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Record No. 1434

In the
Supreme Court of Appeals of Virginia
at Richmond

UNITED DENTISTS, INCORPORATED,
Plaintiff in Error,

v.

COMMONWEALTH OF VIRGINIA,
Defendant in Error.

FROM THE CIRCUIT COURT OF THE CITY 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.

162 Va 347

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1434

UNITED DENTISTS, INCORPORATED,
Plaintiff-in-Error,

vs.

COMMONWEALTH OF VIRGINIA, Defendant-in-Error.

PETITION FOR WRIT OF ERROR AND *SUPERSEDEAS*.

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

Your petitioner, United Dentists, Incorporated, respectfully represents that it is aggrieved by a judgment of the Circuit Court of the City of Norfolk, entered on the 20th day of May, 1933, in a proceeding to revoke the charter of your petitioner instituted by and in the name of the Commonwealth of Virginia, by which said judgment the charter of your petitioner was revoked and annulled. Transcript of the record in said case accompanies this petition and from it will appear the following facts:

On the 10th day of October, 1932, the Commonwealth of Virginia instituted certain proceedings against your petitioner under Section 3831 of the Virginia Code of 1930, which section is in the words and figures following:

“Any corporation which shall wilfully fail to use any of its essential functions for the period of two years, or which shall

wilfully and habitually misuse any essential corporate function, shall thereby forfeit its charter, and proceedings to declare the same forfeited may be had on the motion of the Attorney-General in the name of the Commonwealth in any circuit court of this State having jurisdiction over the county or city in which the principal office in this State of such corporation is located. *An appeal to the Supreme Court of Appeals may be had from the findings of such court at the instance of either party, and the method of applying for and prosecuting the same, in so far as not fixed by law, shall be prescribed by the rules of the Supreme Court of Appeals.*"

In such proceedings the Commonwealth alleged, as grounds for the revocation of the charter of your petitioner, that its president and secretary respectively, who were not licensed dentists, had engaged with the knowledge of your petitioner in the unlawful practice of dentistry in many respects, particularly in diagnosing cases and in directing its employees what work was to be done on a patient, in treating diseases and lesions of the oral cavity, teeth and gums, in taking and attempting to take impressions of the mouth and gums of patients for the purpose of fitting artificial teeth and bridges, in placing artificial teeth and bridges in the mouths of patients, and in using an X-Ray machine upon patients.

That your petitioner had suffered one J. F. King, who was not a licensed dentist, but a lay employee of petitioner, to fit bridges into the mouths of patients, to extract teeth of patients, and do other acts which in law amount to the unlawful practice of dentistry.

And finally and particularly that your petitioner had been repeatedly guilty of making false and untrue statements in advertisements published in a newspaper of the City of Norfolk.

In this proceeding your petitioner pleaded not guilty and the case was tried by a jury which found in favor of the Commonwealth. A motion for a new trial was duly made and overruled and due exception made. The judgment complained of followed in due course.

PETITIONER ENTITLED TO AN APPEAL.

By a reference to Section 3831 of the Code hereinabove quoted it will be seen that provision is made for an appeal in such proceedings as this, and as your petitioner construes said section, that appeal is a matter of right.

It is provided that an appeal "may be had at the instance

of either party" and this plainly implies that either party can appeal from the decision, if it so desires. The word "may" is often used in the sense of "can" as conferring a right or power, and when the statute says a party "may appeal" it plainly means that the party "can appeal" or shall have the power to appeal, if it so desires. *Wiltz Veneer Company vs. Ange* (N. C.), 80 S. E. 886, 88. The subsequent language of the statute adds force to this in providing "the method of applying for and prosecuting the same (appeal), in so far as not fixed by law, shall be prescribed by the rules of the Supreme Court of Appeals." This simply provides for the mechanics of taking an appeal, the right to which had already been conferred by statute and in no way limits the language giving the right to an appeal.

Petitioner, therefore, claims the right to an appeal as of right under this statute.

FIRST ASSIGNMENT OF ERROR.

When this case was called for trial the Commonwealth moved for an exclusion of all the witnesses. Whereupon your petitioner asked that Mrs. Payne, its secretary and treasurer, and Mr. Payne, its president, be allowed to remain in the courtroom. The court ruled as to this that only one of the officers could remain in the courtroom and excluded Mr. Payne, the president of your petitioner. To this action of the court petitioner excepted. This action of the court constitutes your petitioner's first assignment of error.

It is well settled that the rule excluding or separating witnesses during the trial of a case does not apply to parties to the action or proceedings, and that it does not apply to officers of a corporation, which can be present in court only through their presence. If this were not so, manifest injustice would often be done to corporate suitors.

In the present case it was distinctly charged that these officers themselves had separately and jointly violated the law relative to the practice of dentistry and that they had done this as representing the corporation. Each of them was almost on trial on criminal charges. It is absolutely essential that they be present in the courtroom during the production of the evidence relative to those charges in order to protect themselves and your petitioner from such charges and to advise and consult with counsel during the trial of the case.

It is submitted that the court erred in excluding Mr. Payne, the president of the corporation, from the courtroom during the trial of such charges and of this case.

Supreme Court of Appeals of Virginia.

SECOND ASSIGNMENT OF ERROR.

During the trial of this case the Commonwealth produced certain advertisements made by your petitioner, which it alleged contained *false and untrue statements*; such advertisements being as follows:

(a) Advertisement of March 8, 1931, in the *Virginian-Pilot*, in that it charges fraudulent combination by reputable licensed dentists for the purpose of fixing exorbitant prices.

(b) Advertisement of September 11, 1932, in the *Virginian-Pilot*, in that it claims over 700,000 satisfied patients.

(c) Advertisement of March 24, 1931, in that the defendant is falsely holding out E. T. Payne to be a licensed dentist with thirty years experience in prosthetic dentistry.

(d) Advertisement of January 3, 1932, in the *Virginian-Pilot*, in that it claims "The only difference in our work and that of high priced dentists is the cost".

(e) Advertisement of August 7, 1932, in the *Virginian-Pilot*, in that it claims "our bridge work is superior to any in Norfolk" and also that "This huge dental office has served hundreds of patients this week" and "Everybody knows our work is as good as high priced dentists do".

(f) Advertisement of August 24, 1930, in the *Virginian-Pilot*, in that it indirectly charges all reputable dentists in Norfolk with fraudulent overcharges, dishonesty and unlawful price fixing methods, and claims to be the most reliable, and in speaking of sets of teeth says "We make them fit where others fail".

(g) Advertisement of November 23, 1930, in the *Virginian-Pilot*, in that it claims to be "Most reliable" and says "We are far superior and much more thorough than the small one chair dentists".

(h) Advertisement of January 7, 1932, in the *Virginian-Pilot*, in that it claims to be the "safest" and that "our bridge work is the finest in Norfolk".

(i) Advertisement of January 10, 1932, in the *Virginian-Pilot*, in that it claims "Hundreds fitted where others have failed".

(j) Advertisement of May 4, 1931, in the *Ledger-Dispatch*, in that it claims "We save you 1/2. Why pay more?"

(k) Advertisement in the *Ledger-Dispatch* March 19, 1931, in that E. T. Payne and J. F. King are held out as practicing dentists, and it claims that they are leaders in "dental skill", "fine bridge work", "superior crown work", "perfect fitting plates", and "have greatest number satisfied patients".

(l) Advertisement of February 23, 1931, in Ledger-Dispatch, in that it says "Thousands of satisfied patients treated at our office testify to our reliability", and "Patients who used to swear at other dentists' bills—now swear by our high grade dental work. The only difference is the price". "We save you half."

(m) Advertisement of March 15, 1931, in the Virginian-Pilot, in that it says "Leadership because of our superior dental skill" and "We are supreme in Norfolk", and advertises E. T. Payne, the president of the said corporation, as a practitioner of dentistry in that organization and with thirty years experience.

