responsible and liable to the said Marie H. Justis for payment of the said judgment against Wade Arnold, the interest thereon and the costs incident thereto.

(9). The plaintiff, Marie H. Justis, by counsel, reserves the right to further amend this bill of particulars.

MILTON P. BONIFANT,
A. O. LYNCH,
Counsel for the plaintiff.

And at another day, to-wit: On the 8th day of March, 1935, the following grounds of defense was filed by the defendant:

The defendant, State Farm Mutual Automobile Insurance Company, for a statement of its grounds of defense says that it will rely upon each and every defense provable under the general issue, among others the following:

This defendant admits that it issued a certain Policy number 237516—Va. to V. J. Arnold dated on or about August 9, 1933 by which it agreed to insure said V. J. Arnold against certain risks therein mentioned from August 9, 1933, to January 1, 1934. Said policy is not in the possession of this defendant; and inasmuch as said policy forms the basis of the plaintiff's rights in this action this defendant calls upon the plaintiff to take such steps as may be necessary to have available for evidence the original policy at the trial. Under the terms of said policy there is no obligation on the part of this defendant to insure or indemnify Wade Arnold or any one else other than V. J. Arnold.

That as the result of the accident of November
page 8 } 4th, 1933 the plaintiff brought an action in this
Court against V. J. Arnold and Wade Arnold as defendants to recover for the damages suffered by the plaintiff. That said action was duly tried resulting in a final judgment in favor of said V. J. Arnold and for the plaintiff against Wade Arnold only as alleged in the bill of particulars. The said judgment is final and is *res adjudicata* so far as the question of liability of said V. J. Arnold to the plaintiff is concerned. There is no obligation on the defendant State Farm Mutual Automobile Insurance Company to pay any judgment against said Wade Arnold, nor to insure nor to indemnify said Wade Arnold. And the plaintiff in this action has no claim against this defendant by virtue of her judgment against Wade Arnold or otherwise. The policy aforesaid does not contain a so-called "Omnibus Coverage" clause.

This defendant denies that the automobile belonging to V. J. Arnold was kept and maintained for the use of his

family, and denies that Wade Arnold was a member of his family.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
By C. C. SHARP, its Atty.

C. C. SHARP,
RIXEY & RIXEY, p. d.

And at another day, to-wit: On the 26th day of April, 1935 the following order was entered:

This day came the plaintiff, by counsel, and filed her amendment to bill of particulars.

And the amendment to bill of particulars referred to in the foregoing order is in the words and figures following, to-wit:

page 9 } The plaintiff, Marie H. Justis, by counsel, in addition to the Bill of Particulars heretofore filed in this cause, further amends the said Bill of Particulars by adding thereto the additional particulars herein contained.

That the said defendant, State Farm Mutual Automobile Insurance Company immediately after the happening of the accident complained of, considered itself liable under the terms of the said policy, and sent one of its agents, claim investigators and claim adjusters to see the plaintiff, Mrs. Marie H. Justis, in the Petersburg Hospital a few days after the happening of said accident; and that said agent, investigator or adjuster then and there told the plaintiff, Marie H. Justis, "not to worry; that everything including the hospital and Doctor's bills would be taken care of by the said Insurance Company"; and

That the said defendant, State Farm Mutual Automobile Insurance Company, by its attorneys duly appeared in the Circuit Court of Norfolk County in the case of Marie H. Justis *v.* Wade Arnold for and on behalf of the said Wade Arnold, and then and there defended the interests and all liability of said Wade Arnold in said suit without any agreement, recompense or reward from said Wade Arnold, and that the defendant, State Farm Mutual Automobile Insurance Company employed counsel and authorized, instructed and caused them to appear in said action of law for and on behalf of and in defense of the said Wade Arnold in obedience to its obligations and contractual duties under the insurance policy sued upon in this action, and because the said defendant so construed the said policy as to require it to defend

the said Wade Arnold, the driver of the said automobile; and

That the said automobile at the time of the accident was a family car, owned and maintained by Vernon J. Arnold for the pleasure and business of himself and family,
page 10 } and at the time of the accident was being used for family purposes.

MILTON P. BONIFANT,
A. O. LYNCH,
Counsel for the plaintiff.

And at another day, to-wit: On the 31st day of May, 1935, the following addition to the bill of particulars and amended bill of particulars was filed by the plaintiff:

The plaintiff, Marie H. Justis, by counsel, in addition to the Bill of Particulars and Amended Bill of Particulars heretofore filed in this cause further amends and adds to said Bill of Particulars, by adding thereto the following:

That the said State Farm Mutual Automobile Insurance Company, after it had obtained full and complete knowledge of all of the facts and circumstances in connection with said accident, assumed and took charge of and defended in the Circuit Court of Norfolk County the action at law filed by the plaintiff, Marie H. Justis, against Wade Arnold, and after the verdict of the jury further defended the said Wade Arnold by moving to set aside the verdict as to him, and is now estopped to deny its liability under the insurance policy sued on, or to claim that Wade Arnold was not covered by said insurance.

MILTON P. BONIFANT,
Of the Counsel for the Plaintiff.

And at another day, to-wit: On the 3rd day of June, 1935, the following supplemental grounds of defense was filed by the defendant:

The defendant, State Farm Mutual Automobile Insurance Company, for further statement of its grounds of defense especially in reference to the two amendments to bill of particulars, says that it will rely upon each and every
page 11 } defense provable under the general issue, among others the following:

This defendant has never considered itself liable under the policy to Wade Arnold or so far as concerns any liability that might be imposed upon Wade Arnold; but has always considered, and acted accordingly, that there was no coverage to Wade Arnold under the policy, and no liability under the policy so far as concerns any liability of Wade Arnold. And this defendant has done nothing inconsistent with that position.

It is admitted that immediately after the happening of the accident the plaintiff made claim against V. J. Arnold and afterwards brought suit against V. J. Arnold and Wade Arnold. It is further admitted that this defendant has always considered itself bound under the policy to protect V. J. Arnold, and that V. J. Arnold was an assured, and the only assured, under the policy; and this defendant has always acted accordingly.

This defendant further denies that any servant or agent of its ever told Mrs. Justis "that everything including the hospital and doctor's bills would be taken care of by the insurance company". That if any such statement was made, it should be considered as an effort to buy peace on behalf of V. J. Arnold, and was unauthorized and corrected and withdrawn by the insurance company, and was rejected by Mrs. Justis, and did not prejudice her in any way.

In the action brought by the plaintiff against J. V. Arnold, and Wade Arnold, the defendant employed attorneys to defend the action as against V. J. Arnold only, and informed said Wade Arnold it would not authorize its attorneys to defend said Wade Arnold unless the said Wade Arnold should sign a certain paper acknowledging, admitting and agreeing that there was no obligation on the part of the insurance company to defend said Wade Arnold and that by defending him the said insurance company would not waive
page 12 } any of its rights to deny liability under the policy so far as any liability might be imposed upon said Wade Arnold. The insurance company refused to defend Wade Arnold unless and until said Wade Arnold should sign said paper. Before the return day set in the notice of motion commencing the said action against said V. J. Arnold and Wade Arnold, said Wade Arnold signed the aforesaid agreement and delivered same to the attorneys for the insurance company. Thereupon, and not before, the attorneys for the insurance company appeared in the case on behalf of Wade Arnold and defended him. This defendant denies that it is estopped to deny liability under the policy sued on, and denies that it has waived any of its rights under the policy to deny coverage to Wade Arnold, and denies that its de-

fense of Wade Arnold was in obedience to any obligations contained in the policy.

C. C. SHARP,
RIXEY & RIXEY, p. d.

And at another day, to-wit: On the 15th day of July, 1935, the following order was entered:

This day came the parties by their Attorneys, and by consent of all parties it is ordered that this case be tried at this term. Thereupon neither party demanding a Jury, the Court proceeded to hear and determine the whole matter of law and fact; and after having fully heard the evidence and argument of Counsel, the Court doth take time to consider of its judgment, and this case is continued.

And at another day, to-wit: On the 7th day of October, 1935 the following order was entered:

This day came again the parties by their Attorneys, and the Court having fully heard and considered the
page 13 } evidence and argument of Counsel, doth consider that the plaintiff recover against the defendant the sum of Seven Thousand Dollars ($7,000.00) due upon a certain judgment rendered in favor of Marie H. Justis against Wade Arnold in the Circuit Court of Norfolk County, Virginia, on the 6th day of August, 1934, together with interest thereon from the 6th day of August, 1934 until paid and the costs recovered in said judgment, as well as the costs incident to these proceedings; to which action of the Court in pronouncing judgment against it, the defendant, by Counsel, excepted; and the said defendant signifying its desire to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to said judgment, it is ordered that execution on this judgment be suspended for the period of ninety (90) days from this date upon the defendant, or someone for it, entering into and acknowledging a bond before the clerk of this Court in the sum of Nine Thousand Five Hundred Dollars ($9,500.00), conditioned according to law, with surety to be approved by the said Clerk.

And at another day, to-wit: On the 21st day of October, 1935 the following order was entered:

This day came the parties by their attorneys, and the defendant presented the stenographic report of the testimony and other incidents of the trial of this case, with the original Exhibits Numbers one, two, three, four, five, six, seven, eight

and nine, and his Bill of Exceptions A, all of which are received, signed and authenticated by the Court, and are hereby ordered to be made a part of the record in this case within sixty days of final judgment, after it duly appeared that the plaintiff and her attorneys had been given proper notice in writing of the time and place of tendering said papers.

page 14 } Virginia:

In the Circuit Court of Norfolk County.

Marie H. Justis
v.
State Farm Mutual Automobile Insurance Company.

Stenographic report of the testimony, together with the motions, objections and exceptions on the part of the respective parties, the actions of the Court in respect thereto, and other incidents of the trial of the case of Marie H. Justis *against* State Farm Mutual Automobile Insurance Company, tried before the Hon. C. W. Coleman without a Jury in the Circuit Court of Norfolk County, Virginia on the 15th day of July, 1935.

Present: Messrs. A. O. Lynch, M. P. Bonifant and M. J. Fulton, attorneys for the Plaintiff; Messrs. Rixey & Rixey (John S. Rixey) and C. C. Sharp, attorneys for the Defendant.

page 15 } Mr. Fulton: If your Honor pleases, if it is agreeable to the court, we are perfectly willing to waive the jury. We think it is largely a question of law in the end with very few disputed facts, and we are perfectly willing to submit the case as to the law and facts to the court. I have talked to Mr. Rixey about it, counsel for the defendant.

Mr. Rixey: That is satisfactory.

The Court: We will just excuse the jury then.

Mr. Bonifant: Mrs. Justis, the plaintiff in the case, we expected to be here. She has not gotten here yet. She is somewhat crippled, and I expect her here and we will put her on as a witness when she comes.

The Court: There is no objection to that. Do you want to wait until she comes?

Mr. Bonifant: We will go ahead.

Note: Opening statements were thereupon made by counsel for the respective parties.

page 16 } VERNON J. ARNOLD,
sworn on behalf of the plaintiff, testified as follows:

Examined by Mr. Bonifant:
Q. Your name is Vernon J. Arnold?
A. Yes, sir.
Q. Where do you reside, Mr. Arnold?
A. Fox Hall.
Q. Fox Hall?
A. Yes.
Q. Were you residing at Fox Hall on the 9th of August, 1933?
A. Yes.
Q. Were you residing there on November 4th, 1933?
A. Yes, sir.
Q. On the 9th of August, 1933, did you own an automobile?
A. Yes, sir.
Q. What kind of automobile was it?
A. V-8, 1932.
Q. V-8 Ford?
A. 1932 model, yes, sir, eight cylinder.
Q. Standard coupe?
A. Yes, sir.
Q. I hand you certificate of the Motor Vehicle Department, certified copy of title certificate—

Mr. Rixey: This certificate is not in his name. This certificate is in the name of J. E. Harry.
Mr. Bonifant: It is the sales certificate—
Mr. Rixey: The certificate is in the name of Harry.

A. I bought the car from Harry and the Griffin Motor Company made the deal.

Mr. Rixey: I admit he owned the automobile, if that is what you are after.

