

*Rec'd* 2823  
192-32

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Record No. **3740**

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**CHARLES E. FEREBEE, AN INFANT, ETC.**

v.

**E. B. HUNGATE, AND ANOTHER**

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FROM THE CIRCUIT COURT OF NORFOLK COUNTY

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RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

192 VA 32



## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



APPEALS COURT OF APPEALS

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RICHMOND, VIRGINIA

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 3740**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Tuesday the 25th day of April, 1950.

CHARLES E. FEREBEE, AN INFANT &C.,  
Plaintiff in Error,

*against*

E. B. HUNGATE AND ANOTHER, Defendants in Error.

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From Circuit Court of Norfolk County.

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Upon the petition of Charles E. Ferebee, an infant who sues by R. L. Ferebee as next friend, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Norfolk County on the 30th day of November, 1949, in a certain notice of motion for judgment then therein depending wherein the said petitioner was plaintiff and E. B. Hungate and another were defendants, upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

Virginia :

Pleas before the Circuit Court of Norfolk County, at Courthouse of said County, on the 28th day of January, 1950.

Be it remembered that heretofore to-wit: On February 19th, 1949, came the complainant and filed his notice of motion in the words and figures following, to-wit :

Charles E. Ferebee, an infant, who sues by R. L. Ferebee, as next friend, Plaintiff,

v.

E. B. Hungate and Lelia E. Hungate, Defendants.

AT LAW.

NOTICE OF MOTION.

To: E. B. Hungate, 210 Pennsylvania Ave., Colonial Place, City.  
Lelia E. Hungate, 210 Pennsylvania Ave., Colonial Place, City.

TAKE NOTICE: That I will move the Circuit Court of the County of Norfolk, Virginia, on the 7th day of March, 1949, at 10:00 A. M. or as soon thereafter as counsel may be heard, for a judgment and an award of execution against you, defendants, for the sum of Twenty-five Thousand (\$25,000.00) Dollars for damages and costs of these proceedings, for this, to-wit:

For that heretofore, to-wit: on or about the 31st day of October, 1948, the undersigned plaintiff was properly operating his automobile up and along a certain intersection in the County of Norfolk, Virginia, and then and there, through the carelessness, negligence and recklessness of the defendants in and about the ownership and operation of an automobile, struck the automobile which the undersigned plaintiff was driving, and as a proximate cause thereof, the undersigned plaintiff sustained personal injuries all over his person and particularly to his kneecap, and was caused to be permanently injured, to suffer pain in body

*Lelia Ferebee vs E. B. Hungate & Lelia E. Hungate*

and mind and to continue to suffer and to be permanently injured.

WHEREFORE, the plaintiff institutes this notice of motion for Twenty-five Thousand (\$25,000.00) Dollars for damages.

CHARLES E. FEREBEE,  
an infant who sues by R.  
L. Ferebee, as next Friend.

By: JOSEPH D. DEAL  
of Counsel.

JOSEPH D. DEAL AND  
LOUIS B. FINE, p. q.

And the return of the Sergeant of the City of Norfolk on the said notice of motion is in the words and figures following to-wit:

Not finding E. B. Hungate, nor any member of his family above the age of 16 years at his usual place of abode I executed the within process in the City of Norfolk, Va., this the 18th day of Feb., 1949, by leaving a Copy hereof placed at the Front Door of his said place of abode.

LEE F. LAWLER,  
Sergt. City of Norfolk, Va.

By: R. B. WOLFE, Deputy.

Not finding Lelia E. Hungate, nor any member of her family above the age of 16 years at her usual place of abode I executed the within process in the City of Norfolk, Va., this the 18th day of Feb., 1949, by leaving a Copy hereof page 3 } posted at the Front Door of her said place of abode.

LEE F. LAWLER,  
Sergt. City of Norfolk, Va.

By: R. B. WOLFE, Deputy.

And the plea of general issue filed by the defendant on June 6th, 1949, as in the words and figures following, to-wit:

The defendants by their attorneys come and say that they are not guilty of the premises in this action laid to their charge in manner and form as the plaintiff hath complained. And of this the said defendants put themselves upon the country.

RIXEY & RIXEY, p. d.