(n) Advertisement of January 1, 1931, in the Virginian-Pilot, in that it says "United Dentists have made it possible for you to have your dental work done at reasonable prices", and "There is a profit of from 700 per cent to 1,000 per cent on all bridge work, fillings, etc., at the prices charged by high priced dentists in Norfolk", and "Only the rich can afford such prices".

(o) Advertisement of October 5, 1930, in the Virginian-Pilot, in that it claims "If you pay more than we charge you—you are throwing your money away".

(p) Advertisement of September 28, 1930, in the Virginian-Pilot, in that it says "The United Dentists is the only dental office in Norfolk that will replace any unsatisfactory work free of charge", and also "Only highly trained dentists allowed to practice in this office".

(q) Advertisement of December 20, 1931, in the Virginian-Pilot, in that it claims "Dental work far superior to any in Norfolk in or near same price range". Also it says "Our superior methods, finer materials, better mechanics, enable us to give you better work", and "The safe place for dental work".

The Commonwealth on the trial of the case introduced no evidence showing that the statements or claims made in any of these advertisement were false, and yet the court instructed the jury on the subject of these advertisements as follows:

"The Court instructs the jury that if you believe from the evidence that the defendant has wilfully and habitually attempted to obtain practice by the publication or circulation of false claims or misleading statements of its art, skill or knowledge, or by false advertisement of its methods of treatment or practice, then it has wilfully and habitually misused its corporate function and you must find for the plaintiff."

“The Court instructs the jury that in considering the advertisements introduced in evidence the jury are to determine from all the testimony before them whether or not such advertisements are wilfully false.”

It will be noted that in the instruction first above quoted, the court told the jury that if the claims or statements made in said advertisement were false, the jury *must find for the plaintiff*, and in the second quoted instruction above, it told the jury that they should determine from all the testimony before them whether or not such advertisements were wilfully false. In other words, the jury without any evidence of falsity or misleading statements in said advertisements were left by the court to surmise and conjecture as to whether said advertisements were false and were given a free rein to find the verdict against your petitioner on such surmise and conjecture on their part.

Not only is this true, but petitioner on the trial of the case moved the court to grant the following instructions on this phase of the matter:

“DEFENDANT’S INSTRUCTION A.

“The Court instructs the jury that the burden is on the Commonwealth to satisfy the jury by evidence that the statements made in the advertisements introduced in evidence were designedly and purposely false; such statements are not presumed to be false and the Commonwealth is required to produce evidence that they are false and also designedly false. And in this connection the jury are further told that if the Commonwealth has shown that the statements in one or more of the advertisements are false, this alone does not constitute a wilful and habitual violation of an essential corporate function on the part of the defendant and is not sufficient to convict.”

“DEFENDANT’S INSTRUCTION B.

“The Court instructs the jury that they have no right to presume or assume that any of the advertisements introduced in evidence are untrue, but the Commonwealth must prove by a preponderance of the evidence that the advertisements or any of them are untrue; and that they were wilfully and habitually published for the purpose of deceiving and defrauding the public.”

"DEFENDANT'S INSTRUCTION C.

"The Court instructs the jury that the burden is on the Commonwealth to satisfy the jury by evidence that the statements made in the advertisements introduced in evidence were purposely false; such statements are not presumed to be false and the Commonwealth must show that they are false."

The court refused to give these instructions, or any of them, and petitioner excepted to such refusal as to each instruction.

The refusal to give these instructions, or any of them, constitutes petitioner's second assignment of error.

Especial attention is called to the fact that in none of the instructions given by the court was there contained any mention of where the burden of proof was as to any of the allegations contained in the complaint, and therefore the case went to the jury *without any instructions as to the burden of proof being upon the Commonwealth*. The refusal of the Court to give the instructions, or any of them, requested by petitioner on the subject accentuates the error of the court in this respect.

There can be no doubt, as will hereinafter be demonstrated, that the burden of proof was on the Commonwealth to prove that the advertisements were false and misleading, and it is equally as well settled that your petitioner was entitled to an instruction from the court to that effect. In Volume I, Randall, Instruction To Juries, p. 397, sec. 203, it is said:

"While in one jurisdiction [Kentucky] it is considered to be the better practice not to refer specifically to the burden of proof, but to simply frame the instructions as to indicate such burden, and to tell the jury to decide as they believe from the evidence the fact to be, *the general rule is that instructions telling the jury upon whom the burden of proof rests are proper and should be given both in civil and in criminal cases, if a request is made therefor.*" (Italics and word in bracket supplied.)

In *Alabama Co. vs. Lee*, 79 Ala. 497, the court declares:

"It is the duty of the court to determine and to instruct the jury, if necessary, on whom rests the burden of proof as to any material issue."

Indeed, it is the ordinary practice in Virginia in all civil

and criminal cases to instruct the jury as to on whom the burden of proof lies, and the refusal of the court in this case to give any of the instructions on that question offered by your petitioner constituted a grave and serious error, especially in view of the fact that in no instruction given by the court was it intimated that the burden of proof was on the Commonwealth.

There was no evidence that there was not a fraudulent combination by reputable licensed dentists for the purpose of fixing exorbitant prices, as stated in advertisement in paragraph (a) above.

There was no evidence that petitioner did not have 700,000 patients, as stated in advertisement in paragraph (b) above. And it may be noted that this 700,000 was a typographical error in the advertisement and was intended to be 70,000.

There was no evidence that there was any difference in petitioner's work and that of high priced dentists except the cost, as stated in advertisement in paragraph (d) above.

There was no evidence that petitioner's bridge work was not superior to any in Norfolk, and that petitioner's dental office had not served hundreds of patients that week, and no evidence that everybody did not know that petitioner's work was as good as high priced dentists did, as stated in advertisement in paragraph (e) above.

There was no evidence that reputable dentists in Norfolk were not guilty of fraudulent overcharges and unlawful price fixing methods, or that petitioner did not make sets of teeth fit where others failed, as stated in advertisement in paragraph (f) above.

There was no evidence that petitioner was not the most reliable dentist and was not far superior than the one chair dentist, as stated in advertisement in paragraph (g), above.

There was no evidence that petitioner was not the safest and its bridge work the finest in Norfolk, as claimed in advertisement in paragraph (h) above.

There was no evidence that hundreds were not fitted where others had failed, as stated in advertisement in paragraph (i) above.

There was no evidence that petitioner did not save its customers one-half, as stated in advertisement in paragraph (j) above.

There was no evidence that petitioner was not the leader in dental skill, in fine bridge work, in superior crown work, in perfect fitting plates, in having the greatest number of satisfied patients, as stated in advertisement in paragraph (k) above.

There was no evidence that thousands of satisfied patients treated by petitioner did not testify to petitioner's reliability and no evidence that patients accustomed to swear at other dentists' bills did not swear by the high grade dental work of petitioner, and no evidence that there was any difference in petitioner's work and the work of high grade dentists except the price, and no evidence that petitioner did not save its customers one-half, as stated in advertisement in paragraph (1) above.

There was no evidence that petitioner did not have leadership because of superior dental work and no evidence that petitioner was not supreme in Norfolk because of dental work, as stated in advertisement in paragraph (m) above.

There was no evidence that petitioner had not made it possible to have dental work done at reasonable prices, and no evidence that there was not a profit of from 700 per cent to 1,000 per cent on all bridge work, fillings, etc., at the prices charged by high priced dentists in Norfolk, and no evidence that any except the rich could pay the prices charged by high priced dentists, as stated in advertisement in paragraph (n) above.

There was no evidence that if people paid more than petitioner charged them, they were not throwing away their money, as stated in advertisement in paragraph (o) above.

There was no evidence that petitioner was not the only dental office in Norfolk that would replace unsatisfactory work free of charge, as stated in advertisement in paragraph (p) above.

There was no evidence that petitioner's dental work was not superior to any in Norfolk at or near the same price, and no evidence that petitioner's methods, materials and mechanics did not enable petitioner to give better work, and no evidence that petitioner's dental office was not a safe place for dental work, as stated in advertisement in paragraph (q) above.