By Mr. Bonifant:
Q. Did you own Ford automobile, the engine number of which was V18-184097?
A. Yes.
Q. Did you, on the 9th of August, 1933, take out insurance on that automobile?
A. I don't remember exactly what date it was but it was a very little time since I got the car that I taken the insurance out.

Q. I hand you a policy and ask you to look and see if that is the policy, the insurance policy, that you took out on the automobile described in it?

A. I think so, yes, sir. That is the one.

Mr. Bonifant: I desire to offer this policy in evidence, your Honor, but I don't know whether it is necessary to read it now. You have heard it read, and we can read it in the course of the argument later on.

Note: The paper was thereupon marked "Exhibit 1".

By Mr. Bonifant:

Q. Now, on the 4th of November, 1933, did anybody use the automobile that is described in that policy?

A. My brother used it.

Q. Your brother?

A. Yes.

Q. What was his name?

A. Wade Arnold.

Q. Wade Arnold?

A. Yes, sir. That is before the accident, isn't it? That was before the accident.

Q. You had paid the premium on the policy?

A. Yes.

Q. Up to January 1st, hadn't you?

A. Yes.

Q. The insurance was in full force on the 4th of November?

A. Yes, sir.

Q. 1933?

A. Yes, sir.

Q. How did Wade Arnold come to drive the car? Did he have your consent or permission?

A. He asked me for it along about the middle of the week, and then on Friday night he asked me if everything was all right, and what he was going to do, and, of course, I knew all the time. I told him to go ahead, it would be all right. I had made plans, but I cancelled them.

page 17 } Q. He was driving the automobile with your consent?

A. Yes, sir.

Q. You knew where he was going with this car?

A. Yes, sir.

Q. When he asked you for permission to drive it?

A. Yes, sir.

Q. Where was he going?

A. Powhatan County, to his wife's people's home.

Q. Did you know that he was going to take Mrs. Justis with him?

A. No, I didn't know it.

Q. You didn't know it?

A. I didn't know it for a fact, but they said something about she might go. I didn't know whether she would go, or not.

Q. You say you lived at Fox Hall. Who lived there with you, Mr. Arnold?

A. My mother and I, and Wade and his wife. I believe my sister and her husband were there at that time, too.

Q. Your father was dead, was he?

A. Yes, sir.

Q. How long had he been deceased?

A. Approximately a year and a half or two years; I could not say exactly.

Q. After your father's passing away, did you occupy—

Mr. Rixey: If your Honor pleases, I don't know what he is driving at unless it is an effort to show some lia-
page 18 } bility on Mr. Vernon J. Arnold by reason of the Family Purpose Doctrine, but that matter was all thrashed out in the previous suit and they have no judgment against Mr. Vernon J. Arnold. The judgment was in his favor; so I object to any further rehash of the Family Purpose Doctrine.

The Court: What do you want to ask him?

Mr. Bonifant: The policy provides that if a member of his immediate family was driving his automobile—that was one of the provisions in the policy. I want to ask him who is the general head of the family.

The Court: I think you have got a right to ask him that.

Mr. Rixey: Note an exception.

By Mr. Bonifant:

Q. Who was the general head of your family at your house?

A. I am.

Q. Was Wade Arnold a member of your immediate family?

A. I would say he was. He was my brother and was living there with us.

Q. Did he and you contribute to the maintenance of the family?

A. Yes.

Q. To the expenses?

A. Of course.

page 19 } Mr. Rixey: Note an exception to all of this line of evidence.

The Court: I understand it is relevant and so far as the policy is concerned is admissible.

By Mr. Bonifant:

Q. When you subscribed to this policy or took out this policy with the State Farm Mutual Automobile Insurance Company to whom did you apply? Who wrote the policy for you?

A. Mr. Harrison in Fox Hall.

Q. Harrison?

A. G. W. Harrison.

Q. Was he the agent of the company?

A. Yes, sir.

Q. He was selling this policy?

A. Yes.

Q. Where did you have your insurance previous to this time, previous to the time you took this policy?

A. The Travelers, Taylor Johnson.

Q. Did Mr. Harrison make any representation to you at the time he sold you this policy?

Mr. Rixey: I object to that.

By Mr. Bonifant:

Q. As to who it covered?

Mr. Rixey: I object to that. The policy speaks for itself.

The Court: The policy speaks for itself, I think.

page 20 } Mr. Fulton: I think the interpretation by the company itself through its agent of a contract of insurance can be shown for the purpose of enabling the court or the jury to determine what—

The Court: It is a question of law, of course.

Mr. Fulton: If he was the agent of the company selling it to the man, I think it is admissible under the rule. Your Honor can give such weight to it, of course, as you think proper when you get down to determine it.

The Court: Is there anything in the policy about that?

Mr. Rixey: Yes, sir. There is a provision in it saying that any notice of the agent shall not bind the company: "This policy, together with the application, shall constitute the entire contract between the Company and the Assured, and no change in the agreements, statements, terms, conditions or representations of this policy, either printed or written, shall be valid unless made by endorsement hereon signed by a

duly authorized officer of the Company, and notice to or knowledge possessed by any Agent or any other person shall not be held to waive, alter or extend any such agreements, statements, terms, conditions, or representations.

page 21 } The Assured by accepting this policy becomes a member of this company, and upon cancellation or other termination of the policy, shall cease to be a member."

Furthermore, there is nothing in the bill of particulars in this case about any claim or acknowledgment of this policy by statement of any agent. My friend filed notice of motion and some two or three bills of particulars and supplements thereof, but there is not one word to indicate that the claim was authorized by its agent.

The Court: I think it is going very far if you can vary it by statement of the agent. Of course, it is the construction put upon it by the company itself, and it would have to be by somebody in authority, not by this man who is delegated as agent. What the company did would be different. Have you some authorities to the contrary?

Mr. Fulton: We have some authorities.

The Court: There is no question about the construction put upon the writing by the parties themselves, but I don't know that this man would be a party to it.

Mr. Fulton: We will note an exception at this time to the ruling of the court.

The Court: We haven't got a jury here, but I don't think it is admissible.

page 22 } Mr. Fulton: We except upon the ground that the interpretation given by the company to its agent is admissible when that interpretation has been conveyed by the agent to the assured.

By Mr. Bonifant:

Q. When did you learn of the accident?

A. What day did the accident happen on?

Q. November 4th.

A. What day of the week?

Q. On Saturday.

A. I learned about it Sunday morning.

Q. What did you do after you learned of the accident, so far as notifying the company?

A. Well, I could not notify them on Sunday.

Q. When did you notify them?

A. I believe it was on Monday.

Q. On Monday?

A. I might have notified Harrison on Sunday. I could not

say for sure that I did, but when I heard of the accident I went up there.

Q. What?

A. The first thing I did when I heard of it was I went up there, where the accident happened.

Q. That was on Sunday, was it?

A. Yes.

Q. When you came back did you notify the com-
page 23 } pany, or Mr. Harrison, the agent?

A. I notified Harrison and he give me Mr. Sharp's address and told me to see him, that he had nothing to do with that, that Mr. Sharp would have to take care of it.

Q. Did you notify Mr. Sharp?

A. Yes, sir.

Q. Did you notify anyone else who was an agent of the company?

A. When I went to Petersburg I got in contact with Jackson. I found out Mr. Jackson was agent up there, and I got in contact with him.

Q. What did he say?

A. He didn't say anything—

Mr. Rixey: Just a minute.

The Court: Of course, we haven't got a jury here.

Mr. Rixey: I don't know what Jackson said, but what has what he said got to do with the case?

By Mr. Bonifant:

Q. Did you tell Mr. Jackson all the particulars about how the accident happened, as far as you knew?

A. Yes, and he went to the Western Union, he and I did, or the Postal Telegraph, and he called the home office and they told him what to do; they wired him to go ahead and take charge.

Q. Told him to go ahead and take charge?

page 24 } A. Yes, sir.

By Mr. Rixey:

Q. How do you know that?

A. Because I waited there until he received an answer from the wire.

By Mr. Bonifant:

Q. Was anything else said?

A. He went around—I went around to, I believe, the New-

man Motor Company to look at the car with this boy, the last thing that was—

Q. Did any agent of the company tell you what they were going to do; what they were going to do after you notified them that the accident had happened?

Mr. Rixey: I object to that.

The Court: He has just testified about the correspondence to the home office.

By Mr. Bonifant:

Q. After he received a message from the home office, did they tell you what they were going to do about the accident?

The Court: Did who tell him?

Mr. Bonifant: The agent, or any representative, authorized representative, of the company.

Mr. Rixey: I object to that, the agent telling him what he was going to do. What has that got to do with it?

Mr. Bonifant: The policy says he must co-op-
page 25 } erate in every respect with the company. My inquiry is did they ask him to do anything or tell him what they were going to do so he would know what their position was.

Mr. Rixey: There is no evidence that this defendant has failed to co-operate with the company. We have always maintained that it was our obligation to protect Mr. V. J. Arnold, which we have done throughout in this case.

Mr. Bonifant: It is encumbent upon him to show that he complied with the terms of this policy.

The Court: You can ask him about that.

Mr. Rixey: We note an exception.

The Court: He has got a perfect right to show what he did.

By Mr. Bonifant:

Q. Did you do anything further after that?

A. Everything I would hear about it or find out about it I would go to Mr. Sharp and Mr. Rixey, a couple of times, and co-operated with them every way I could.

Q. Did the agent say—

Mr. Rixey: I object to that.

By Mr. Bonifant:

Q. (Continuing.) That they were going to take charge and do anything, and that you need not bother about it?

A. Yes, sir; Jackson told me that.

page 26 } Mr. Rixey: I move to strike that out.
The Court: Mr. Jackson was the agent, and the accident occurred near Petersburg?
Mr. Bonifant: Occurred about five miles east of Petersburg, yes, sir.
Mr. Rixey: Your Honor lets it in?
The Court: Yes.
Mr. Rixey: We note an exception.

By Mr. Bonifant:
Q. That was in Virginia, was it?
A. Yes, sir.
Q. Now, later, notice was served on you by the Sheriff and Mrs. Justis brought suit against you?
A. Yes, sir.
Q. What did you do with the notice as soon as you got it?
A. Took it down to Mr. Sharp and Mr. Rixey. I knew then Harrison had nothing more to do with it and what dealings I had was with them.
Q. So you actually co-operated with them in every way that you could that they requested you, didn't you?
A. Yes, sir.
Q. Had your brother, Wade, used this same automobile on previous occasions with your consent and knowledge?
A. Yes, sir.
Q. Generally, when he wanted to, by asking you for the use of it?
page 27 } A. Yes, he has. He had taken a trip in it before. That was not the first trip he had taken.

CROSS EXAMINATION.

By Mr. Rixey:
Q. Mr. Arnold, you say you took the notice of motion in the original suit when it was started to Mr. Sharp's office?
A. Yes, sir.
Q. Did your brother go with you?
A. I don't think he did the first time I come up there, Mr. Rixey.
Q. Mr. Sharp told you, did he not, that he would not defend your brother for it unless your brother would sign this paper?
A. That was the last time I came up there, I believe.
Q. You were up there on the 26th of March, were you not?
A. Whatever day it was. I don't remember.

Mr. Fulton: I object to the introduction of that paper as constituting any defense as against the plaintiff here. Certainly, if the plaintiff had cause of action, it didn't lie within the mouth of Wade Arnold by entering into any agreement or any contract of any kind with the insurance company to defeat the cause of action of the third person. The plaintiff is not a party to that paper, and if offered in evi-
page 28 } dence by the defendant it is irrelevant testimony against the plaintiff's claim. I submit it is not relevant between other parties. It relates purely to the action of Wade Arnold after the accident, and the insured here, and no matter what they did it cannot effect the rights of the plaintiff here, and I object to the introduction of it on that ground.

Mr. Rixey: It is offered, if your Honor pleases, only to prove that there has been no waiver on the part of the insurance company of its right under the policy by the fact that the attorneys for the insurance company defended Mr. Wade Arnold. That is the only purpose for which it is offered. I suppose, until evidence is introduced by the plaintiff to the effect that Mr. Sharp and I did represent Mr. Wade Arnold in this suit, possibly it would not be advisable to present this evidence at this time.

The Court: You withdraw it at this time?

Mr. Rixey: Yes, sir. I will have to ask Mr. Wade Arnold, however, not to leave the court room until the case is through, if my friend objects to the production of the letter at this time.