And the special plea filed by the defendant on June 6th, 1949, as in the words and figures following, to-wit:

The defendants, by their attorneys, come and say that the plaintiff ought not to have or maintain this action against these defendants because they say as follows.

As the result of the same collision between the automobile owned and operated by the plaintiff and the automobile owned and operated by the defendants, which forms the basis of the action at bar, one Marcella N. Hungate, a passenger in the Hungate car, was injured in and about her person as the result of the negligence of the said Charles E. Ferebee, who is the plaintiff in the action at bar. Thereafter, the page 4 } said Marcella N. Hungate as plaintiff brought an action at law in this Court against the said Charles E. Ferebee as defendant to recover damages for her said personal injury sustained by the said Marcella N. Hungate as aforesaid, basing her claim to recovery upon the allegation that the aforesaid collision was proximately caused by the negligence of the said Charles E. Ferebee. A guardian *ad litem* was duly appointed to defend the said infant, Charles E. Ferebee, who pleaded the general issue to which the plaintiff in that suit replied generally. On March 4 and 5, 1949, there was a trial of said last mentioned suit upon the merits in this Court before the Court and a jury, as the result of which the jury rendered a verdict for the plaintiff in that suit against the said Charles E. Ferebee for \$2,000.00, on which verdict the Court entered final judgment for the plaintiff in that suit against the said Charles E. Ferebee.

As the result of the aforesaid collision the said Lelia E. Hungate, (one of the defendants in the action at bar) was also injured and damaged. Thereafter, the said Lelia E. Hungate as plaintiff brought an action at law in this Court against the said Charles E. Ferebee as defendant to recover damages sustained by the said Lelia E. Hungate as aforesaid, basing her claim to recovery upon the allegation that the aforesaid collision was proximately caused by the negligence of the said Charles E. Ferebee. A guardian *ad litem* was duly appointed

to defend the said infant, Charles E. Ferebee, who pleaded the general issue to which the plaintiff in that suit page 5 } replied generally. Also in said last mentioned suit there was duly filed by and on behalf of said Charles E. Ferebee a cross-claim asserting and suing upon the same identical claim and alleged cause of action as is sued upon and constitutes the basis of the action now at the bar, to issue, and the said Charles E. Ferebee replied generally. On March 9, 1949, there was a trial of the said suit of Lelia E. Hungate v. Charles E. Ferebee, including the cross-claim as aforesaid upon the merits in this Court before the Court and a jury, as the result of which the jury rendered a verdict for the said plaintiff in that suit, Lelia E. Hungate against the said Charles E. Ferebee, for \$1,500, on which verdict the Court entered final judgment for the said Lelia E. Hungate against the said Charles E. Ferebee.

which cross claim is merged into the main claim of Lelia E. Hungate

Both of the aforesaid judgments are valid and final, and have not in any way been vacated, reversed or modified. The term of Court at which they were rendered has ended; and the judgments have been paid. Each of said judgments is a final and judicial determination of the fact that the said collision was proximately caused by the negligence of the said Charles E. Ferebee. Each judgment is the judgment of a Court of competent jurisdiction in a suit of which it had jurisdiction of both the subject matter and the parties.

Wherefore the alleged cause of action in the case at bar asserted by the said Charles E. Ferebee is *res adjudicata*; and the said Charles E. Ferebee is estopped by the aforesaid judgments from further prosecuting this case at bar; and the case at bar should be dismissed. And the defendants vouch the records aforesaid.

And this the said defendants are ready to verify.

**RIXEY & RIXEY**  
Attorneys for the defendants,  
E. B. Hungate and Lelia E. Hungate.

And the replication of the complainant filed October 29th, 1949, in the words and figures following, to-wit:

Said plaintiff comes and says that the judgment of Lelia E. Hungate v. Charles E. Ferebee and the dismissal of the cross claim of J. W. Ferebee in said former action is not *res adjudicata* nor an estoppel, in any manner and form, as the said defendants hath in their plea alleged. And this the said



plaintiff, prays may be inquired of by the country.  
 page 7 } And the final order of this Court entered November 30th, 1949, in the words and figures following,  
 to-wit:

This day came the parties; and the plaintiff filed his general replication to the special plea heretofore filed by the defendants.