It is clear that the burden of proof was upon the Commonwealth as to the falsity of all the statements contained in these numerous advertisements. The fact that the Commonwealth in order to prove most of the statements false would have to prove a negative does not militate against the rule. Without proof of that negative, the Commonwealth would fail in its case, and to turn loose the jury to surmise and conjecture as to such falsity wrought a gross injustice to your petitioner.

On this subject we cite the following authorities:

"The rule is not universal, which forbids the proof of a negative to be thrown upon a party. It is, indeed, generally true, that the *onus probandi* lies upon that party who has the affirmative of the issue; a rule founded upon the difficulty, in most cases, and the impossibility in some, of proving a negative. But to this general rule, there are well-established exceptions. One of these is, that where the negative involves an affirmative, the burden of proof will rest upon either the one or other party, according to other principles, and without reference to the mere formal character of the negation. Such are the cases of the pleas of infancy, fully administered, beyond the sea, and such like. * * * There is another exception to the general rule. *It is, that where the negative involves a criminal omission in the party, and consequently where the law upon its general principle presumes his innocence, the affirmative of the fact is presumed, and the onus is thrown upon the party alleging the criminal omission.*" (Italics supplied.) *Hinchman vs. Lawson*, 5 Leigh 695, 27 Am. Dec. 652.

"If, regardless of terms, it is borne in mind that when the issue is joined he has the burden of proof who seeks to move the court to act in his favor, the question of whether the grounds of his claim are alleged affirmatively or negatively is really of no consequence. And if the term 'affirmative' is insisted upon as being inseparable from the 'burden of proof', it must be remembered that the affirmative of the issue does not depend upon the form of the pleading, but the rule is concerned with the substance of the issue, and that only. *Therefore, where the proof of negative matter is essential to the maintenance of a cause of action, this may necessitate a negative averment, and the plaintiff has the burden of proving it, because looking at the substance of the issue as a whole, he must be regarded as asserting the affirmative thereof.*" (Italics supplied. *Clifton vs. Weston*, 54 W. Va. 250, 261, 46 S. E. 360.

In Stephen's Digest of the Law of Evidence, Article 93, it is said:

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence or *non-existence* of facts which he asserts or *denies to exist*, must prove that those facts do or *do not exist*. (Italics supplied.)

In *Richmond Ice Co. vs. Crystal Ice Co.*, 103 Va. 465, 473, in speaking to this point the court observes the fact:

“That one of the litigants was required to prove a negative does not affect the question since the existence of that fact was necessary to the relief sought. 1 Greenleaf on Ev., §§78, 81; 1 Taylor on Ev., §§364 to 366. See also *Reusens vs. Lawson*, 91 Va. 226, 253, 21 S. E. 347, and authorities cited.”

In *Colorado Coal Co. vs. United States*, 123 U. S. 307, it is held:

“In a suit by the United States to cancel a patent of public land the burden of producing the proof and establishing the fraud is on the Government, from which it is not relieved although the proposition which it is bound to establish may be of a negative nature.

“When a plaintiff’s right of action is grounded on a negative allegation, which is an essential element in his case, or which involves a charge of criminal neglect of duty or fraud by an official, the burden is on him to prove that allegation, the legal presumption being in favor of the party charged.”

In its opinion the court quotes the following from Mr. Greenleaf:

“He says, 1 Greenleaf on Evidence, section 78: ‘To this general rule, that the burden of proof is on the party holding the affirmative, there are some *exceptions*, in which the proposition, though negative in its terms, must be proved by the party who states it. One class of these exceptions will be found to include those cases in which the plaintiff *grounds his right of action upon a negative allegation*, and where, of course, this negative is an essential element in his case.’ And in section 80: ‘So, where the negative allegation involves a charge of *criminal neglect of duty*, whether official or otherwise; or fraud; or the wrongful violation of actual lawful possession of property; the party making the allegation must prove it; for in these cases the presumption of law, which is always in favor of innocence and quiet possession, is in favor of the party charged.’”

In fact the statements of most of these advertisements are mere expressions of opinion and constitute “Puffing” or “Dealer’s Talk”, such as are noted in *Worrell vs. Kinnear Co.*, 103 Va. 720, where it is held:

“Statements by a manufacturer that his ‘bid for the work is as low as the work can be done for, and that there is no

profit in it at that price', are mere expressions of opinion, 'dealer's talk', and not such, as if proved and are untrue, will invalidate the contract."

Such expressions of opinion would not be grounds for the revocation of a corporate charter.

In view of the peremptory instruction of the court that if the jury believed the advertisements contained false statements and claims, *they must find for the plaintiff*, it is submitted that this assignment of error is well taken and the case must be reversed for a new trial.

THIRD ASSIGNMENT OF ERROR.

Petitioner assigns as its third assignment of error the refusal of the court to set aside the verdict in this case, on the ground that the evidence produced against petitioner at the most showed a violation of the criminal laws of the State, for which due punishment was provided for certain of its executive officers. For such criminal acts those officers were liable under the statute, and it was never contemplated by the Legislature that such acts of such officers should be ground for the revocation of a charter.

PRAYER.

Your petitioner prays that a writ of error and *supersedeas* may be awarded it to the judgment aforesaid, and that said judgment may be reviewed, reversed and annulled.

CERTIFICATE.

Petitioner avers that before this petition for a writ of error is presented to a judge in vacation, or to the court in term, or filed with the clerk of the court, a copy thereof has been mailed to Venable, Miller, Pilcher & Parsons, opposing counsel in the trial court, and that the day of such mailing was the 12th day of August, 1933.

UNITED DENTISTS, INCORPORATED,
By NATH'L T. GREEN, and
DANIEL COLEMAN, Counsel.

NATH'L T. GREEN,
DANIEL COLEMAN,
Attorneys for Petitioner.

We, Daniel Coleman and Nath'l T. Green, counsel practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in our opinion the judgment complained of in the foregoing petition is erroneous and should be reviewed, annulled and reversed.

Given under our hands this 12th day of August, 1933.

DANIEL COLEMAN,
NATH'L T. GREEN.

Writ of error granted and *supersedeas* awarded. Bond \$500.00.

GEORGE L. BROWNING.

8-30-33. Rec'd Aug. 31, 1933.

M. B. WATTS, Clerk.

RECORD

VIRGINIA:

Pleas before the Circuit Court of the City of Norfolk, at the Courthouse thereof, on the 17th day of July, in the year, 1933.

Be It Remembered, that heretofore, to-wit: In the Circuit Court of the City of Norfolk, on the 10th day of October, 1932, came the Commonwealth of Virginia, plaintiff and filed its notice of motion for judgment against United Dentists, Incorporated, Defendant, in the following words:

Virginia:

In the Circuit Court of the City of Norfolk.

Commonwealth of Virginia, Plaintiff,

vs.

United Dentists, Incorporated, Defendant.

NOTICE OF MOTION FOR JUDGMENT.

To: United Dentists, Incorporated,
Main and Granby Streets,
Norfolk, Virginia.

Take Notice: That on the 10th day of October, 1932, at

ten o'clock A. M., or as soon thereafter as counsel may be heard, the Commonwealth of Virginia, by and through its Attorney General, will move the Circuit Court of the City of Norfolk, at the Court Room thereof, to revoke and/or annul, and/or forfeit the charter of the United Dentists, Incorporated, granted by the State Corporation Commission on October 21, 1929, and filed in the office of the Secretary of the

Commonwealth at Richmond, Virginia, on the same page 2 } day, and certified to the Clerk of the Corporation Court of the City of Norfolk, and there received and recorded on the 24th day of October, 1929.

The ground upon which this motion is based is that you, the said United Dentists, Incorporated, have wilfully and habitually misused your essential corporate functions for more than a year, and thereby forfeited all your right to further existence.

This motion is brought by authority of the provisions of Section 3831 of the Code of Virginia and Section 154 of the Constitution of Virginia.

COMMONWEALTH OF VIRGINIA,
By JOHN R. SAUNDERS,
Attorney General.