The Court: Your idea is you are not committed
page 29 } by defending the case?

Mr. Rixey: That we are not estopped by reason of the fact that we defended Mr. Wade Arnold. I have no other questions.

By Mr. Bonifant:

Q. The State Farm Mutual Automobile Insurance Company took full charge of the matter, full charge of the investigation?

A. Yes, sir.

Q. After the accident, and of the defense of the suit after you had turned over the papers to them?

A. Yes, sir.

WADE ARNOLD,
sworn on behalf of the plaintiff, testified as follows:

Examined by Mr. Bonifant:
Q. Your name is Wade Arnold, is it not?
A. Yes, sir.
Q. How old are you, Mr. Arnold?
A. 22.
Q. Do you live at Fox Hall?
A. Yes, sir—not now; I did.
Q. Where were you living on November 4th?
A. Fox Hall.
page 30 } Q. 1933.
A. Fox Hall.
Q. With whom were you living?
A. With my mother and brother.
Q. Were you married at that time?
A. Yes, sir.
Q. What was your wife's name?
A. Nancy.
Q. Did she also live there?
A. Yes, sir.
Q. Were you all members of the same family?
A. Yes, sir.
Q. Did you and your brother, Vernon, contribute to the expenses of the family, living expenses?
A. Yes, sir.

Mr. Rixey Same exception to this line of testimony again, if your Honor pleases.
The Court: Objection overruled.
Mr. Rixey: Note an exception.

By Mr. Bonifant:
Q. On November 4th, 1933, did you start on a trip to go anywhere?
A. Started up to Powhatan, yes, sir.
Q. How were you traveling?
A. I was traveling in my brother's Ford I borrowed from him.
Q. What?
page 31 } A. I was traveling in my brother's Ford I borrowed from him that afternoon.
Q. Your brother's Ford automobile?
A. Yes, sir.
Q. That was a Ford standard coupe automobile?
A. Yes, sir.

Q. That was the only car your brother owned, was it, at that time?

A. Yes, sir.

Q. Did you get permission from your brother to use the car?

A. Yes, sir.

Q. When did you get permission from him first to use it on that particular occasion?

A. I asked him, I reckon, about—I don't know the date of that, but I didn't get exact permission then, and I asked him two or three times to find out definitely, and I think about the middle of the week he told me it was all right, and then that Friday night we talked it over, and I had got off from work and my sister came after me from work, and she told me going on home, and we went in the house, and told him I was ready to go, and asked him if I could use it, and told him when I would be back, and he said yes, and he handed me the keys to the car, and he walked out to the car with me and we pulled off.

Q. He was at the car with you when you started away to Powhatan?

page 32 } A. Yes, sir.

Q. You were driving the car, and in so driving it you were acting with your brother's, Vernon Arnold's, consent?

A. Yes, sir.

Q. Then did you go by Mrs. Justis', where Mrs. Justis lived?

A. Yes, sir, we went from my mother's to Mrs. Justis'.

Q. She was invited to go with you?

A. Yes.

Mr. Rixey: I object to counsel continuing to lead the witness all along.

By Mr. Bonifant:

Q. What happened on that trip?

A. From the time we left her apartment?

Q. Did any accident happen on that trip before you reached Powhatan?

A. Yes, sir. We got about five miles from Petersburg and come to this curve, which was kind of a right-hand curve in the road, and we come in the curve and there was a hill—

The Court: We don't want to try the other case over again.

By Mr. Bonifant:
Q. The car turned over near Petersburg, did it?
A. Yes, sir.
Q. Was Mrs. Justis injured?
A. Yes, sir.
Q. Did she sue you for the injury?
page 33 } A. My brother and I, yes.
Q. And got judgment in this court, didn't she?
A. Yes, sir.

Mr. Rixey: Judgment against whom?

By Mr. Bonifant:
Q. She got judgment against you in this court?
A. Yes, sir, against me.

The Court: There is no question at all that there was a judgment against Wade Arnold.

By Mr. Bonifant:
Q. That is the same car and the only car Vernon Arnold owned on the 4th of November?
A. Yes, sir.
Q. Is that so?
A. Yes, sir.
Q. And for the injuries she received from that car turning over she got judgment against you and your brother, and the court set the judgment aside against Vernon and sustained it as to you?

Mr. Rixey: I object to that. She didn't get judgment against Mr. Vernon Arnold.
Mr. Bonifant: I mean verdict.

A. Yes, sir.

Mr. Bonifant: I am trying to identify the judgment and the court.
Mr. Rixey: Let's use accurate language, please.
page 34 } Don't say judgment against Vernon Arnold.
Mr. Fulton: May I ask counsel if it may be agreed, with the view of briefing the matter, that the plaintiff here sued both the Arnolds, Vernon and Wade, that there was a verdict rendered against both of them by the jury, that the verdict was set aside as to Vernon J. Arnold, and judgment entered for him by order of the court, and then the verdict was affirmed as to Wade Arnold?

Mr. Rixey: Why don't you put the judgment in?

Mr. Fulton: We will offer it, too. I don't know what the order of the court will show. If we can agree that can be done, it will save a lot of testimony.

The Court: I think all of those facts are matters of record.

Mr. Rixey: I think the record ought to be put in.

Mr. Fulton: We will put it in, and I think that will be proper.

The Court: I think you have a right to put in the record showing both transactions.

Mr. Rixey: Why don't you put the judgment in?

page 35 } Mr. Fulton: I think, if it is agreeable, we will put in the order showing the verdict of the jury and the court order subsequent to that showing the final disposition of the case here. If it may be agreed, we will have it brought up and put in the record.

Mr. Rixey: I think you better have that than this.

The Court: What is that?

Mr. Lynch: This is a certified copy of the formal judgment showing execution and the return on it, and the dates.

Mr. Fulton: I think it would be better to put it in as Mr. Rixey suggests.

Mr. Rixey: This is not a certified copy of the judgment, but just an abstract.

By Mr. Bonifant:

Q. Have you ever paid that judgment?

A. No, sir.

Q. Are you able to pay it?

A. No, sir.

Q. Was Mrs. Justis invited to go with you all—

Mr. Rixey: I object to counsel leading the witness. He has been leading him on every question he has asked.

By Mr. Bonifant:

page 36 } Q. How did Mrs. Justis come to accompany you all on that trip to Powhatan?

A. Well, my wife got a letter from her home and they were going to give a shower, I reckon a week and a half before the shower was supposed to come off, and wanted us to come up to the shower, and I discussed it, and my wife told Mrs. Justis they were going to give her a shower, and Mrs. Justis said she would like to go up before long sometime to put some flowers on her mother's grave, I think it was, if I am not mistaken, and my wife and I both

told her, said, "Won't be anybody else going up and we would be glad for you to come along and go with us, and it won't cost any more for you to go than us", and she told her when the shower was going to be and she said she would appreciate it and would be ready, so when we got ready to go we stopped by and picked her up and she was going to put some flowers in the cemetery while we were up there, and she was coming back with us.

Q. Mr. Arnold, when this suit was brought against you by Mrs. Justis, and your brother, Vernon, who defended the suit?

A. Defended me?

Q. Yes, who defended you?

A. Mr. Rixey and Mr. Sharp.

Q. Mr. Rixey and Mr. Sharp?

A. Yes, sir.

Q. They were the attorneys who defended the suit?

A. Yes, sir.

Q. Whose attorneys were they?

page 37 } A. They were insurance company's—Mr. Sharp was the insurance company attorney, I think, and Mr. Rixey took charge of the case. He took the case for my brother and I.

Q. You didn't employ them or pay them to defend you, did you?

A. No, sir.

CROSS EXAMINATION.

By Mr. Rixey:

Q. Now, Mr. Arnold, do you remember how many times you were up in Mr. Sharp's or my office before the trial of the case?

A. Two or three times. I don't remember exactly, no, sir.

Q. I show you this paper and ask you if you can identify that paper.

A. Yes, sir.

Q. You do identify it?

A. Yes, sir.

Mr. Rixey: I offer it in evidence and ask that it be marked "Exhibit 2".

Mr. Fulton: We object.

The Court: I think he has a right to offer the paper and show the circumstances under which he defended him.

Mr. Fulton: I would like to put my objection in the rec-

ord on these grounds, if your Honor pleases:
page 38 } That the paper is not signed by Vernon Arnold, the insured, and no passenger or driver of his could effect his rights, if they were involved. In the second place, the plaintiff here, Mrs. Justis, is not a party to it, but was a passenger in the car, and anything that the driver of the car did with the consent of the insured would not affect her rights to proceed against the company.

The Court: I think you are right about that, but that paper is introduced for the purpose of showing that he didn't commit the company by defending him.

Mr. Rixey: That is all.

Mr. Fulton: To the extent that your Honor does not sustain me, may I note an exception for the reasons stated?

The Court: Yes.

Mr. Fulton: Then I understand your point, your Honor and don't care to press it further than that.

By Mr. Rixey:

Q. Isn't true, Mr. Arnold, that you were in my office on March 26th, 1934, the date of that paper?

Mr. Fulton: Same objection, your Honor, applies to all of this.

page 39 } A. Yes, sir.

By Mr. Rixey:

Q. And did not both Mr. Sharp and myself tell you that we would not defend you in the action unless you would sign that paper; is that so?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. As I understand it, you said that you would have to take this paper away with you and would come back later and let us know whether or not you would be willing to sign it; is that correct?

A. Yes.

Q. Then you returned to our office on March 30th and delivered this paper to Mr. Sharp signed with your name; is that correct?

A. I don't remember what date it was.

Q. But several days later?

A. Yes.

Q. You did return with the paper signed by you?

A. Yes, sir.

Q. And delivered it to Mr. Sharp; is that right?
A. I don't remember whether I delivered it to Mr. Sharp or you.
Q. Also, Mr. Arnold, Mr. Sharp and I explained to you when you were in the office and that paper was
page 40 } given to us, that according to our construction of the policy there was no obligation on the part of the insurance company to defend you?

Mr. Lynch: We object to that.
The Court: Objection sustained.
Mr. Rixey: Note an exception. I would expect the witness to answer yes.

By Mr. Rixey:
Q. Also at the same time we told you that if there was a judgment recovered against you in the suit that the insurance company would not pay it, did we not?

Mr. Fulton: Same objection.
The Court: Objection sustained.
Mr. Rixey: Note an exception. I would expect the witness to answer yes. That is all.

RE-DIRECT EXAMINATION.

By Mr. Bonifant:
Q. Did you see Mr. Jackson, the agent of the company, up at Petersburg?
A. Yes, sir.
Q. Did you talk with him?
A. Yes, sir.
Q. After the accident?
A. Yes, sir.
Q. Did he say anything about taking care of all of the damages and expenses in this case?

page 41 } Mr. Rixey: I object to that, if your Honor pleases.
The Court: I think the policy speaks for itself. I think anything that tends to show cooperation is all right.
Mr. Rixey: There is no claim here that there has been any failure to cooperate.
The Court: The policy speaks for itself. I exclude the evidence on that.

Note: The question was argued at length and the objection sustained.

Mr. Fulton: We save the point on the ground that the interpretation of the policy as explained by the company's agent is binding upon the company, and expect to prove the statement of facts,—

The Court: He has not answered the question.

Mr. Fulton: I was going to put it in.

Mr. Rixey: I understand his Honor has ruled it out.

The Court: I think he has a right to testify what he told him he was going to do about suit, or anything of that kind.

Mr. Rixey: Do you sustain or overrule my objection?

page 42 } Note: The question was thereupon read.

The Court: I think that question is objectionable in that case.

Mr. Fulton: The court sustains the objection on that subject. The plaintiff excepts, and the witness, if permitted to answer, would have answered that he did promise to pay all of the damages and expenses incurred in defending suit.

Mr. Rixey: I don't think the witness will say that. I take issue with you. Wait just a minute. We asked for a bill of particulars, and counsel filed a bill of particulars, an addition to the bill of particulars and an amended bill of particulars, and the only thing he says about anything of the kind is, "Someone told Mrs. Justis not to worry, that everything, including the hospital and doctors' bills would be taken care of by the insurance company". I object on the further ground that there is nothing in the various bills of complaint about it.

The Court: Let him answer as to what he said.