By consent of the parties the case was tried before the Court without a jury upon the issues made upon the special plea and replication. ~~The plaintiff moved the Court to dismiss the case as to the defendant Lelia E. Hungate, which motion is sustained and the Court doth dismiss this case as to the defendant Lelia E. Hungate.~~

After hearing the evidence consisting of the records in the cases mentioned in the special plea and the argument of counsel, the Court is of the opinion that the special plea should be sustained; and it is accordingly adjudged and ordered that this case be dismissed as to the defendant E. B. Hungate; to which action of the Court in sustaining the special plea and dismissing the case as to E. B. Hungate the plaintiff, by counsel, duly excepted.

page 8 } Virginia:

In the Circuit Court of Norfolk County.

Charles E. Ferebee, an infant who sues by R. L. Ferebee, his next friend, Plaintiff,

v.

E. B. Hungate and Lelia E. Hungate, Defendants.

#### NOTICE OF APPEAL.

To: Mr. John S. Rixey, attorney for defendants, Citizens Bank Bldg., Norfolk, Virginia.

PLEASE TAKE NOTICE: That on the 28th day of January, 1950, at 10:00 o'clock, A. M., or as soon thereafter as counsel may be heard, the undersigned will present to the Honorable Edward L. Oast, Judge of the Circuit Court of Norfolk County, Virginia, at the courthouse of said court in Portsmouth, Virginia, the evidence and other proceedings in the trial of the above entitled case for certification by the said Judge, and will on the same date make application to the Clerk of said court for a transcript of the record in the said

case for the purpose of presenting the same to the Supreme Court of Appeals of Virginia, with a petition for writ of error and *supersedeas* to the final judgment of the trial court in said case.

CHARLES E. FEREBEE,  
an infant, who sues by R. L.  
Ferebee, his next friend.

By LOUIS B. FINE  
Counsel.

Legal service of the above notice is hereby accepted this 23rd day of January, 1950.

RIXEY & RIXEY  
Attorney for E. B. Hungate  
and Lelia E. Hungate.

page 9 } And the notice of motion filed November 18th,  
1948, and mentioned in the special plea is as follows:

#### NOTICE OF MOTION.

Lelia E. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

To: J. W. Ferebee and  
Charles E. Ferebee  
Route 3, Box 236  
Norfolk County.

TAKE NOTICE that on the 6th day of December, 1948, at 10:00 A. M., or as soon thereafter as counsel can be heard, the undersigned will move the Circuit Court of the County of Norfolk, Virginia, at the Courthouse thereof, for a judgment and award of execution against you for the sum of Ten Thousand Six Hundred Ninety-eight Dollars and Eleven Cents (\$10,698.11) and costs of this proceeding for this, to-wit:

That on or about the 31st day of October, 1948, the undersigned was riding in her automobile as a passenger when you and each of you so carelessly and negligently operated an automobile, then and there owned, operated and controlled by

you, as to cause it to run into the automobile of the undersigned at or near the intersection of Gillis Road and *Alwyn* Road in Norfolk County, Virginia, and as a result thereof the automobile of the undersigned was greatly damaged and the undersigned was severely, painfully and permanently injured in and about her person and was caused and will be caused to suffer great pain, inconvenience and mental anguish, and further the undersigned will be required to lay out large sums of money in endeavoring to have her automobile repaired and has been and will be caused to become responsible for large sums of money in endeavoring to be cured of her said injuries all as a result of your negligence and carelessness to the damage of the undersigned in the sum of Ten Thousand Six Hundred Ninety-eight Dollars and Eleven Cents (\$10,698.11).

LELIA E. HUNGATE  
By: RIXEY & RIXEY  
Her Counsel.

And the cross-claim filed in said suit on March 9th, 1949, in the words and figures following, to-wit:

Lelia E. Hungate, Plaintiff

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

#### CROSS-CLAIM.

NOW comes the defendant J. W. Ferebee, and filed this cross claim against the plaintiff, Lelia E. Hungate, for the sum of Twenty-seven Hundred (\$2,700.00) Dollars, for this, to-wit:

First Count: For that on the contrary, the undersigned defendant is not indebted to the plaintiff in any amount whatsoever, but that the plaintiff is indebted to the undersigned defendant, for that arising out of the same accident, the automobile of the undersigned defendant was damaged by reason of the carelessness, negligence and recklessness of one E. B. Hungate, who is the husband, and was the agent of the plaintiff, at the time the automobile was being operated. And as a result of the negligence and carelessness of the husband and agent of the plaintiff, the undersigned defendant sustained property damages to the automobile in the amount of Two Hundred (\$200.00) Dollars.