VENABLE, MILLER, PILCHER & PARSONS,
Of Counsel.

The following is the return made on the foregoing notice of Motion:

Executed 24th day of Sept. 1932 by delivering a copy of the within to E. T. Payne, Pres. of United Dentists, Inc. a Corporation, in the City of Norfolk, wherein he resides and wherein the said Corporation is doing business.

CHAS. E. FRANCIS,
City Sergeant,
City of Norfolk.

.By H. L. GORDON, Deputy.

page 3 } And thereupon, on the same day, to-wit: In the Circuit Court aforesaid, on the 10th day of October, in the year 1932:

Upon the motion of the plaintiff, by its attorneys, Venable, Miller, Pilcher and Parsons, it is ordered that this notice of motion be docketed.

And at another day, to-wit: In the Circuit Court aforesaid, on the 7th day of December, in the year 1932:

This day came again the plaintiff, by its attorneys, Venable, Miller, Pilcher & Parsons, and also came the defendant by its attorney, Daniel Coleman, and thereupon the said plaintiff, with leave of court, filed herein its Amended Notice of Motion; and with like leave of Court, the said defendant filed herein its demurrer to said plaintiff's Amended Notice of Motion and to each count thereof and its Motion to quash, in which said demurrer the said plaintiff joined; and the further hearing of which said demurrer is continued.

The following are the Amended Notice of Motion and the Demurrer and Motion to quash Amended Notice, filed herein by leave of the foregoing order:

To United Dentists, Incorporated:

Take Notice That on The 10th day of October, 1932, at 10 o'clock A. M., or as soon thereafter as counsel may be heard, the Commonwealth of Virginia, by and page 4 } through its attorney duly authorized, will move the Circuit Court of the City of Norfolk, Virginia, at the Court House thereof, to revoke the charter of the United Dentists, Incorporated, granted by the State Corporation Commission on October 21, 1929, filed in the office of the Secretary of the Commonwealth in Richmond, Virginia, on the same day, and certified to the Clerk of the Corporation Court of the City of Norfolk on the 24th day of October, 1929, a copy of which is attached to the original notice of motion in this case. This motion is brought by authority of the provisions of Section 3831 of the Code of Virginia and Section 154 of the Constitution of Virginia.

The ground upon which the motion is based is that the said United Dentists, Incorporated, has wilfully and habitually misused the essential corporate functions of the said corporation for more than a year, in the following particulars:

1. Elmer T. Payne, Elizabeth Dudley Payne, his wife, and L. B. Bowie, applied for and were granted a charter under the name of United Dentists, Incorporated, by the State Corporation Commission of Virginia. This charter was granted by the Commission upon the theory that the corporation would employ only competent licensed dentists to engage in the practice of dentistry, and that such licensed dentists would be the only persons in the office of the corporation to practice dentistry. The said Elmer T. Payne and Elizabeth Dudley Payne, President and Secretary and Treasurer, respectively,

of the corporation, in the handling of the business of the company have themselves engaged in the practice of dentistry. This was their intention at the time the charter was applied for. Such action upon their part made their application for a charter a fraud upon the State Corporation Commission and upon the State of Virginia. Their conduct in so practicing dentistry under the guise and shield of the corporation is a fraud, for which fraud the charter of the said corporation should be revoked.

2. The declared purposes for which the defendant corporation was granted a charter was TO EMPLOY COMPETENT LICENSED DENTISTS TO ENGAGE IN THE BUSINESS OF DENTISTRY, as set forth in clause (c) of its charter, and no authority is given by the charter authorizing the corporation to employ or permit any persons who did not occupy the position of competent licensed dentists to practice dentistry under its name.

3. The defendant has wilfully and habitually misused its essential corporate functions, and has wilfully, deliberately and unlawfully, by and through the acts of its executive officers, violated, misused and abused the authority and privileges granted by its charter in the following particulars:

(a) Its President, Elmer T. Payne, and its Secretary and Treasurer, Elizabeth Dudley Payne, neither of whom are duly licensed dentists, have continually practiced dentistry on a great number of patients that have come to the offices of the corporation for dental treatment; this unlawful practice of dentistry by said executive officers has continued from day to day and from time to time for a long period of time, to-wit: from the date of the incorporation of the company.

(b) That when patients come to the dental rooms of the corporation for treatment, they are regularly met and received by one or the other of the said executive officers, who habitually examine the teeth and mouth of the prospective patient, diagnose his prospective case, and advise the patient what work should be done in his mouth and make all arrangements as to charges which will be made for the work. Before the patient is sent into the operating room, where employed licensed dentists are at work, a card showing the mouth is so marked that it will indicate and direct the licensed dentist what work is to be done in the mouth of the patient. The patient is then taken into the room where the licensed dentist performs his work. The card with the afore-said markings upon it is given to the licensed dentist, which directs him what work is to be done in the patient's mouth,

and the licensed dentist is directed by said executive officers, or one of them, to do the work in the patient's mouth indicated on the card.

(c) The President of the company, Elmer T. Payne, requires the employees in the office (and it is the custom of other employees) to always address the said President as "Dr. Payne" in the presence of patients.

page 7 } (d) That the said executive officers treat and profess to treat diseases and lesions of the oral cavity, teeth and gums.

(e) That the said executive officers have been guilty on numerous occasions of taking and attempting to take impressions of the mouth and gums for the purpose of fitting artificial teeth and bridges.

(f) That the said executive officers on numerous occasions place newly made artificial teeth, plates and bridges in the mouths of patients in order to have adjustments made and changes made so as to produce comfort and ease to the patient.

(g) That the said executive officers from time to time used an X-Ray machine upon patients for dental treatment and dental diagnosis purposes.

(h) That the said executive officers have on numerous occasions directed J. F. King, who is not a licensed dentist, but a dental mechanic employed in the office, to fit bridges into the mouths of patients, to extract teeth of patients, and do other acts which in law amount to the unlawful practice of dentistry.

(i) All of which said above enumerated acts, and any of them, are deemed to be the act of practicing dentistry by Section 1640 of an Act of the General Assembly of Virginia, approved March 19, 1930, and all of which said acts page 8 } are made unlawful by Section 1641 of an Act of the General Assembly of Virginia, approved March 19, 1930.

(j) That the said corporation, through its executive officers, has repeatedly been guilty of making false and untrue statements in advertisements published in the Virginia-Pilot, a newspaper published in the City of Norfolk, Virginia, copies of many of which advertisements are attached hereto, which said advertisements are calculated to deceive the public.

COMMONWEALTH OF VIRGINIA,
By JOHN R. SAUNDERS,

Attorney General.

VENABLE, MILLER, PILCHER & PARSONS, p. q.

DEMURRER AND MOTION TO QUASH AMENDED
NOTICE.

And now comes the defendant, United Dentists, Incorporated, and says that the amended notice of motion herein is insufficient in law and also moves to quash the same, and as grounds for such demurrer and such motion to quash sets forth the following:

(1) That there are no facts alleged or stated showing that the said defendant has misused its essential corporate functions, or any of said functions.

(2) That Ground (1), alleged and set out in said amended notice of motion, furnishes no basis for proceedings, under Section 3831 of the Code, to forfeit the charter of page 9 } said respondent.

(3) That none of the facts alleged and set forth in Ground (3) and subdivisions thereof constitute a misuse of the essential corporate functions of respondent, but on the other hand are illegal acts of individuals made unlawful by law and for which punishment of individual violators is duly provided.

(4) That the allegation of subdivision (j), of Ground (3) of said amended notice is too vague, general and indefinite, and not sufficient in law to require an answer from this respondent.

(5) Respondent says, without waiving the above grounds of demurrer, that Ground (3) of said amended notice, and each and every subdivision thereof and all subdivisions thereof, are too general, vague and indefinite, and are not sufficient to require an answer thereto on the part of this respondent is entitled to have definite facts set forth to sustain the general allegations therein made so that this respondent may have the notice thereof and the opportunity to properly answer the same and produce testimony relative thereto. Allegations of a course of conduct, without any specific facts as to time, place and names, are too vague, indefinite and shadowy to support the motion in this cause or to require an answer from this respondent.