By Mr. Fulton:

Q. What did the agent tell you about taking care of the damages and expenses as a result of that collision?

A. I met Mr. Jackson on Monday morning, if I am not mistaken—

Q. Following the accident?

A. Sir?

page 43 } Q. Monday morning following the accident?

A. Yes, sir, in Mr. Newman's garage. He is the Ford dealer in Hopewell. I met my brother and Mr. Jackson there. My brother introduced me to him. He had already met him, and Mr. Jackson patted me on the back and

he had a telegram in his hand. I don't know exactly what it read now, but he said, "Don't worry about a thing in the world. We are going to look after everything. Everything will be taken care of", and with that I left Mr. Jackson and went back to my uncle who had a filling station about a block away from there, and that is the only time I have seen him.

The Court: I believe there is testimony that Mr. Jackson was agent of the company.

Mr. Fulton: Yes, sir. He was the agent of the company, or adjuster.

The Witness: Yes, sir, in Petersburg. I talked with him in Hopewell.

By Mr. Fulton:

Q. Mr. Jackson had a telegram from the company at the time he made answer to you?

A. I don't know exactly what the telegram was.

Q. He had a telegram?

A. Yes, sir, but what it was I could not say.

Mr. Fulton: That is all.

Mr. Rixey: No questions.

Mr. Fulton: We would like to have the order
page 44 } book showing the verdict of the jury and the orders subsequent to that time.

Note: The following orders from order book No. of this court were thereupon introduced:

"This 21st day of June, 1934.

Marie H. Justis, Plaintiff,

v.

Vernon J. Arnold and Wade Arnold, Defendants.

This day came the parties by their attorneys and a jury, to wit: M. W. Dennis, M. M. Parker, J. D. Carey, W. W. Davis, W. H. Vandergrift, T. B. Tuttle and J. S. Roper, who were duly sworn the truth to speak upon the issue joined, and after having fully heard the evidence and argument of Counsel, retired to their room to consult of a verdict, and after some time returned into the court, having found the following verdict, "We, the jury find for the plaintiff the sum of $7,000.00 against Vernon Arnold and Wade Arnold".

Thereupon, the defendants moved to set aside the verdict of the jury in this case, and grant them a new trial,

upon the ground that the same is contrary to the
page 45 } law and the evidence, and without evidence to
support, and on the ground of errors made by the
court in granting and refusing instructions, and the court's actions on the evidence and verdict is excessive, and for other grounds to be assigned, and further move the court to enter final judgment for Vernon Arnold, the hearing of which motions is continued."

"This 6th day of August, 1934.

Marie H. Justis, Plaintiff,
v.
Vernon J. Arnold and Wade Arnold, Defendants.

This day came the parties and upon consideration of the motion of the defendant, Vernon J. Arnold, to set aside the verdict and render final judgment in his favor, which motion has been argued by counsel and duly considered by the court, the court doth sustain the said motion and doth hereby set aside the verdict as to the defendant, Vernon J. Arnold; and it is considered by the court that the plaintiff recover nothing against the said Vernon J. Arnold by her suit, and for her false clamor, she being in mercy, etc., and that the said
defendant, Vernon J. Arnold, recover of the plain-
page 46 } tiff his costs by him in this behalf expended. To
the action of the court in sustaining said motion and in setting aside the verdict and in rendering final judgment in favor of the defendant, Vernon J. Arnold, the plaintiff duly excepts.

And upon consideration of the defendant, Wade Arnold, to set aside the verdict and render judgment in favor of Wade Arnold and/or grant a new trial, after argument of counsel and due consideration by the court, the court overruled said motion, and doth consider that the plaintiff recover of the defendant, Wade Arnold, the sum of $7,000.00 with interest from June 21st, 1934, until paid, and her costs by her in this behalf expended. To the action of the court in overruling said motion and in rendering final judgment for the plaintiff, the defendant, Wade Arnold, duly excepted."

Mr. Bonifant: I want to introduce the Clerk and have
him sworn as a witness to prove that execution
page 47 } was issued and returned "No effects".
Mr. Rixey: I will admit execution was issued and returned "No effects".

VERNON J. ARNOLD,
recalled on behalf of the plaintiff, testified as follows:

Mr. Fulton: This evidence we are offering now is to show the statement made by the agent of the defendant company at the time the witness here took the insurance policy out which your Honor said would not be admitted, but in order to make up the record we are putting the witness on to show just what statement was made by the agent of the defendant to him.

By Mr. Bonifant:

Q. At the time that you purchased this policy of insurance from the State Farm Automobile Insurance Company from Mr. Harrison, I understood—

A. Yes.

Q. What statement, if any, did he make to you as to who was covered by that policy?

A. Naturally I inquired what would the policy cover because I was trying to compare it to the policy I had before. Harrison said, "It is the same policy that takes care of anybody driving the car, anybody in your family", or, page 48 } in other words, "Anybody in the car; protects the whole car". Naturally if I had known the policy would not have covered the car I would not have let the boy have the car to go on that trip. He had taken a trip with it before and I felt he was perfectly covered.

Q. After the accident happened you took the matter up with Mr. Jackson in Petersburg, who was adjuster for the company, did you not?

A. Yes, sir.

Mr. Rixey: Is this being put in the record on the same basis?

Mr. Fulton: Yes, on the grounds of the exception.

By Mr. Bonifant:

Q. What did he tell you, if anything, about what he was going to do, or the company was going to do about paying the damages or expenses resulting from the accident?

A. He told me the company would take care of any hospital bill and doctors' bills and everything, that I had nothing to worry about.

Q. Nothing to worry about?

A. It was after he had got his telegram; after he had sent his telegram.

Q. After he had gotten a reply from the telegram?
A. Yes, sir.

Q. He knew then all of the facts you had told
page 49 } him, all the facts as to how the accident happened?

A. Yes, sir.

Q. And who was driving the car?
A. Yes, sir.
Q. Did he know about Mrs. Justis being hurt?
A. Yes.
Q. Did he say anything about going to send anybody to see Mrs. Justis?
A. I told Mr. Jackson somebody ought to go and see the woman to see how she was, that I could not go, and he said it would be taken care of. Whether he did that, or not, I don't know, because I had to come back to Norfolk and go to work.

MRS. MARIE H. JUSTIS,
the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. Bonifant:
Q. Your name is Mrs. Marie H. Justis?
A. Yes, sir.
Q. You are the plaintiff in this case?
A. Yes.
Q. You are the same Mrs. Marie H. Justis who was injured in an accident on November 4th near Petersburg in an automobile that Mr. Wade Arnold was driving?
page 50 } A. Yes.

Q. After the accident where were you taken?
A. To the Petersburg Hospital.
Q While you were in the Petersburg Hospital as a result of your injuries, did any representative of any insurance company come to see you there?
A. Yes.

Mr. Rixey: I object to that unless he can show whether or not he was a representative of the insurance company.
The Court: You can ask her who it was.

By Mr. Bonifant:
Q. How long after you had been hurt when anyone came to see you purporting to be from the insurance company?
A. Four or five days.

Mr. Rixey: I object to anyone purporting to be from the insurance company.

The Court: Mr. Vernon Arnold has already testified about that.

By Mr. Bonifant:
Q. Did Mr. Jackson come to see you?
A. A young man from the State Farm Mutual Insurance Company came to see me.

Mr. Rixey: I object to that.

By the Court:
Q. Do you remember what his name was?
page 51 } A. No, sir, I can't remember his name, as it has been so long and the case has been postponed, but at the time I knew his name and told Mr. Bonifant, Mr. Wade Arnold, and Nancy Arnold, but it has gone from my mind.

The Court: Let her testify.
Mr. Rixey: Note an exception.

By Mr. Bonifant:
Q. What did he tell you while he was there? What did this man tell you when he came to see you?
A. He told me he would take care of all of my bills and I need not worry.
Q. That he would pay your claim?

Mr. Rixey: I object to that. Just a moment. She has testified to what he said.

A. I will tell you exactly the conversation, if you like.

By Mr. Bonifant:
Q. I want his exact conversation.
A. He asked me first about my accident. I could not tell him about the accident itself but I could tell him what led up to the accident, what caused it, and then he asked me about my injuries, and I told him he could see I was crippled and helpless, and that I was worried out of my mind about my business. He said, "Mrs. Justis, don't worry". I said, "How can I help from worrying when I am lying here crippled and have got expenses going on in Norfolk and I am not making any money, earning any money, to pay
page 52 } them?" and he said, "Mrs. Justis, we are going to take care of all of that". I said, "Somebody will have to take care of it because when I am not there my business stops and I can't pay this additional and useless ex-

pense at this hospital", and he said, "Mrs. Justis, don't worry. We are going to settle all of your bills". When you came in later on that night I repeated the conversation to you. That is the reason—

Mr. Fulton: You need not tell what you told Mr. Bonifant.

The Witness: That is what he said.

CROSS EXAMINATION.

By Mr. Rixey:

Q. You say you repeated what the agent told you to Mr. Bonifant?

A. I repeated it to many people.

Q. You repeated it to Mr. Bonifant, your attorney?

A. He was not my attorney. He was just my brother-in-law.

Q. Mr. Bonifant is not representing you in this matter, is he?

A. Yes, but at that time Mr. Bonifant was simply my sister's husband that came to see me, and I told my sister about it.

Q. When was it you told Mr. Bonifant that?

A. Just about that time, just at the time.

Q. How many days after you were hurt did this young man come to see you at the hospital and tell you what you say he told you?

page 53 }

A. I will tell you, Mr. Rixey, the first few days my mind was blank.

Q. Was it a day, or—

A. I would not know anything. If anybody had come there I wouldn't remember the date, but my mind was cleared up.

Q. I ask you how many days after the accident was it this young man came to the hospital to see you?

A. I said I don't remember. I don't recall, but my mind was cleared up. It was about the time my mind was cleared to know and recognize people, to recognize and remember things that they told me.

Q. If Mr. Bonifant wrote a letter to Mr. V. J. Arnold on November 8th, 1933, four days after the accident, claiming to be your lawyer, you say he was not your lawyer at that time?

A. No, I didn't say anything of the kind. No, I didn't say that. I guess that is about the time the young man come there, was it not, Mr. Bonifant?

Q. You think that was about the time?

A. I don't know. I could not tell you to save my life.
Q. Whatever the conversation was, you told it to Mr. Bonifant?
A. What?
Q. Whatever the conversation was, you repeated it to Mr. Bonifant?

page 54 ⟩ A. To my sister and Mr. Bonifant, and to my other sisters. They *call* came to see me.

Q. You don't remember the man's name at all?
A. No, I don't. It was a very nice Virginia name.
Q. How old a man was he?
A. He was about 24 or 25, a very pleasant and nice young man; a very nice one and very familiar, and told me three or four times not to worry, that they were going to attend to all of my bills.

By Mr. Bonifant:
Q. Have you ever been paid anything on account of the judgment you got against Wade Arnold?
A. No, indeed.

Mr. Fulton: We rest.
The Court: I am going to call Mr. Sharp. Are you an agent of the company?
Mr. Sharp: No. I am attorney.

C. C. SHARP,
sworn on behalf of the defendant, testified as follows:

Examined by the Court:

page 55 ⟩ Q. Who is the agent of the company here in Norfolk?

A. In Norfolk they have various agents.
Q. Who is the principal agent here?
A. They have no principal agent here. They have a district representative.
Q. Just a district representative?
A. Yes.
Q. Who is the district representative?
A. In Suffolk.
Q. In Suffolk?
A. Yes.
Q. Who is the district representative?
A. At that time Mr. Walter Higgins, who lives between Suffolk and Smithfield.
Q. They had no representative here?
A. No, and none now.