Second Count: For that the husband and agent of the plaintiff, E. B. Hungate, carelessly and negligently operated the automobile and caused it to run into the automobile of the undersigned defendant, and as a proximate cause of the negligence aforesaid, the defendant's son, Charles E. Ferebee, was injured and caused to suffer pain in body and mind, and as a consequence, the undersigned defendant was caused to expend moneys in endeavoring to cure his said son, Charles E. Ferebee, and to lose his services in the amount of Twenty-five Hundred (\$2,500.00) Dollars.

WHEREFORE, the defendant files this cross claim for the sum of Twenty-seven Hundred (\$2,700.00) Dollars for damages.

J. W. FEREBEE  
By: LOUIS B. FINE  
Counsel.

page 12 } And the cross-claim filed in said suit on March  
9th, 1949, in the words and figures following, to-wit:

Lelia E. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

#### CROSS-CLAIM.

NOW comes the defendant Charles E. Ferebee, and filed this cross claim for himself and by R. L. Ferebee as next friend, against Lelia E. Hungate, for the sum of Twenty-five Thousand Dollars (\$25,000.00), for this, to-wit:

For that the undersigned defendant is not indebted to the plaintiff in any amount whatsoever in that he was not careless and negligent as alleged in the notice of motion, but on the contrary the plaintiff is indebted to the undersigned defendant in the sum of Twenty-five Thousand (\$25,000.00) Dollars for damages, for this, to-wit:

That on or about the 31st day of October, 1948, the undersigned defendant was driving an automobile properly at the intersection of Gillis Road and Alvin Road at Cradock, in Norfolk County, Virginia, and then and there, through the carelessness, negligence and recklessness of the husband and

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agent of the plaintiff, to-wit: E. B. Hungate, caused the automobile which was operated by E. B. Hungate to  
 page 13 } strike the automobile which the undersigned defendant was driving, and as a proximate cause of the negligence aforesaid, the undersigned defendant sustained severe and permanent injuries all over his person, causing him to suffer pain in body and mind, and to continue to be injured and to be scarred.

WHEREFORE, the defendant, Charles E. Ferebee by his next friend, R. L. Ferebee, files this cross claim for Twenty-five Thousand (\$25,000.00) Dollars for damages.

CHARLES E. FEREBEE  
 By: LOUIS B. FINE,  
 Counsel.

And the affidavit denying operation and control filed March 9th, 1949, is in the words and figures following, to-wit:

Lelia E. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendant.

#### AFFIDAVIT DENYING OPERATION AND CONTROL.

Commonwealth of Virginia  
 City of Norfolk, to-wit:

This day personally appeared before me, Lonita M. Midgett, a Notary Public in and for the City and State aforesaid, J. W. Ferebee, the undersigned, who having first  
 page 14 } been duly sworn, deposes and says that at the time alleged in the notice of motion in this suit, to-wit: October 31st, 1948, the undersigned did not operate and control the automobile involved in the collision, nor did anyone operate the said automobile as his agent or in his behalf, and particularly does the undersigned aver that the said Charles E. Ferebee did not operate the said automobile as his agent or on his behalf.

J. M. FEREBEE.

Subscribed and sworn to before me this 8th day of March, 1949.

My commission expires: November 21, 1950.

LONITA M. MIDGETT.

And the affidavit filed March 9th, 1949, is as follows:

Lelia E. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendant.

AFFIDAVIT.

I, Lelia E. Hungate, being duly sworn *depose* and say that I am the plaintiff in the above entitled action and the person against whom the cross-claim on the report of J. W. Ferebee and Charles E. Ferebee have been filed in the notice of motion and cross-claim the automobile belonging to this page 15 } affiant was not under the operation or control of this affiant; that at said time and place said automobile was being operated and driven by E. B. Hungate who was not the servant or agent of this affiant in the operation of said automobile.