UNITED DENTISTS, INCORPORATED,
By DANIEL COLEMAN, and
NATH. T. GREEN, Atty.

And at another day, to-wit: In the Circuit Court of the City of Norfolk, on the 2nd day of February, in page 10 } the year 1933:

This day came again the plaintiff, by its attorneys, Venable, Miller, Pilcher & Parsons, and with leave of Court filed herein The Bill of the Particulars of its Claim; and the further hearing is continued.

The following is the Bill of Particular filed by leave of the foregoing order:

BILL OF PARTICULARS.

The plaintiff for a bill of particulars says:

1. That it relies upon each and every allegation in the notice of motion and amended notice of motion contained.

2. That the allegations of the notice of motion and amended notice of motion are complete and need no explanation, and fully conform to the requirements of Section 3831 of the Code of Virginia.

3. Wherever the notice of motion and amended notice of motion contain the statements with reference to the acts and conduct of Elmer T. Payne, President of the United Dentists, Incorporated, and of Elizabeth W. Dudley Payne, his wife, Secretary and Treasurer of the United Dentists, Incorporated, and J. F. King, employee of said corporation such acts and conduct on the part of any of them were in their capacity as agents and officers of the corporation, and were done under and pursuant to the charter of and on behalf of the corporation, and as such were in direct, wilful and habitual misuse of the essential corporate functions of the said corporation; all of which said acts and conduct were done with the knowledge, connivance and approval of the corporation, its officers and agents.

4. From the securing of the charter of the defendant corporation up to the time of the filing of the notice of motion herein, and from time to time during the aforesaid period, R. N. Mitchell, O. G. Barnett and J. Franklin Payne and others known to the defendant were licensed dentists, duly licensed under the laws of Virginia, and were employed by the United Dentists, Incorporated; that during the said period from the securing of the charter to the filing of the notice of motion herein said E. T. Payne, Elizabeth W. Dudley Payne and J. F. King, none of whom were licensed dentists of permitted under the laws of Virginia to practice dentistry, willfully and habitually, as officers and employees of the corporation, with the knowledge and at the direction of the corporation, misused

the essential corporate functions of the corporation and practiced dentistry, contrary to the provisions of Section 1640, Code of Virginia, as amended, by making diagnoses and professing to make diagnoses, by treating, professing to treat and actually treating patients for diseases and lesions of the oral cavity, teeth, gums and maxillary bones; and extracted teeth, prepared and filled cavities in human teeth; and corrected malpositions of teeth and jaws, and supplied artificial teeth as substitutes for natural teeth, and administered anaesthetics, general and local; the names of the individual patients and the dates of the diagnoses, prescriptions and treatment being unknown to the said plaintiff but known to the defendant; and the said R. N. Mitchell, O. G. Barnett, J. Franklin Payne and other licensed dentists during the period of their employment with the corporation were required

page 12 } to accept the said diagnoses of the said E. T. Payne, Elizabeth W. Dudley Payne and J. F. King, or any of them, and render the treatment prescribed by the said E. T. Payne, Elizabeth W. Dudley Payne, and J. F. King, or any of them.

5. The habitual and wilful misuse of the essential functions of the corporation have been continuous from the time of the securing of its charter, and up to the time of the filing of the notice of motion herein.

6. The plaintiff is advised and therefore avers the continuous, wilful and habitual misuse of the essential functions of the corporation as alleged in the notice of motion, the definite dates of which the plaintiff is unable to specify except as the witnesses may give or approximate. The actual dates are in the possession of the defendant.

The plaintiff, in further explanation of sub-section (j) of paragraph 3 of the amended notice of motion, says that the defendant advertised or permitted to be advertised on numerous occasions in the newspapers of the City of Norfolk, that E. T. Payne, President of the said corporation, and J. F. King were actively engaged in the practice of dentistry, as defined in Section 1640 of the Code of Virginia as amended, and in violation of the provisions of said Section 1640 and of Section 1641 of the Code of Virginia, and that the false and untrue statements and advertisements of the defendant therein mentioned are, among numerous others, appearing from time to time in the newspapers of the city of Norfolk as follows:

(a) Advertisement of March 8, 1931, in the Virginia-Pilot, in that it charges fraudulent combination by reputable licensed dentists for the purpose of fixing exorbitant prices.

(b) Advertisement of September 11, 1932, in the *Virginian-Pilot*, in that it claims over 700,000 satisfied patients.

(c) Advertisement of March 24, 1931, in that the defendant is falsely holding out E. T. Payne to be a licensed dentist with thirty years experience in prosthetic dentistry.

(d) Advertisement of January 3, 1932, in the *Virginian-Pilot*, in that it claims "The only difference in our work and that of high priced *dentists* is the cost".

(e) Advertisement of August 7, 1932, in the *Virginian-Pilot*, in that it claims "our bridge work is superior to any in Norfolk" and also that "This huge dental office has served hundreds of patients this week" and "Everybody knows our work is as good as high priced dentists do".

(f) Advertisement of August 24, 1930, in the *Virginian-Pilot*, in that it indirectly charges all reputable dentists in Norfolk with fraudulent overcharges, dishonesty and unlawful price fixing methods, and claims to be the most reliable, and in speaking of sets of teeth says "We make them fit where others fail".

(g) Advertisement of November 23, 1930, in the *Virginian-Pilot*, in that it claims to be "Most reliable" and says "We are far superior and much more thorough than the small one chair dentist".

(h) Advertisement of January 7, 1932, in the page 14 } *Virginian-Pilot*, in that it claims to be the "safest" and that "our bridge work is the finest in Norfolk".

(i) Advertisement of January 10, 1932, in the *Virginian-Pilot*, in that it claims "Hundreds fitted where others have failed".

(j) Advertisement of May 4, 1931, in the *Ledger-Dispatch*, in that it claims "We save you 1/2. Why pay more"?

(k) Advertisement in the *Ledger-Dispatch* March 19, 1931, in that E. T. Payne and J. F. King are held out as practicing dentists, and it claims that they are leaders in "dental skill", "fine bridge work", "superior crown work", "perfect fitting plates", and "have greatest number satisfied patients".

(l) Advertisement of February 23, 1931, in *Ledger-Dispatch*, in that it says "Thousands of satisfied patients treated at our office testify to our reliability" and "Patients who used to swear at other dentists' bills-now swear by our high grade dental work. The only difference is the price". "We save you half."

(m) Advertisement of March 15, 1931, in the *Virginian-Pilot*, in that it says "Leadership because of our superior dental skill" and "We are supreme in Norfolk" and advertises E. T. Payne, the president of the said corporation, as a

practitioner of dentistry in that organization and with thirty years experience.

(n) Advertisement of January 1, 1931, in the *Virginian-Pilot*, in that it says "United Dentists have made it possible for you to have your dental work done at reasonable prices" and "There is a profit of from 700 per cent to 1,000 per cent on all bridge work, fillings, etc., at the prices charged page 15 } by high-priced dentists in Norfolk", and "Only the rich can afford such prices".

(o) Advertisement of October 5, 1930, in the *Virginian-Pilot*, in that it claims "If you pay more than we charge you--you are throwing your money away".

(p) Advertisement of September 28, 1930, in the *Virginian-Pilot*, in that it says "The United Dentists is the only dental office in Norfolk that will replace any unsatisfactory work free of charge", and also "Only highly trained dentists allowed to practice in this office".

(q) Advertisement of December 20, 1931, in the *Virginian-Pilot*, in that it claims "Dental work far superior to any in Norfolk in or near same price range". Also it says "Our superior methods, finer materials, better mechanics, enable us to give you better work" and "The safe place for dental work".

8. The plaintiff says that the notice of motion and the amended notice of motion sufficiently comply with the law and apprise the defendant of what it is to meet and give it proper opportunity to defend the same.

COMMONWEALTH OF VIRGINIA,
JOHN R. SANDERS, Atty General

p. q.