Q. Do you know anything about Mr. Harrison?
A. Mr. Harrison is a local agent in Norfolk County.

By Mr. Rixey:
Q. Mr. Harrison is local agent in what particular?
A. Well, he is a part time man and writes insurance for the company on a part time basis, and lives out in Fox Hall. He writes a few policies out there.
Q. What is your age and occupation?
A. I am 41 years of age, attorney at law.
Q. Where is your office?
A. 511 Law Building, Norfolk, Virginia.

page 56 } Q. You are in the same suite of offices with the Law firm of Rixey & Rixey?
A. Yes.
Q. You were the regular attorney for the State Farm Mutual Automobile Insurance Company at the time of this accident and have been ever since?
A. Yes.
Q. What is my connection with you?
A. We just occupy the same suite of offices and as a general rule I turn suits over to you to defend that I don't have time to myself.
Q. Was this accident reported to you?
A. Yes, on November 11th.
Q. How was it reported?
A. Mr. Wade Arnold and Mr. V. J. Arnold came into the office to report the accident and I made out regular proof of loss form and had Mr. V. J. Arnold sign it, and at that time I took a signed statement from V. J. Arnold and *Ward* Arnold giving the circumstances of the accident and as to the use of the car.
Q. I show you here a letter and ask you if you can identify that letter, and where you got it.
A. Mr. V. J. Arnold handed me this letter.
Q. Do you recall when?
A. When he came in to report the accident on November 11th.

page 57 } Mr. Rixey: I offer this letter in evidence and ask the reporter to mark it "Exhibit 3". This letter is written on the stationery of Milton P. Bonifant, Attorney and Counsellor at Law, Richmond, Addressed to Mr. V. J. Arnold, dated November 8th, 1933, and signed by Mr. Bonifant. I will read it. (The letter was thereupon read.) I offer that to show that if there was any statement on the part of any representative of the insurance company that it was not agree-

able to Mrs. Justis because on November 8th her attorney makes claim against Mr. Arnold for money from this accident.

By Mr. Rixey:

Q. Did you reply to that letter?

A. I did, yes.

Q. Have you got a copy of your reply?

A. I have a copy of my letter to Mr. Bonifant dated November 24th.

Mr. Fulton: I don't see the relevancy of that. I think a letter to prove the knowledge of the attorney might be admissible, but anything said between the attorneys here I don't think is relevant.

The Court: His construction of that policy is immaterial.

Mr. Rixey: It is the claim of the plaintiff in this case that it was the construction of the insurance company
page 58 } that they were liable.

The Court: It is the very thing I excluded. I have excluded the construction by this agent down there, and why should not this be sustained?

Mr. Rixey: I will offer all of these letters in evidence so the record can show them.

Mr. Fulton: Identify them by marking them, "Offered and refused".

Mr. Rixey: I am offering letter dated November 24th, 1933, written by Mr. C. C. Sharp and addressed to Mr. Bonifant.

The Court: The whole question is what the policy means.

Mr. Rixey: This is in reply to Mr. Bonifant's letter of November 8th. I also offer in evidence letter written by Mr. Bonifant addressed to Mr. Sharp, dated January 19th, 1934, which is in reply to Mr. Sharp's letter of November 24th. I also offer letter written by Mr. C. C. Sharp, addressed to Mr. Bonifant, dated January 22nd, 1934, which is in answer to Mr. Bonifant's letter of January 19th, 1934; also offer copy of letter dated March 29th, 1934, addressed to Mr. A. B. Carney, Clerk of this Court, written by myself. I also offer
page 59 } copy of letter addressed to Mr. Milton P. Bonifant, dated March 29th, 1934, written by myself.

Note: The letters were thereupon marked "Exhibit 4", "Exhibit 5", "Exhibit 6", "Exhibit 7" and "Exhibit 8".

By Mr. Rixey:

Q. Mr. Sharp, please state the circumstances under which you and I represented Mr. Wade Arnold in the suit of Marie H. Justis against Wade Arnold and Vernon Arnold.

Mr. Fulton: I object to that.

The Court: I have let that letter in that shows that part of it.

Mr. Rixey: If your Honor holds that there was no appearance made in the suit on behalf of Mr. Wade Arnold until he signed that agreement that has been introduced in evidence, I think that is sufficient.

The Court: These gentlemen are claiming, however, that your representing him was an admission of liability on your part. I think you have a right to show what you did before that.

Mr. Rixey: If that claim is withdrawn, all right.

Mr. Fulton: We are not withdrawing it. Of course, our contention is that when you appeared, so far as
page 60 } Mrs. Justis was concerned, in defending that suit here, you appeared also in defending the suit for the company and any transaction you had with either party does not prejudice our right to hold you liable in that suit. In other words, Wade Arnold could not make an agreement by which you could defeat her claim, if she has a claim under the policy, and whatever you did for Wade Arnold is irrelevant and immaterial.

Mr. Rixey: I don't think there is any question of the fact that the case is going to be considered clearly on the policy. The only purpose of offering this evidence is to meet the claim of counsel that by Mr. Sharp's and my appearing in the case and defending Wade Arnold that we have waived any rights that we had under the policy and by that act it made the company liable under the policy for judgment against Wade Arnold.

The Court: Is there anything in addition to what you have in the letter? I think you have a right to show—

Mr. Rixey: I thought you had let the evidence go in.

Mr. Fulton: I will save the point for the reasons stated.

The Court: Go ahead.

page 61 } A. Mr. V. J. Arnold called to see me and handed me notice of motion of Mrs. Justis against Wade Arnold and Vernon Arnold, V. J. Arnold. I explained to Mr. V. J. Arnold that the policy that he carried did not protect Wade Arnold—

The Court: That is the thing I ruled out, I think, is the construction of it.

Mr. Rixey: It is not binding on the court. We have notified the man that "We are not going to defend you", and he comes in and doesn't know whether he is entitled to protec-

tion. We say, "We are not going to defend you unless you sign this paper". It is all a part of the same transaction.

The Court: I don't think it makes very much difference. His construction won't have any weight with me, as far as that is concerned.

Mr. Fulton: What he told Wade Arnold after the accident is not relevant testimony.

Mr. Rixey: Suppose you let him testify in his own way, and if your Honor wants to strike it out afterwards, you have the power to do so.

The Court: Go ahead.

A. So I told Mr. V. J. Arnold that Mr. Rixey and I would defend the suit as against him—

By the Court:

Q. Was Mr. Wade Arnold there?

page 62 } A. I was answering his question. I will get to that. I told him to come back with his brother, Wade Arnold, and they came back on the 26th.

By Mr. Rixey:

Q. The 26th of what?

A. The 26th of March. We had the notice of motion.

Q. You are talking about March, 1934, are you not?

A. On the 19th day of March, 1934, yes. So Mr. V. J. Arnold came back to my office on March 26th with Wade Arnold. I explained to Mr. V. J. Arnold that we would defend the case as to him, and I explained to Mr. Wade Arnold that in view of the fact that we were going to defend the case as to Mr. V. J. Arnold, that if he wanted us to, we would defend the case as to him without any additional charge provided he would sign a non-waiver of liability agreement which Mr. John Rixey filled out, and we gave it to Mr. Wade Arnold. He would not sign it but came back on March 30th and signed the agreement and delivered it to me.

Q. What happened thereafter with reference to your and my representing Wade Arnold?

A. Previously we had noted an appearance on behalf of V. J. Arnold, so on that day Mr. John Rixey called the Clerk's office, and that was March 30th, and told the Clerk to mark himself and me as attorney for Wade Arnold along with V. J. Arnold.

page 63 } Q. Was there any appearance by either you or me on behalf of Wade Arnold before Mr. Wade Arnold returned that paper you have in your hand and which has been introduced in evidence? (Referring to Exhibit #2.)

A. There was not?

CROSS EXAMINATION.

By Mr. Fulton:

Q. What position did Mr. Harrison hold with the defendant company at the time of this accident?

A. I would term him a part time insurance solicitor.

Q. He was the agent selling the policy, Mr. Harrison was, was he, or Mr. Jackson?

A. I don't know anything about Mr. Jackson. I know about Mr. Harrison. He is down here at Fox Hall.

Q. He was the agent selling the policy, the man who did sell the policy?

A. Mr. Harrison. All he could do was to take the application and the company would take the policy.

Mr. Fulton: I object to your stating what he could do.

Mr. Rixey: You are asking for his authority.

The Court: You can ask him what he did do.

By Mr. Fulton:

Q. He is the man who made sale of the policy?

A. He is the man who took the application for page 64 } the policy.

Q. You don't know Mr. Jackson, you say?

A. I don't know Mr. Jackson. He is, I understand, around Petersburg some place.

Q. Agent of the company, however?

A. I don't know. I never met the man and never heard of him.

RE-DIRECT EXAMINATION.

By Mr. Rixey:

Q. You say Mr. Harrison took the application. How do the agents take those applications, and what do they do with them?

A. They have a regular application blank with a lot of questions on it.

By the Court:

Q. What becomes of the application?

A. That application goes on to the company.

Q. Is it made a part of the policy? The policy itself makes it a part of the policy, but is it attached to the policy?

A. It is not, no, sir. If it is accepted the policy is written and sent down to the man.

By Mr. Rixey:

Q. The policy is written at the home office and sent to the man?

A. Yes.

page 65 } Q. So the soliciting agent does not actually fill out the policy?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Fulton:

Q. Isn't it a fact that the soliciting agent fills out the policy and it is only countersigned at the home office?

A. No. He fills out the application, and it is stated on the application that there is no policy unless the application is accepted by the company.

By the Court:

Q. Does Harrison's name appear at all in this policy?

Mr. Lynch: Yes, sir.

A. I don't think you will find Harrison's name on it.

The Court: Some of those policies are signed by the agent.

Mr. Lynch: I thought it was Harrison on here, but I see it is not.

The Witness: That is where it has to be countersigned at Charlottesville, Virginia.

By Mr. Lynch:

Q. Who is that (indicating on policy)?

A. That is countersigned at Bloomington, Illinois, the 9th day of August, 1933, by Davies, authorized representative, and then it is sent back to Virginia, to the local

page 66 } man in Charlottesville, who countersigned it.

Q. Who is the local man?

A. H. E. Baumberger.

Q. He is agent?

A. He is State Agent.

By Mr. Rixey:

Q. The policy is written and countersigned at the home office in Illinois, and then sent to Charlottesville for another signature?

A. Sent there for the State agent to sign, and then mailed directly to the policy holder.

Q. So the only part that Mr. Harrison took in the matter was to take the application?

A. That is all he does.

The Court: The application is made a part of the policy, but the application does not appear.

Mr. Fulton: Have you gentlemen the application?

Mr. Rixey: We haven't got it, no.

The Court: I suppose it is filed at the home office.

The Witness: Yes. I can get it for you in about a week.

Mr. Fulton: It is agreeable to us that the application be filed.

Mr. Rixey: We will get it and file it.

Note: The said application was filed as Exhibit #9 before the decision of the case.

page 67 } BILL OF EXCEPTIONS A.

Be it remembered that at the trial of this case on July 15th 1935, after the introduction of all the evidence as shown in the stenographic report of the testimony and other incidents of the trial, the case was argued by counsel on both sides; and the Court taking time to consider of its judgment, did on October 7th, 1935, render final judgment for the plaintiff against the defendant as shown by the judgment of that day and did refuse to render final judgment for the defendant, to which action of the Court in rendering judgment for the plaintiff and in refusing to render final judgment for the defendant, the defendant duly excepted on the following grounds; that the judgment and action of the Court is contrary to the law and the evidence and without evidence to support it, and is plainly wrong; that the judgment which formed the basis of the present suit was against Wade Arnold and not against Vernon J. Arnold, and that there is no obligation on the part of the defendant insurance company under the policy sued on or otherwise to indemnify or assure Wade *Warnold* or to pay the amount of any judgment against Wade Arnold, and that neither Wade Arnold nor the plaintiff Marie H. Justis were assured under said policy.

Wherefore the defendant prays that this its Bill of Exceptions A may be signed, sealed and made a part of the record, which is accordingly done in due time this 21st day of October, 1935, after it duly appeared that the plaintiff had

been given due notice of the time and place of tendering this Bill of Exceptions according to law.

C. W. COLEMAN, (Seal)
Judge of the Circuit Court of Norfolk County.

EX. NO. 1.

Form 2050.1—4-11-33

CITY DEPARTMENT

No. 237516—VA.