LELIA E. HUNGATE.

Sworn and subscribed to before me deputy clerk of the Circuit Court of Norfolk County in the courtroom of said court this 9th day of March, 1949.

E. H. SMITH  
Deputy Clerk.

And the notice of motion filed November 18th, 1948, is as follows:

NOTICE OF MOTION.

Marcella N. Hungate, Plaintiff

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

To: J. W. Ferebee and  
Charles E. Ferebee  
Route 3, Box 236  
Norfolk County.

TAKE NOTICE that on the 6th day of December, 1948, at 10:00 A. M. or as soon thereafter as counsel can be heard, the undersigned will move the Circuit Court of the County of Norfolk, Virginia, at the Courthouse thereof, for a judgment and award of execution against you for the sum page 16 } of Twenty Thousand Dollars (\$20,000.00) and costs of this proceeding for this, to-wit:

That on or about the 31st day of October, 1948, the undersigned was riding as a passenger in a certain automobile when you and each of you so carelessly and negligently operated an automobile, then and there owned, operated and controlled by you and each of you, as to cause it to run into the automobile in which the undersigned was riding at or near the intersection of Gillis Road and Alwyn Road, Norfolk County, Virginia, and as a result thereof the undersigned was painfully, severely and permanently injured in and about her person and was required and will be required to suffer great pain, inconvenience and mental anguish, and further was required to lay out large sums of money in endeavoring to be cured of her said injuries all as a result of your negligence and carelessness to the damage of the undersigned in the sum of Twenty Thousand Dollars (\$20,000.00).

MARCELLA N. HUNGATE

By: RIXEY AND RIXEY

Her attorneys.

page 17 } And an affidavit of Non-Operation and Agency  
by J. W. Ferebee filed March 4th, 1949, is as follows:

Marcella N. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

AFFIDAVIT OF NON-OPERATION AND AGENCY  
BY J. W. FEREBEE.

Commonwealth of Virginia  
City of Norfolk, to-wit: .

This day personally appeared before me, Lonita M. Midgett, a Notary Public in and for the City and State aforesaid, J. W. Ferebee, the undersigned, who first having been duly

sworn, deposes and says that the automobile as alleged in the notice on the 31st day of October, 1948, was not operated by Charles E. Ferebee on his business, but that the said Charles E. Ferebee was operating the same for his own benefit and at his own pleasure and that he, the said Charles E. Ferebee, was not acting as agent or operating the said automobile in his behalf or on his business, and that he does not know anything concerning the actual operating of the said automobile; and that the said Charles E. Ferebee was operating it in his own behalf.

J. W. FEREBEE.

Subscribed and sworn to before me this 3rd day of March, 1949.

page 18 }

LONITA M. MIDGETT  
Notary Public.

My commission expires: November 21, 1950.

And an order entered by this Court, March 5th, 1949, is as follows:

Marcella N. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

MOTION (6615-M).

This day came again the parties in person and by counsel, and the jury sworn on Friday, March 4th, 1949, appeared in pursuance to their adjournment on yesterday, and after having fully heard the evidence and argument of counsel, retired to their room to consult of a verdict and after sometime, returned into Court having found the following verdict, "We the jury find for the plaintiff the sum of \$2,000.00 against the defendant Charles Ferebee."

Thereupon the defendant by counsel moved the Court to set aside the verdict of the jury in this case and enter up judgment for the defendant.

The plaintiff by counsel moved the Court to set aside the verdict of the jury in this case and grant him a new trial on the grounds that the amount of the verdict is inadequate, the hearing of which motions the Court doth overrule.

page 19 } Thereupon it is considered by the Court that the plaintiff, Marcella N. Hungate, recover against the



defendant, Charles Ferebee, in the sum of Two Thousand (\$2,000.00) Dollars, the amount by the jury in their verdict ascertained, with interest thereon at the rate of six (6%) per cent from the 5th day of March, 1949, until paid and costs.

And an order entered by this Court on March 9th, 1949, is as follows:

MOTION (6616—M).

Lelia E. Hungate, Plaintiff,

v.