Of Counsel

VENABLE, MILLER, PILCHER & PARSON.

page 16 } And at another day, to-wit: In the Circuit Court
aforesaid, on the 15th day of February, in the year
1933:

This day came again as well the plaintiff by its attorneys, Venable, Miller, Pilcher and Parsons, as the defendant by its attorneys, Daniel Coleman and Nathaniel T. Green, and thereupon the said defendant, by its attorneys, and with leave of Court filed herein its additional demurrer to the said plaintiff's notice of motion, in which said demurrer, the said plaintiff joined; and the said demurrer and the demurrer here-

tofore filed herein having been fully heard and maturely considered by the Court, is overruled; and the motion to quash the plaintiff's notice of motion heretofore filed herein been fully heard and maturely considered by the Court is overruled to which action of the Court in overruling said motion to quash, the said defendant by its attorneys duly excepted; and thereupon the said defendant filed herein its plea of the general issue to which the plaintiff replied generally and issue is joined; and thereupon came a jury, to-wit: A. L. Foster, P. R. Smith, K. C. Edwards, H. D. Thompson, J. C. Whichard, P. C. Hastings and W. V. Blassingham, who were sworn to well and truly try the issue joined and having heard a part of the evidence at five o'clock P. M., the hour of adjournment having been reached, were adjourned until tomorrow morning Thursday, February 16th, 1933, at ten o'clock A. M., for the further consideration of this case.

page 17 } The following is the Demurrer and Plea of Not Guilty, filed herein by leave of the foregoing order:

DEMURRER TO NOTICE OF MOTION AND AMENDED NOTICE OF MOTION.

The said United Dentists, Incorporated, Defendant, by its Attorneys come and say that the said Notice and amended Notice is not sufficient in law.

First: That the said notice and amended notice filed herein are vague and indefinite, and fails to set forth with sufficient certainty acts committed by the said defendant so that it can prepare its defense, and be appraised of the charges necessary to make its defences, in violation of Article one Section 11 of the Constitution of Virginia; and of the 14th *amendment* of the Constitution of the United States in that it deprives the defendant of its property and rights without the due process of law.

Second: That Section 3831 of the Code of Virginia, *and* in violation of Article one (1) Section ten (10) of the Constitution of the United States in that impairs the obligation of the charter of said defendant, granted by the said Commonwealth of Virginia.

Third: That Section 3831 of the Code of Virginia *and* unconstitutional and violates Article one (1) (Bill of Rights) Section (11) of the Constitution of Virginia, and Fourteenth Amendment of the Constitution of the United States because it fails to define acts with reasonable certainty which are

wilfully and habitually misuse of any essential corporate function.

page 18 { UNITED DENTISTS, INCORPORATED,
DANIEL COLEMAN,
NATH'L T. GREEN, p. d.

PLEA OF NOT GUILTY.

The said United Dentists, Incorporated, by its attorneys come and say that it has not been guilty as charged in the Notice and amended Notice of Motion of any wilful and habitual misuse of any essential corporate function.

And of this the said defendant puts itself upon the Country.

UNITED DENTISTS, INCORPORATED,
By DANIEL COLEMAN,
NATH'L T. GREEN, p. d.

And at another day to-wit: In the Circuit Court aforesaid, on the 16th day of February, in the year 1933:

This day came again as well the plaintiff, by its attorneys, Venable, Miller, Pilcher and Parsons, as the defendant, by its attorneys, Daniel Coleman and Nathaniel T. Green and pursuant to adjournment again came the Jury, to-wit: A. L. Foster, P. R. Smith, K. C. Edward, H. D. Thompson, J. C. Whichard, P. C. Hastings and W. V. Blassingham, who were sworn on yesterday, and having heard a further part of the evidence at five o'clock P. M., the hour of adjournment having been reached, were adjourned until tomorrow morning, Friday, February 17th, 1933, at ten o'clock A. M. for the further consideration of this case.

page 19 { And at another day, to-wit: In the Circuit Court
aforesaid, on the 17th day of February, in the year
1933:

This day came again as well the plaintiff, by its attorneys, Venable, Miller, Pilcher & Parsons, as the defendant, by its attorneys, Daniel Coleman and Nathaniel T. Green, and pursuant to adjournment again came the jury, to-wit: A. L. Foster, P. R. Smith, K. C. Edwards, H. D. Thompson, J. C. Whichard, P. C. Hastings and W. V. Blassingham, who were sworn on Wednesday, and having fully heard the evidence and argument of counsel returned their verdict in the following

words, to-wit: "We, the jury, find for the Plaintiff." And thereupon the said defendant, by its attorneys, moved the Court to set aside the verdict of the jury and grant it a new trial on the grounds that the same is contrary to the law and the evidence, and on the further grounds of the misdirection of the jury by the Court; and the further hearing of which motion is continued.

And at another day, to-wit: In the Circuit Court of the City of Norfolk, on the 20th day of May, in the year 1933:

This day came again as well the plaintiff, by its attorneys, Venable, Miller, Pilcher & Parsons, as the defendant, by its attorney, Daniel Coleman, and the motion for a new trial heretofore made herein having been fully heard and maturely considered by the Court is overruled. Whereupon it is considered by the Court that the charter of the United
page 20 } Dentists, Incorporated, granted by the State Corporation Commission on October 21, 1929, filed in the office of the Secretary of the Commonwealth in Richmond, Virginia, on the same day, and certified to the Clerk of the Corporation Court of the City of Norfolk on the 24th day of October, 1929, be revoked, and that said plaintiff recover of said defendant its costs about its suit in this its behalf expended, to all of which said defendant, by its attorney, duly excepted.

And at another day, to-wit: In the Circuit Court aforesaid, on the 23rd day of May, in the year 1933:

This day came again as well the plaintiff, by its attorneys, Venable, Miller, Pilcher & Parsons, as the defendant, by its attorney, Daniel Coleman, and thereupon said defendant having signified its intention of applying to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment heretofore entered herein on the 20th day of May, in the year 1933, it is ordered that execution upon said judgment be suspended for the period of sixty (60) days from the end of this term of the Court, upon the said defendant, or someone for it, entering into and acknowledging a proper suspending bond before the Clerk of this Court in the penalty of Two Hundred Fifty (\$250.00) Dollars, with surety to be approved by said Clerk, and with condition as the law directs.

page 21 } And now, at this day to-wit: In the Circuit Court aforesaid, on the 17th day of July, in the year 1933, the day and year first hereinabove written:

This day came the defendant and tendered its Certificates of Exceptions Nos. 1, 2 and 3, and on its motion the same were signed, sealed and made a part of the record in this case.

The following are the Certificate of Exceptions Nos. 1, 2 and 3, filed by leave of the foregoing order:

page 22 } CERTIFICATE NO. 1.

This is to certify that the following is a complete and true report of all the testimony and evidence and certain other incidents of the trial of the Commonwealth of Virginia, Plaintiff, vs. United Dentists, Incorporated, Defendant, in the Circuit Court of the City of Norfolk, Virginia, before Hon. Allan R. Hanckel, Judge of said court, and a jury, together with certain motions and objections on the part of the respective parties, the actions of the court in respect thereto, and certain exceptions of the respective parties to the actions of said court, as hereinafter shown.

page 23 } This page put in error.

Teste: CECIL M. ROBERTSON, Clerk.

page 24 } In the Circuit Court of the City of Norfolk, Virginia.

Commonwealth of Virginia, Plaintiff,

vs.

United Dentists, Incorporated, Defendants.

EVIDENCE.

Before Judge A. R. Hanckel and Jury, Norfolk, Virginia, Feb. 15, 1933.

Present: Messrs. Venable, Miller, Pilcher & Parsons (Mr. Henry Venable and Mr. William Venable) Attorneys for the Plaintiff.

Messrs. Daniel Coleman and Nathaniel T. Green, Attorneys for the Defendant.