OPTIONAL COVERAGE FORM AUTOMOBILE POLICY

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

HOME OFFICE, BLOOMINGTON, ILLINOIS,

(hereinafter called "The Company")

IN CONSIDERATION of the statements made by the Assured in the application heretofore signed, which application forms a part of this contract as though it were fully recited herein, and of the membership fee and premium deposit which shall entitle the applicant to insure in this company as shown in the following schedule,

	Membership	Premium Deposit
Section 1. Fire, Transportation, Tornado, etc. and Theft	$ 5.00	$ 5.00
Section 2. For Collision	$.....	$.....
Section 3. For Liability and Property Damage	$ 5.00	$ 9.00
Total	$10.00	$14.00

does hereby insure V. J. ARNOLD of the City of FOX HALL State of VIRGINIA hereinafter called the "Assured", against the perils arising from the ownership, maintenance or use of an automobile as hereinafter specified, from the 9TH day of AUGUST A. D. 1933, at 12:00 o'clock noon Standard time to the 1ST day of JANUARY A. D. 1934, at 12:00 o'clock noon Standard time and for such terms of six

months each thereafter as the premium deposit is restored as required by this policy and the application therefor, subject to the terms and conditions of this policy while the automobile insured is within the limits of the United States (excluding Alaska, the Hawaiian Islands and Porto Rico) and Canada, as to the following described automobile:

Name of Car	List Price	Engine Number	Serial Number	Year Built	Type of Body	No. of Cyls.	Purch. Price
Ford	Class A	V 18— 184097		1932	Standard Coupe	8	400

PERILS INSURED AGAINST

PART I—DAMAGE TO THE INSURED AUTOMOBILE

Insurance upon the described motor vehicle is against direct loss or damage to the body, machinery and standard tool equipment of the motor vehicle, together with accessories when attached to the said motor vehicle at the time of loss, to an amount not exceeding that specified herein, caused solely by

Clause A—FIRE

This coverage includes loss or damage caused by fire from any cause whatsoever and lightning.

Clause A-1—TRANSPORTATION

This coverage includes loss or damage while being transported in any conveyance by land or water—stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

Clause A-2—TORNADO, CYCLONE, WINDSTORM, HAIL EARTHQUAKE, EXPLOSION

This coverage includes direct loss or damage to the automobile insured caused by Tornado, cyclone, windstorm, hail, earthquake, explosion, accidental and external discharge or leakage of water, excluding damage caused by rain, sleet, snow, flood, rupture of tires and explosion within the combustion chamber of an internal combustion engine.

Clause B—THEFT

This coverage protects against theft, robbery and pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occurs during the hours of such service or employment or not, and excepting by any person, or agent thereof, or by the agent of any firm or corporation to which person, firm or corporation the Assued, or any one acting under express or implied authority of the Assured, voluntarily parts with title and/or possession, whether or not induced so to do by any fraudulent scheme, trick, device or false pretense; and excepting in any case, other than the theft of the entire automobile described herein, the theft, robbery or pilferage of tools or repair equipment.

Clause C—COLLISION

(This Clause Void)

This coverage protects against direct loss, other than to tires, on account of accidental collision with any animal, vehicle or the rolling stock of a public carrier. The amount payable by the Company shall not exceed eighty (80%) per cent of the actual loss, nor in any event, eighty (80%) per cent of the insurance on the automobile at the time of the loss.

The amount of insurance granted under Part I of this policy is THREE HUNDRED TWENTY Dollars and the liability of this Company shall in no event exceed said amount and is subject to all the applicable terms and conditions forming a part of this policy.

PART II—DAMAGE BY THE AUTOMOBILE

Clause D—PUBLIC LIABILITY

This coverage protects the Assured against legal liability imposed upon the Assured resulting solely and directly from an accident by reason of the ownership, maintenance or use of said automobile, on account of bodily injury and/or death suffered, or alleged to have been suffered by any person, other than the Assured or persons in the same household as the Assured, or those in the service or employment of the Assured, whether occurring during the hours of such service or employment or not, to an amount not exceeding 10,000 Dollars on account of the injuries or death of one per-

son, and, subject to the same limit as to each person, to an amount not exceeding 20,000 Dollars on account of two or more persons suffering bodily injury and/or death as a result of any one accident.

Clause E—PROPERTY DAMAGE

This coverage protects the Assured against legal liability imposed upon the Assured resulting solely and directly from an accident by reason of the ownership, maintenance or use of said automobile on account of damage to property, other than property of or in charge of the Assured, or property of or in charge of person or persons in the same household as the Assured or those in the service or employment of the Assured, whether occurring during the hours of such service or employment or not, or property carried in or upon the automobile described herein, to an amount not exceeding 2,000 Dollars as a result of any one accident.

SERVICES

The Company also agrees, without additional premium deposit, to render the following services in connection with accidents covered under Clauses D and E:

To investigate any such accident, upon receiving notice thereof, and to endeavor to make amicable settlement of any resulting claim.

To defend in the name of the Assured, any suits which may be brought against the Assured by reason of any such accident even if such suit is groundless, false or fraudulent; and to pay all expense of litigation on account of suits brought against the Assured by reason of any such accident, and all costs taxed against the Assured in any such legal proceeding defended by the Company; and also to pay interest accruing after entry of judgment upon such part of such judgment as shall be within the liability of the Company on account of such accident.

To furnish such immediate necessary medical and/or surgical first aid at the time of the accident as will alleviate suffering.

TERMS AND CONDITIONS FORMING A PART OF THIS POLICY

(1) *Risks Not Assumed by The Company.* The Company shall not be liable and no liability or obligation of any kind

shall attach to the Company for losses or damages; (A) To robes, wearing apparel or personal effects under Part I above; (B) To any parts of the body, machinery and equipment of the automobile herein described while kept or stored separately or while not connected with said automobile; (C) Caused directly or indirectly by flood, invasion, insurrection, riot, civil war or commotion, military, naval or usurped power or by order of any civil or military authority; (D) Unless the said automobile is being operated by the Assured, his paid driver, members of his immediate family, or persons acting with the consent of the Assured; (E) Caused while the said automobile is being driven or operated by any person whatsoever either under the influence of liquor or drugs or violating any law or ordinance as to age or driving license, or under the age of fourteen (14) years in any event; (F) While the automobile described herein is used in carrying passengers for compensation (actual or implied) or as a taxicab, or is rented, or leased, or is operated in any race or speed contest, or is used for the transportation of high explosives of any nature, intoxicating liquors, or for the illegal transportation of any property; (G) While the interest of the Assured in the automobile described herein is at any time other than sole and unconditional ownership, or while the car is incumbered by a lien, mortgage, or other charge, except as may be specifically endorsed hereon: (H) If the policy or any part thereof or interest therein shall be assigned or transferred to any other person without the consent of the Company endorsed hereon; (I) Because of any obligation assumed or imposed upon the Assured by or under any employer's liability or workmen's compensation law, plan, or agreement; (J) If at the time a loss occurs there be any other insurance covering against risks assumed hereunder, (unless so stated in the application or specially endorsed hereon) whether such other insurance be valid and/or collectible or not, which would attach if this insurance had not been effected; (K) For any liability of the kind covered by Clauses D and E of this policy which the Assured may have accepted or rendered himself liable for by verbal or written agreement without the consent of the Company; (L) If the assured or his representative has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning this insurance or the subject thereof, or if the Assured, or his representative, shall make any attempt to defraud the Company either before or after the loss.

(2) *Instructions in Case of Fire, Transportation, Tornado, etc., Theft or Collision, etc.* (A) In the event of loss or dam-

age to the automobile herein described the Assured shall within Five (5) days give notice thereof by telephone, telegraph or letter, with the fullest information obtainable at the time, to the Company at its home office at Bloomington, Illinois, and to the nearest known agent of the Company and shall protect the property from further loss or damage; and within thirty (30) days thereafter unless such time is extended in writing by the Company, shall render a statement to the Company at its home office, signed and sworn to by said Assured, stating the knowledge and belief of the Assured as to the time and cause of the loss or damage, the interest of the Assured and all others in the property; and the Assured, as often as required, shall exhibit to any person designated by the Company all that remains of any property herein described, and submit to examination under oath by any person named by the Company, and subscribe the same; and, as often as required, shall produce for examination all books of accounts, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made. It is a condition of this policy that failure on the part of the Assured to render such sworn statement of loss to the Company within thirty (30) days of the date of loss (unless such time is extended in writing by the Company) shall render such claim null and void; (B) Any act of the Assured or the Company, or its agents, in recovering, saving, and preserving the property described herein in case of loss or damage, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; (C) In the event of disagreement as to the amount of loss or damage to the automobile described herein, the same must be determined by competent and disinterested appraisers before recovery can be had hereunder. The Assured and the Company shall each select one, and the two so chosen shall then select a competent and disinterested umpire. Thereafter the appraisers together shall estimate and appraise the loss or damage, which shall be the cost of repairing and/or replacing the damaged automobile, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the mount of such loss or damage; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire. The Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any re-

quirement, act or proceeding on its part relating to the appaisal or to any examination herein provided for; and the sum for which the Company is liable for loss or damage to the automobile herein described, pursuant to this policy, shall be payable sixty (60) days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required, have been received by the Company, including an award by appraisers when appraisal is required hereunder.

(3) *Instructions in Case of Property Damage or Liability Accidents.* (A) Upon the occurrence of an accident covered by this policy involving injuries to persons or damage to the property of others, the Assured shall give immediate notice thereof by telephone, telegraph or letter, with the fullest information obtainable at the time, to the home office of the Company at Bloomington, Illinois, and to the nearest known agent of the Company. If any claim is made on account of such accident against the Assured, he shall give like notice thereof with full particulars. The Assured shall at all times render to the Company all co-operation and assistance in his power; (B) If suit is brought against the Assured to enforce a claim for damages covered by this policy, the Assured shall immediately forward to the Company every notice, summons or other process as soon as served upon the Assured, and the Company will, at its own cost, defend such suit in the name and on behalf of the Assured. It is also a condition of this insurance that the Assured when requested by the Company, shall aid in effecting settlements, securing information and evidence, securing the attendance of witnesses and in prosecuting appeals and shall throughout such litigation actively co-operate with the Company and its representatives in the defense thereof and attend upon any hearing or hearings therein when requested by the Company or its representatives but the Assured shall not voluntarily assume any liability, settle any claim, interfere in any settlement or legal proceeding, or incur any expense, except at his own cost, without the consent of the Company previously given in writing, except that as respects injuries, for which there might be liability under Clause D, the Assured may provide at the expense of the Company such immediate medical and/or surgical first aid as is imperative at the time of the accident.

Notice, under 2 or 3 to an authorized agent of this Company sufficient to identify the insured shall be deemed sufficient notice of the Company. Failure to give notice will not invalidate the policy, if it is shown that the Assured could not reasonably give notice.

(4) *Inspection.* The Company shall have the right to inspect the automobile hereunder insured at any and all reasonable times while this policy is in force.

(5) *Depreciation.* The amount for which the automobile described is insured under Part I, shall take a natural depreciation of two percent (2%) per month, or any part thereof, for the first twenty-four (24) months succeeding the date when the insurance takes effect and one percent (1%) per month or any part thereof, thereafter.

(6) *Repair and Replacement.* It shall be optional with the Company, within a reasonable time, to repair or replace property damaged or destroyed with other of like kind and quality or to return or replace property stolen, but there can be no abandonment to the Company of the poperty described. Upon payment of loss either total or partial, the remaining parts or salvage shall become the property of the Company.

(7) *Automatic Reinstatement.* In the event of loss or damage to any automobile described hereunder, whether such loss or damage is covered by this policy or not, the liability of the Company under this policy shall be reduced by the amount of such loss or damage until repairs have been completed but shall then attach for the amount insured under this policy less the natural valued depreciation, without additional charge.

(8) *Subrogation.* If the Company shall claim that any loss or damage insured under this policy was caused by act or neglect of any person, firm or corporation, private or municipal, the Company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the Assured for the loss resulting therefrom, and such right shall be assigned to the Company by the Assured immediately on receiving such payment and the Assured shall execute all papers required and shall co-operate with the Company and its representatives to secure its rights, by suit or otherwise. It is a condition of this policy that this insurance shall not inure to the benefit of any carrier whatsoever, but the right of the Assured to recover under this policy shall not be prejudiced by any release from liability which may have been given to any railroad or other carrier or bailee in any bill of lading or other contract of carriage or storage, and the Company concedes to the Assured the right to give such release; any right of recovery the Assured is entitled to against said carrier or others shall, by subrogation, inure to the benefit of the Com-

pany upon payment of the claim and the Company shall be entitled, if it so desires, to take over and conduct in the name of the Assured, the defense of any action or to prosecute any claim for indemnity, damages or otherwise against any third party.