J. W. Ferebee and Charles E. Ferebee, Defendants.

This day came the parties in person and by counsel, and it appearing to the Court that Charles E. Ferebee one of the defendants is an infant under the age of 21 years; the Court doth appoint Louis B. Fine, a discreet and competent attorney at law, guardian *ad litem* to defend the said infant, Charles E. Ferebee.

Thereupon came a jury, to-wit: J. C. Lassiter, C. J. Robertson, William T. Eastwood, A. L. Flemming, Sr., Gerald F. Parsons, C. O. Bayne and Earnest Umphlett who were duly sworn the truth to speak upon the issue joined, and after having heard the plaintiff's evidence, the defendants by counsel moved the Court to strike out the same on the grounds of contributory negligence on part of the plaintiff, which motion the Court overruled and the defendants ~~by counsel excepted~~

~~On motion of the plaintiff by counsel, the defendant's cross claims are ordered stricken from the record, and the defendant's by counsel excepted~~

~~On motion of the defendants by counsel, the evidence is ordered stricken out as to the defendant, J. W. Ferebee, and after having fully heard the evidence and argument of counsel, the jury retired to their room to consult of a verdict, and after sometime returned into Court having found the following verdict, "We the jury find for the plaintiff against the defendant Charles Ferebee and fix the damages at \$1,500.00.~~

Thereupon the defendant Charles E. Ferebee by counsel moved the Court to set aside the verdict of the jury in this case on the grounds that the same is contrary to the law and the evidence and to enter up judgment for the defendant Charles E. Ferebee. The defendant also moved the Court to set aside the verdict of the jury in this case and grant him a new trial on the grounds that the same is excessive and without evidence to prove it, and to enter up judgment in favor of the defendant J. W. Ferebee on his cross claim, which mo-

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MS

tions the Court overruled and the defendants by counsel excepted.

Thereupon it is considered by the Court that the plaintiff, Lelia E. Hungate, recover against the defendant, Charles Ferebee, in the sum of Fifteen Hundred (\$1,500.00) Dollars, the amount by the jury in their verdict ascertained with interest thereon at the rate of six (6%) per cent from the 9th day of March, 1949, until paid and costs.

page 21 } JUDGE'S CERTIFICATE.

I, Edward L. Oast, Judge of the Circuit Court of Norfolk County, Virginia, hereby certify that the foregoing is a true and correct transcript of all of the proceedings had upon the trial of the case of Charles E. Ferebee, an infant who sues by R. L. Ferebee, his next friend v. E. B. Hungate and Lelia E. Hungate in said court on the 30th day of November, 1949, which was all of the evidence offered, the motions and objections of counsel for the respective parties upon all questions of fact and law, the rulings of the Court thereon and the exceptions of the parties.

I hereby certify that said transcript was presented to me for certification within sixty days after the entry of the final order in said cause and that the attorney for the defendants had reasonable notice in writing, of the time and place at which the same would be presented for my certification.

Given under my hand this 28th day of January, 1950.

EDWARD L. OAST  
Judge.

page 22 } CLERK'S CERTIFICATE.

I, E. T. White, Clerk of the Circuit Court of Norfolk in the State of Virginia, do hereby certify that the foregoing is a true and correct copy of all the testimony and other incidents of the trial of the case of Charles E. Ferebee, etc. v. E. B. Hungate, et als., and that the original thereof and said copy were lodged and filed with me as Clerk of said Court on the 28th day of January, 1950.

E. T. WHITE, Clerk  
Circuit Court of Norfolk County.

By: A. W. SNOW, D. C.

## CLERK'S CERTIFICATE.

Virginia:

In the Clerk's Office of the Circuit Court of Norfolk County, Virginia, on the 28th day of January, in the year 1950.

I, E. T. White, Clerk of the Circuit Court of Norfolk County, State of Virginia, do certify that the foregoing is a true and correct transcript of the record in the case of Charles E. Ferebee, etc. v. E. B. Hungate, et als., lately pending in said Court.

I further certify that the same was not made up and completed and delivered until the Attorney for the Defendant had received due notice in writing thereof, and of the intention of the plaintiff to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to page 23 } the judgment therein.

E. T. WHITE,  
Clerk of the Circuit Court of  
Norfolk County, Virginia.

By: A. W. SNOW, D. C.

A Copy—Teste:

M. B. WATTS, C. C.

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