C. L. Hendry,
Shorthand Reporter,
Norfolk, Va.

page 25 } There was a motion made by Mr. Pilcher that this case should be heard by the Court and not tried by a jury. After some argument by Counsel the Court overruled the motion and counsel for the Commonwealth noted an exception.

The Court: You plead the general issue.

Mr. Coleman: Yes, sir.

Mr. Green: General issue, and plea of not guilty.

Note: The jury was examined on their *voire dire*.

Note: A motion was made that all witness be excluded from the Courtroom.

Mr. Coleman: Both Mr. and Mrs. Payne are officers of the company, and they should be allowed to remain.

The Court: Let one of them remain. Let the President remain.

Mr. Coleman: Mrs. Payne is Secretary and Treasurer and Mr. Payne is president.

The Court: You can let one of them remain in.

Mr. Green: We except to the ruling of the Court.

page 26 } Note: Mrs. Payne was allowed to remain in the court room.

After the opening statements by Mr. Venable on behalf of the Commonwealth and by Mr. Coleman on behalf of the defendant, the Commonwealth to sustain the issue on its part introduced the following evidence:

Mr. Venable: It may be that we can shorten this case, and save some time about a matter which I presume there is no dispute about: that these three persons are not licensed dentists.

Mr. Green: We will admit that Mr. Payne and Mrs. Payne and Mr. King are not licensed dentists.

Mr. Venable: That is all right as to that.

Mr. Green: We admit that John F. King, Elmer T. Payne and Elizabeth Dudley Payne are not licensed dentists in the State of Virginia, and never have been.

Mr. Venable: I have a certified copy of the charter of the company. I can get the book from the Clerk's Office if necessary.

Mr. Green: That is all right.

Mr. Venable: I wish to offer in evidence the charter of the United Dentists, Incorporated, which was granted by the Corporation Commission on the 21st day of October, 1929. Now, as to the officers of this corporation, do we have any dispute about that? This shows the directors are Elmer T. Payne, Elizabeth Dudley Payne and L. B. Bowie.

Mr. Green: That is all right.

Mr. Venable: That Elmer T. Payne is president of the corporation, Elizabeth Dudley Payne is secretary and treasurer of the corporation and that J. F. King is employee 27 } played by the corporation.

Mr. Coleman: We don't admit anything as to Mr. King.

Mr. Venable: We know you do not admit that Mr. King is employed in the office.

Note: The charter of incorporation of the United Dentists, Incorporated, is filed in evidence as Exhibit "A".

Mr. Venable: I would like to call Mrs. Payne.

MRS. ELIZABETH DUDLEY PAYNE,
being duly sworn, testified as follows:

Examined by Mr. Venable:

Q. Mrs. Payne, how long has Mr. John F. King been employed in the office of the United Dentsits Incorporated?

A. He has never been employed in the office. He may have been called in the office temporarily, but he was never employed in the office.

Q. How long has he worked for the United Dentists, Incorporated?

A. He has been working for the United Dentists, Incorporated I don't remember the date, but the fall of 1928 until now, with the exception of about 8 months he was working with the Virginia Dental Laboratory.

By Mr. Green:

Q. What is his position?

A. Technician.

Q. Does he work in the office at all?

A. No, sir.

page 28 } DR. J. FRANKLIN PAYNE,
being duly sworn, on behalf of the Commonwealth,
testified as follows:

Examined by Mr. Venable:

Q. Please state your name, age and residence?

A. My name is J. Franklin Payne; my residence now is Norfolk; 55 years old.

Q. What is your profession?

A. Dentist.

Q. How long have you been practicing as a dentist in Norfolk?

A. A little over 12 months.

Q. Where were you before that?

A. Roanoke, Virginia.

Q. Have you, during the last twelve months, or not, been employed by the United Dentists, Incorporated?

A. Not in the last twelve months.

Q. When were you there?

A. I was there about the middle of November until the last week in December, 1931.

Q. How did you meet King in that office?

A. In the office?

Q. Yes?

A. Dr. Payne took me back to the laboratory and introduced me to Dr. King.

Q. How did you meet Dr. Payne, how was that introduction brought about?

A. I met Dr. Payne about 4, 5 or 6 years ago.
page 29 } He called on me in my office at Roanoke, and introduced himself as Dr. Payne.

Q. He did what?

A. Called on me in my office in Roanoke and introduced himself as Dr. Payne.

Mr. Green: We except to that.

Mr. Venable: How he was introduced to Dr. Payne.

Mr. Green: That is 5, 6 or 7 years ago, before this company was chartered. That has nothing to do with it. The statute provides if they call themselves doctors and hold themselves out as doctors.

The Court: It is nothing in the world but preliminary.

Mr. Green: It is done for the purpose of prejudicing the jury.

The Court: I overrule the objection.

Mr. Green: I note an exception, and ask for a mistrial.

The Court: I overrule your motion.

Mr. Green: I note an exception.

page 30 } By Mr. Venable:

Q. When you came to Norfolk where did you next meet this gentleman?

A. I met him in the office of the United Dentists.

The Court: Who are you talking about?

By Mr. Venable: Dr. Payne.

By Mr. Venable:

Q. Did you make any arrangement as to your employment there?

A. Yes, sir.

Q. How long did you stay there?

A. I think that I stayed there 7 weeks.

Q. Did you know Mrs. Payne?

A. Yes, sir.

Q. Was she and Mr. Payne or "Doctor" as you call him there most of the time that you were there?

A. They were there practically all of the time. If one wasn't the other was there.

Q. Did you ever see Dr. Payne do any dental work while you were there, and, if so, describe it to the jury?

A. Well, (pause) whenever I had a patient Dr. Payne or Mrs. Payne would stand over me and direct me as to what should be done. Stand on the left hand side and when I thought the tooth should be pulled they said that it should be filled.

Q. Were you working there as an independent dentist, or according to their orders?

page 31 } A. I had to work according to their order.

Mr. Green: I object to that. He can't say that his duty was to take orders from anybody else.

The Court: If he did it.

By Mr. Venable:

Q. What did you have to do there?

Mr. Green: Ask what he did do.

By Mr. Venable:

Q. All right, what did you do. Give any instance in which Dr. Payne did bridge work in connection with you?

Mr. Green: Objected to as leading.

The Court: It is leading.

By Mr. Venable:

Q. What, if any, bridge work did you ever see Dr. Payne do?

Mr. Green: Objected to as leading.

The Court: The objection is overruled.

Mr. Green: I save the point.

A. *Sahll* I answer?

By Mr. Venable:

Q. Yes.

page 32 } A. Just a specific instance, a bridge was given to me to place in a man's mouth. I could not get it into position. I ground the tooth off and cut it all that I thought it ought to be ground, and he snatched the instrument out of my hand and ground the tooth himself.

Q. What work have you seen King do there?

A. I happened to be passing back through the room, the operating room one day and I saw Dr. King extracting a tooth for a negro, and set the bridge in the mouth. I could not tell you who the party was. But I knew who I was working for, and everybody else knew who I was working for.

Q. Now, did you have any disagreement with these people, or did any bad feeling exist between you all?

A. Well, there was, I don't know as any bad feeling. My position there was that kind, and it looked like I was there more as a figure-head than anything else. They did not seem to pay any attention to my opinion as to what should be done at all. If I diagnosed a case to be done in a certain way Dr. Payne standing there would say "You ought to have a bridge here, and you ought to have a plate for this tooth. This tooth should be ground". It got so I was afraid to diagnose a case at all. That was all there was to it.

page 33 } Q. What was the custom about diagnosing and—

A. Well—

Mr. Green: He can testify as to the custom by Dr. Payne and Mrs. Payne.

The Court: I understand it had to be done habitually. It must be the customary procedure.

A. I can only say what was customary with me. I know about myself. I don't know about the other operations. I know with me either Mrs. Payne, or Dr. Payne stood right on one side of the chair, and dictated to me how I should diag-

nose a case. If I said certain things should be done, they would indicate something else should be done.

Q. Then, when the card was made up who marked the card up?

A. The card was marked up by whoever happened to be there. Dr. Payne or Mrs. Payne, and might be by one of the girls, and take off what was on the card, what was supposed to be done in the mouth.