(*9*) *Suits Against the Company.* No suit or action on this policy for the recovery of any claim on account of any claim on account of loss or damage to the automobile described herein, shall be sustainable in any Court of law or equity unless the Assured shall have fully complied with all the requirements that relate to such loss or damage, nor until forty (40) days after the same shall become due, nor unless commenced within twelve (12) months next after the happening of the loss; nor shall any action to recover for any loss covered by this policy, arising or resulting from claims upon the Assured for damages, be sustainable unless it shall be brought by the Assured after the amount of damages for which the Assured is liable, by reason of any casualty covered by this policy, is determined either by a final judgment against the Assured or by agreement between the Assured and the plaintiff with the written consent of the Company, nor unless such action is brought within two (2) years after the rendition of such final judgment; provided however, that where any such limitations of time are prohibited by the laws of the state wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such state.

(*10*) *Insolvency or Bankruptcy of Assured.* The insolvency or bankruptcy of the Assured shall not release the the Company from the payment of damages for injuries or loss occasioned during the life of the policy, and in case execution against the Assured is returned unsatisfied in an action brought by the injured, or his or her personal representative in case death results from the accident, because of such insolvency or bankruptcy, then an action may be maintained by the injured person or his or her personal representative against this Company under the terms of this policy, for the amount of the judgment in the said action not exceeding the amount of this policy.

(*11*) *Policy and Mutuality Thereof.* This policy, together with the application, shall constitute the entire contract between the Company and the Assured, and no change in the agreements, statements, terms, conditions or representations

of this policy, either printed or written, shall be valid unless made by endorsement hereon signed by a duly authorized officer of the Company, and notice to or knowledge possessed by any Agent or any other person shall not be held to waive, alter or extend any of such agreements, statements, terms, conditions, or representations. The Assured by accepting this policy becomes a member of this Company, and upon cancellation or other termination of the policy, shall cease to be a member. The Assured agrees to make the payments provided for in this policy, when and as required by the Board of Directors and agrees to co-operate with the Company in preventing losses as far as possible to the end that the cost of insurance may be reduced to the lowest point consistent with solvency and sound insurance protection. The premium deposit set out in this policy is for insurance during the initial period hereinabove designated and for such terms of six (6) months each thereafter for which the premium deposit is restored. If for the purpose of restoring the premium deposit, the Assured shall pay his share of the losses, expenses and liabilities as required by the Board of Directors, the insurance shall be renewed automatically for a six (6) months period from the expiration of the preceding period. Such premium deposit shall be treated as earned *pro rata* during each period. The Board of Directors may require additional payments to meet losses, expenses and liabilities in excess of the earned premium deposit but no such payments shall be required in excess of an amount equal and in addition to the premium deposit. The Assured shall be liable only for losses, expenses and liabilities incurred during the period for which he was insured and the total contingent liability of the Assured is limited to an amount equal and in addition to the amount of premium deposit set out in this policy.

The membership fee paid for this insurance shall entitle the Applicant to insure one automobile for the kinds of insurance and for the terms set forth in the application so long as this Company shall continue to write such kinds of insurance, and such Applicant shall remain a desirable risk.

(*12*) *Cancellation.* This policy may be cancelled at any time by the Assured by written notice to the Company at its home office at Bloomington, Illinois, or may be cancelled by the Company by giving five (5) days notice in writing of such cancellation, mailed to the Assured at the address stated in the policy, which shall be sufficient notice. If this policy shall be cancelled as herein provided, the premium deposit having been paid, or restored as provided for in the application, the unearned portion of such premium deposit shall be returned

on surrender of the policy, the Company retaining the customary short rate, except that when this policy is cancelled by the Company by giving notice it shall retain only the *pro rata* premium deposit. The check of the Company, mailed to the Assured at the address stated in the policy, shall be a sufficient tender of unearned premium deposit. Such cancellation shall be without prejudice to any claim originating prior thereto. In event this policy is lapsed by the Assured or becomes void or ceases, the premium deposit shall be retained by the Company.

(13) *Default in Required Payment When Due.* This entire policy shall automatically be void as of the date of its issuance, without notice of cancellation or notice of any other kind, if there shall be default of any kind, or for any reason whatsoever, in payment of the check given for the membership fee or premium deposit when the same is due and presented for payment.

The Company may, at its option, accept any payment for which the Assured shall be in default on account of either the original membership fee or premium deposit or any other payment, but the acceptance of said payment and the receipt thereof by the Company shall in no case revive or create any liability against the Company for loss occurring while the Assured was so in default on account of said payment. If the Assured or his representative defaults in his obligation to make any payment legally required of him by the Board of Directors to meet his share of the losses, expenses and liabilities of the Company as set forth in paragraph (11) of this policy within thirty (30) days after notice of such payment due is given in writing, then this policy and all obligations of the Company thereunder shall immediately cease without notice of cancellation or without notice of any other kind. In the event of valid loss sustained by the Assured under Part I of this policy while the policy was in force and while any payment not in default is owing to the Company, the amount thereof shall first be paid by deducting it from the loss and the policy shall thereupon, unless cancelled as provided in paragraph (12) remain in force for the balance of the current term.

(14) *Date of Annual Meeting.* The annual meeting of the members of the Company shall be held at the home office of the Company at Bloomington, Illinois, on the second Monday of June at the hour of 10 A. M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be

mailed each member at his last known address at least ten (10) days prior thereto.

(*15*) Where any different provision, than that herein contained, as to notice of loss, cancellation or notice thereof, or as respects settlement with and payment to the Assured under the coverages granted by Part I of this policy, are required by statutory enactment in the state where the Assured resides, then the provisions of this policy are hereby amended to conform to such statutory requirements.

IN WITNESS WHEREOF, THE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY has caused this policy to be signed by its President and Secretary, but the same shall not be binding upon the Company unless countersigned by a duly authorized officer or representative of the Company.

G. J. MECHERLE, President.

H. E. BAUMBERGER,
Authorized Resident Agency.

COUNTERSIGNED WITHIN THE STATE OF VIRGINIA

GEO E BEEDLE Secretary

Countersigned at Bloomington, Illinois, this 9th day of August, 1933.

B. DAVIS
Authorized Representative.

(On back:)

Optional Coverage Automobile Policy

City Department

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

HOME OFFICE

BLOOMINGTON, ILLINOIS

Legal Reserve Insurance

VA. FARM BUREAU FEDERATION

National Bank Building

CHARLOTTESVILLE, VIRGINIA

STATE AGENT

H. E. BAUMBERGER, Ins. Director

Home Office Building Owned and Occupied Exclusively by the State Farm Insurance Companies

Please Read Your Policy

146433—20M-4-11-33

IMPORTANT NOTICE

Report every accident, HOWEVER SLIGHT, on the loss report enclosed with your policy for that purpose. Fill in the report according to instructions in the policy. Always secure the names of disinterested witnesses. If another automobile is involved, secure its license number, and the name and address of the driver.

Your Company is equipped to furnish you nation-wide service on claims.

Marie H. Justis

v.

State Farm Mutual Auto. Ins. Co.

This is Exhibit #1 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

EX. NO. 2.

Form C- 7/15/35

NOTICE AND ACKNOWLEDGMENT OF NON-LIABILITY.

It is hereby understood and acknowledged by and between the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of BLOOMINGTON, ILLINOIS, and

Wade Arnold that any action taken by the said Insurance Company in investigating and/or adjusting and/or defending any claim and/or handling any litigation for the said Wade Arnold growing out of an accident involving Mrs. Marie H. Justis and Mrs. Wade Arnold which occurred on or about Nov. 4, 1933, on road from Suffolk to Petersburg, Va., shall not be construed as a waiver of the right of the said Insurance Company to deny any and all liability to the said Marie H. Justis, Mrs. Wade Arnold or/and Wade Arnold under any policy or policies of insurance issued to Vernon J. Arnold. It is understood and acknowledged by and between the said STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and the said Wade Arnold that there is no obligation whatsoever on the part of the said Insurance Company to investigate and/or settle and/or defend any such claims or handle any such litigation for the said Wade Arnold and that the said Insurance Company has not admitted any liability to the said Wade Arnold, Mrs. Wade Arnold and/or Marie H. Justis in respect thereto. Dated at Norfolk, Va., this 26th day of March, 1934.

STATE FARM MUTUAL AUTO INSURANCE COMPANY

By C. C. SHARP, Atty. (L. S.)

Acknowledged by

W. W. ARNOLD, (L. S.)
WADE ARNOLD. (L. S.)

Witnessed:

V. J. ARNOLD,
C. C. SHARP.

Non-Liability Form

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto Ins. Co.

This is Exhibit #2, introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21st, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

EX. NO. 3.

MILTON P. BONIFANT
Attorney and Counsellor at Law
208 Broad-Grace Arcade Building
Richmond, Virginia

Commonwealth's Attorney for Powhatan County.

November 8, 1933.

Mr. V. J. Arnold,
123 Shopp Avenue,
Fox Hall,
Norfolk, Virginia.

Dear Sir:

I represent Mrs. M. H. Justis, who was riding as a passenger or guest in your automobile, which was being driven by your brother, Wade Arnold, between Norfolk and Petersburg on November 4th, 1933, and which said automobile was capsized and overturned near Petersburg about 7 P. M., resulting in very serious injuries to Mrs. Justis, which injuries so far as we have been able to ascertain at this time are as follows: broken clavicle or collar bone, broken right leg, broken ribs, right eye badly injured, back badly injured, severe and serious contusions, lacerations, cuts, bruises, sprains and wrenches on her body, head, face and limbs, muscles and ligaments severely strained and injured, and a very great nervous shock to her entire nervous system, and possibly some concussion of the brain.

From my investigations of this accident, it appears that the same was due entirely to the fault of your brother, who was driving the automobile at such a speed and in such manner as to amount to gross negligence.

I shall be very glad to discuss the matter with you or your representative with a view of making a friendly settlement of the matter, if you care to enter into such negotiations.

Awaiting your reply, I am

Yours very truly,

MILTON P. BONIFANT.
Per O.

MPB-O

MILTON P. BONIFANT.

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 3 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21st, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

NO. 4—Refused.

Nov. 24th, 1933.

Mr. Milton P. Bonifant
Attorney at Law
206 Broad-Grace Arcade Building
Richmond, Va.

Dear Sir:

Your letter of November 8th, 1933, to Mr. V. J. Arnold regarding the claim of Mrs. M. H. Justice has been referred to me for attention.

So that you will not labor under a misapprehension I desire to advise you that Mr. Wade Arnold was using the car for his own personal pleasure and not on any business for Mr. V. J. Arnold. The policy carried by V. J. Arnold does not extend coverage to Mr. Wade Arnold. In other words, the policy does not contain the clause known as "Omnibus Coverage".

From the description of the accident, as related by the driver and witnesses, there does not appear to be any liability on the part of Mr. Wade Arnold.

Under the circumstances neither Mr. V. J. Arnold or the insurance company will be interested in making any offer of settlement to Mrs. Justice.

Yours very truly,

CCS:a C. C. SHARP.

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 4 introduced in evidence in the trial of the above entitled case on July 15, 1935.

Oct. 21st, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

NO. 5.

MILTON P. BONIFANT
Attorney and Counsellor at Law.
208 Broad-Grace Arcade Building
Richmond, Virginia

Commonwealth's Attorney for Powhatan County

January 19, 1934.

Mr. C. C. Sharp,
Law Building,
Norfolk, Virginia.

In Re: Mrs. M. H. Justis *v.* V. J. Arnold and Wade Arnold.

Dear Sir:

I am acknowledging receipt of your letter of November 24th, 1933, written to me in reply to my letter written to Mr. V. J. Arnold on November 8th.

I am at a loss to understand how you construe the policy issued by the State Farm Mutual Insurance Company so as to exclude coverage of Mr. Wade Arnold when using Mr. V. J. Arnold's automobile with his express consent and authority, whether it contains what you call the "Omnibus clause" or not. It appears to me that the policy issued by your company does extend coverage to Mr. V. J. Arnold and such others who are using and operating the car insured with his authority and consent, and that such is plain and in no uncertain words.

I also further note with interest from the description of the

accident as related by the driver and witnesses, there does not appear to be any liability on the part of Mr. Wade Arnold. I do not know what you regard as gross and wanton negligence or what the witnesses have informed you, but from the information I have received from witnesses to the accident, I cannot see how Mr. Wade Arnold can ever maintain a position that he was not responsible for the accident, and is not liable for the results thereof, nor can I see how your Company can escape liability under the policy it has issued.

If the matter cannot be adjusted in a friendly way, the only recourse left will be for me to institute and prosecute a suit for Mrs. Justis and unless I have some word from you within the next few days indicating that you wish to negotiate further, I shall proceed to institute the suit accordingly.

Yours very truly,

MILTON P. BONIFANT,
Per O.

MPB-O

MILTON P. BONIFANT.

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 5 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

NO. 6.

Jan. 22nd, 1934.

Mr. Milton P. Bonifant
Attorney At Law
208 Broad Street
Arcade Building
Richmond, Va.

Dear Sir:

Receipt is acknowledged of your letter dated January 19th, 1934.

In view of the fact that you feel confident that the policy

of the State Farm Mutual Auto Insurance Company extends coverage to Mr. Wade Arnold, driver of the car, I will not attempt to convince you otherwise. I might mention, however, in passing that hundreds of lawyers, judges and layman in Virginia have read the policy, and you are the first one I have come in contact with who has construed the policy to extend coverage to anyone other than the named assured.

I am not in a position to make you any offer of settlement, so, therefore, it will be necessary for you to take whatever action you deem advisable.

Yours very truly,

CCS:a C. C. SHARP.

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 6 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

NO. 7.

March 29, 1934.

Mr. A. B. Carney,
Clerk of Circuit Court of Norfolk County,
Portsmouth, Virginia.

Dear Sir:

Re: Marie H. Justis *v.* Vernon J. Arnold and Wade Arnold.

Please mark us for the defendant Vernon J. Arnold, and file the enclosed plea of the general issue and affidavit on his behalf. We are not representing the other defendant, Wade Arnold.

Very truly yours,

RIXEY & RIXEY.

JSR/R By .....

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 7 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

NO. 8.

March 29, 1934.

Mr. Milton P. Bonifant,
208 Broad Street,
Arcade Building,
Richmond, Virginia.

Dear Sir:

Re: Marie H. Justis *v.* Vernon J. Arnold, et al.

Enclosed you will please find copy of plea of general issue and affidavit the original of which we will file in the clerk's office. We are not representing Mr. Wade Arnold.

Very truly yours,

RIXEY & RIXEY.

JSR/R By.....

Copy to Mr. A. O. Lynch,
Norfolk, Va.

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

This is Exhibit No. 8 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

EXHIBIT #9.

Form 515—5 26 33

CITY DEPARTMENT

DO NOT USE THIS APPLICATION FOR FARM BUSINESS

APPLICATION FOR INSURANCE

In The

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

of Bloomington, Illinois

(1) The undersigned hereby makes application for insurance in the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY OF BLOOMINGTON, ILLINOIS, for the classes of insurance below stated, with the understanding that the insurance is not in force until the application is accepted at the home office.

(2) It is understood and agreed that the membership fee and premium deposit is to be paid at the time this application is signed, by check made payable to the Company, but that liability on the part of the Company is subject to all provisions of the policy as to payment of membership fee and premium deposit, and that default in payment of such check, when due and presented for payment shall immediately and automatically void the policy issued hereon without notice of any kind to undersigned. The membership fee shall entitle the applicant to insure one automobile for the kinds of insurance set forth in the application as long as this Company shall continue to write such kinds of insurance, and such applicant shall remain a desirable risk.

(3) The premium deposit set out in this application, which shall be construed to be a part of the policy issued hereon, is for an insurance during an initial term expiring six months from the date of issuance of policy and for terms of six months each thereafter for which the premium deposit is restored (except that if the policy to be issued in pursuance of this application is either in whole or in part a transfer of prior insurance in this Company, then the initial term of the insurance herein applied for shall be to a six months anniversary date of a former policy or policies to be fixed by the

Company and specified in the policy to be issued pursuant hereto). If, for the purpose of restoring the premium deposit the assured shall pay his share of the losses, expenses and liabilities as required by the Board of Directors, the insurance shall be renewed automatically for a six months period from the expiration of the preceding period. Such premium deposit shall be treated as earned pro rata during each period. The Board of Directors may require additional payments to meet losses, expenses and liabilities in excess of the earned premium deposit but no such payment shall be required in excess of an amount equal and in addition to the premium deposit. The insured shall be liable only for losses, expenses and liabilities incurred during the period for which he was insured and the total contingent liability of the assured is limited to an amount equal and in addition to the amount of the premium deposit set forth in this application.

237516 VIRGINIA—46

(4) The membership fee and premium deposit which shall entitle the applicant to insure in this Company shall be as follows:

	Member-ship Fee	Premium Deposit	Old Pol
Sec. 1. For Fire and Theft New.... Transportation, Windstorm, Hail, Earthquake and Explosion written with fire.	$ 5.00	$ 5.00	.....
Sec. 2. For Collision..... 6.30 2.70	$.....	$.....	.....
Sec. 3. For Liability and Property Damage.....	Transfer $ 5.00	$ 9.00	9
($10,000—$20,000) ($2,000 Additional Liability— Total.....	$ 5.00	$ 5.00	9
	10.00	14.00	
One Person, $.....Two or more persons,.....	5.00	9.00	
	5.00	5.00	

50% of the Premium Deposit for Sections 1 or 3 shall be collected if only the coverage is written.

Cash T 11—8—33.

The following is a description of the automobile covered by this application.

D2473

Transfer 230221—Va.

Name of Car	List Price	Engine Number	Serial Number	Year Built Year	Type of Body	No. of Cyls.
Ford	Class A	V 18— 184,097		1932	Std. Coupe	V 8

From whom did you purchase car? Griffin Motor Corp.
Address Norfolk, Va.
Date of purchase? 8—1933. How much did you pay for car? $400.00. Month Year
Did you buy it new or second hand? Second hand. What extra equipment do you carry? Spare wheel and tire, nickle tire cover, radio, heater, side mirror and 2 horns.
Is trailer used with car? No. Present value of trailer, $.....
Is car morgaged or encumbered in any way? No. Amount, $.....
To whom?.....Do you carry other insurance on the car? No. If so, state kinds, amounts and name of company?.....
Has any company refused to insure a car for applicant? No.
Give date of expiration of present policy Transfer. Where is the car stored—in public or private garage? Private garage.
For what purpose is car used? Business and pleasure.
If a truck, is it used over 50% for farm purposes?.....
What special marks of identification have you on your car by which it could be identified if stolen? Engine number.
Has car owner any physical defects that might impair his driving? No.
Who besides the owner drives this car? Family and authorized persons.

The foregoing is my own statement made as an inducement to secure insurance in this Company and is correct and truthful in all particulars.

V. J. ARNOLD
Signature of Applicant

123 Shoop(?)
Street and No. or R. R.

Post Office	County	State
Fox Hall Norfolk	Norfolk	Va
Residence if different	County	State

V. J. ARNOLD, Employed at Ford Plant

Agent print name of applicant here

Dated at Norfolk, Virginia, Aug. 9, 1933.

AGENT'S REPORT

I have personally inspected the above car and to my best knowledge and belief this car has a present cash value of $400.00, but it is understood that the home office reserves the right to determine the insurable value. F T

Rural route.

Remarks: Car is in fine condition and insured a good moral risk.

(State whether the value of this car is above or below the average car of same make and age and give such general information as will show how you arrived at the above value.)

G. W. HARRISON
108 Halstead Avenue
Phone 35647
Fox Hall, Norfolk, Va.

230221

G. W. HARRISON
Agent's Signature and Address

VIRGINIA FARM
BUREAU FEDERATION
80%

(To Be Filled in at Home Office)

State	County	Agent		Make	Class	Coverage			Due Date T. C.			L	S
45	65	Local 360	SP.	111	01				M	D	Y		

x Date	Other App's.	Effective Date	Valuation
7-1-33		8-9-33	$320.00

D2473 AUG 23 ENT'D F. T. W. new.

Transfer from	No. 230221 Va	Date 8/9/33
OFFICE MEMO Aug 27 Ent'd	Date Received	Aug. 14 1933
	Number Agt. Rec.	8/16 R.
	Exam.	8/21 R.L.
	Policy	
	X Card	A.S. 8/22 B.D.
	Acct'g. Dept.	

RET'D FOR COLL. P.C.OK

5 Paid by Pomo Date 11-24.
Copy for Legal Dept 2/23/35 R.H.
Agt's P. O. N. O. 5.00
Assds T. C. 5.00 (Coll.) No Claim

CANCELLED

Date 8-21-34 Cause Undesirable Risk

Folio	Dep.	Mssp.
.....T. C. Unpaid	.....	.....
.....Check Ret.	.....	.....
202 Vo. to Asso.	9.19	.....
J.D.J.E. P. C. Retained	4.81	.....
E.B. Total	14.00	.....
Entd.		
V. #793256	By E.L.D.	

A. G. 8-22

(On back:)

Marie H. Justis
v.
State Farm Mutual Auto. Ins. Co.

Aug 23 A. M.

This is Exhibit No. 9 introduced in evidence in the trial of the above case on July 15, 1935.

Oct. 21, 1935.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County.

STATE FARM MUTUAL AUTO INS. CO.
BLOOMINGTON, ILL.

Service Satisfaction Safety Economy

Licensed Under the Uniform Mutual Law
and
Under the Supervision of Department of Trade and Commerce of Illinois

Optional Coverage Policy

AUTOMOBILE INSURANCE

Fire Theft Collision
Liability Property Damage

(See original Application with MS.—Clerk.)

page 68 } I, C. W. Coleman, Judge of the Circuit Court of Norfolk County, Virginia, who presided over the foregoing trial of the case of Marie H. Justis *against* State Farm Mutual Automobile Insurance Company, tried in the Circuit Court of Norfolk County, Virginia, on the 15th day of July, 1935, without a jury, do hereby certify that the foregoing, together with the exhibits therein referred to, is a true and correct copy and report of all the evidence and other incidents of the trial of said cause, with the objections and exceptions of the respective parties and the actions of the Court in respect thereto as therein set forth.

As to the original exhibits introduced in evidence as shown by the foregoing report, to-wit: Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 which have been authenticated by my signature for the purpose of identification, it is agreed by the plaintiff and defendant that they shall be transmitted to the Supreme Court of Appeals of Virginia as part of the record in this case, in lieu of certifying to said Court copies of said exhibits.

And I further certify that the attorney for the plaintiff had reasonable notice in writing, given by the defendant, of the time and place when the foregoing report and exhibits would be tendered to the undersigned for authentication.

Given under my hand the 21st day of October, 1935, within sixty days after the entry of final judgment in said cause.

C. W. COLEMAN,
Judge of the Circuit Court of Norfolk County, Virginia.

A Copy—Teste:

C. W. COLEMAN, Judge.

page 69 } I, A. B. Carney, Clerk of the Circuit Court of Norfolk County, Virginia, do hereby certify that the foregoing report of the evidence and other incidents of the trial of the case of Marie H. Justis *v.* State Farm Mutual Auto Insurance Company, et als., tried in the Circuit Court of Norfolk County, Virginia, on the 15th day of July, 1935, together with the original exhibits therein referred to, was filed and lodged with me as Clerk of the said Court on the 21st day of October, 1935.

A. B. CARNEY,
Clerk of the Circuit Court of Norfolk County, Virginia.
By L. S. BELTON, D. C.

page 70 } State of Virginia,
County of Norfolk, to-wit:

I, A. B. Carney, Clerk of the Circuit Court of Norfolk County, State aforesaid, do hereby certify that the foregoing is a true transcript from the records in the case named.

I further certify that said transcript was not made up and completed until the plaintiff had due notice of the making of the same, as required by law.

I further certify that the defendant has given a bond with Fidelity and Deposit Company of Maryland, as surety, in the penal sum of $9,500.00, conditioned as required for a *supersedeas* in Section 6351 of the Code of Virginia.

Given under my hand, this 1st day of November, 1935.

A. B. CARNEY, Clerk.
By L. S. BELTON,
Deputy Clerk.

Cost of this record $12.00.

A Copy—Teste:

M. B. WATTS, C. C.

INDEX