Q. When you got the card what were the orders with reference to carrying out the work marked on the card?

A. The instructions were to repair the teeth as indicated on the chart.

Q. Was that the usual and ordinary procedure, or was that just in one instance?

page 34 { Mr. Green: Objected to as leading.

The Court: The objection is overruled.

Mr. Venable: I will say habitually.

Mr. Green: I object to that.

The Court: The objection is overruled.

A. That was the usual custom when they turned over a patient to me, it was always done.

CROSS EXAMINATION.

By Mr. Coleman:

Q. Have you talked to anybody about this case?

A. Not anyone except Mr. Venable.

Q. Have you been in conference with any witnesses who are going to testify here today?

A. I have not talked with anyone but Mr. Venable.

Q. That does not answer my question. Have you been at a conference, and met any of the other witnesses here against the United Dentists, Incorporated, lately?

A. Well, I was at Mr. Venable's office last night. There were several witnesses there.

Q. Who were there?

A. Well, Dr. Mitchell was there, and Dr. Wood.

Q. Who else?

A. Now, they are the only ones I can recall there as witnesses. There were a number of dentists there.

page 35 { Q. Was Dr. Simmons there?

A. Yes, Dr. Simmons was there.

Q. Was Dr. Levine there?

A. Not that I know of. I don't know Dr. Levine. He might have been there.

Q. All of the dentists involved in this case as witnesses were requested to be there last night, by letter, were they not?

A. I had a letter from Mr. Venable asking me to be there.

Q. That letter enumerated the names of all witnesses that were to be there for conference?

A. I don't know whether it did or not. It enumerated the name of several witnesses.

Q. Have you got the letter with you?

A. I think I have. Yes, I have it.

Q. You said you worked for the United Dentist seven weeks?

A. I think seven weeks.

Q. What was your salary when you first went there?

A. Well, they were going to pay me a \$100.

Mr. Venable: Has that got anything to do with it?

The Court: He can answer.

page 36 } By Mr. Coleman:

Q. How much was your salary?

A. When I went there to work, I went for \$100 a week.

Q. You stated that you only stayed 7 weeks?

A. Yes, sir.

Q. How long have you worked for advertising dentists?

A. I think they are the only ones I ever worked for.

Q. Did not you conduct an advertising dentist place in Roanoke?

A. I have advertised for 6 or 7 years, yes.

Q. In the City of Norfolk, haven't you?

A. Yes, sir.

Q. You are a client of Mr. Venable's firm, are you not?

A. Yes, sir.

Q. What was Mr. King's work there?

A. King?

Q. Yes?

A. Technician.

Q. What is a technician?

A. A man supposed to do the actual mechanical work.

Q. Most dentists have their work done by a technician, the mechanical part, like making a bridge, or making a set of teeth?

A. Yes, sir, most of it.

Q. Can you give me the name of that patient that you worked on that you said Payne grabbed the instrument away from you?

A. No, I cannot give the name.

page 37 } Q. What kind of looking person was it?

A. I did not know the man.

Q. A man or woman?

A. A man, who was a sailor, I think.

Q. What kind of looking man was he, cannot you describe him?

A. No, I cannot.

Q. What time of day was it that this was done?

A. I am trying to think. I believe it was at night, after supper, I think it was.

Q. After supper—an emergency case?

A. Not necessarily.

Q. Don't you know the custom is, and your practice was, to diagnose the patient's mouth and call out the different teeth that were defective, and that there was trouble with them, and that was put down on the cards by the nurse, or assistant—don't you know that was the way the work was done?

A. Mr. Coleman, I will say that when anyone came in the office the attendants were there, Dr. Payne and Mrs. Payne were there, and they directed what was to be done.

Q. I am talking about the diagnosis?

A. I am talking about the diagnosis too.

Q. You made the diagnosis?

page 38 } A. No.

Q. Then, you were there just a dummy?

A. That is it, a figure-head.

Q. Were you willing to make yourself a party to a transaction of that kind for a \$100 a week?

A. I wasn't willing, but I had to have something to do.

Q. Do you think any man is justified in doing a thing like that.

Mr. Venable: I object to that.

The Court: The objection is sustained.

By Mr. Coleman:

Q. How long ago has that been?

A. Been about a little over 12 months.

Q. How many different places have you had an office for the practice of dentistry in the State of Virginia?

Mr. Venable: I object to that.

Mr. Coleman: He testified he had to do this to get money. I want to show this man had a number of places.

The Court: Suppose he had.

A. I practiced in Roanoke for about 20 years.

Q. How long?

page 39 } A. About 20 years, and practiced in Covington
for four months.

Q. Did you advertise at both places?

A. Yes, when I was practicing in Roanoke I had a branch office at Bland Courthouse and Bassett, Virginia.

RE-DIRECT EXAMINATION.

By Mr. Venable:

Q. I want to ask you how the preparation is made in the office, or what preparation is made for a bridge to be put in the mouth, a plate, or bridge?

A. Well, a bridge preparation is made—the tooth is just separated from the other teeth by running an emery disk between them and making separation enough to measure, and then when we get them far enough separated we take the measurement of the teeth with a piece of wire, and the impression of the mouth is made, and the bridge is made up from that impression.

Q. Now, when that is brought back, and ready to be put in, will you state whether or not the bridge is made to fit the teeth which is prepared before-hand, or whether the teeth have to be ground before the bridge can be made to fit?

A. The teeth have to be ground to fit the bridge after it is made.

page 40 } Q. Do you recall seeing King at any time doing
that work?

A. I recall one instance, in passing back and forth there in the room, that King was extracting a tooth for a colored party.

Q. You have been practicing dentistry for a long time, is it proper, can you tell me whether or not, the ethical method is to treat a patient, and grind the teeth and prepare the mouth before you take the impression—do you do it in that way, or not?

A. The proper way is to prepare the teeth, by grinding them, and making the proper preparation, and then make the bridge to fit the preparation.

Q. What is the difference between that method, when they do that—what do the authorities think of that?

A. There is a difference. The proper way is to prepare the tooth, that is the right way, prepare the tooth, and then make the bridge to fit. The work should be practically all done before the bridge is made, the tooth ground, so that the bridge will sink into position.

Q. Is that the recognized way to fit a bridge?

A. That is the way recognized by authorities.

Mr. Green: I move to strike out the last question and answer.

page 41 } The Court: You are not charging any improper work.

Mr. Venable: I say, under the direction of the corporation who knew it was being done, and we wish to go a step further and show it was being regularly done.

The Court: All right. Go ahead.

Mr. Green: I save the point.

DR. B. M. WILLIAMS,
being duly sworn, testified as follows:

Examined by Mr. Venable:

Q. Please state your name, age and residence?

A. B. M. Williams; I live in Danville, Virginia; 36 years old.

Q. How long have you been in Danville and from where did you go to Danville?

A. I moved to Danville about the 17th of October, and have been there since 1932.

Q. Were you ever in the employ—are you a licensed dentist?

A. I am.

Q. Were you ever in the employ of the United Dentists Incorporated?

A. I was.

Q. How long?

page 42 } A. From March 15, 1932, until October 15, 1932.

Q. Will you please describe to the jury here the procedure; or what habitually happened when a patient comes into the office of the United Dentists, who meets him, who receives him?

Mr. Green: I object to that as to the use of the word "habitual".

Mr. Venable: Leave the *word* "habitual" out.

Mr. Green: I object.

The Court: Make your objections to the Court.

Mr. Venable: I think we should stand up and address our objections to the Court.

Mr. Green: I am still able to stand on my feet.

The Court: I overrule the objection whatever it is.

A. They come into the waiting room and the girl, the nurse, will meet them, or Mrs. Payne, or Dr. Payne, will meet them, and they send them in, and they are seated in the chair and the examination progresses. Now, if all the dentists there are busy I have seen Mrs. Payne diagnose the case of the patient and describe the type of work to be done for them and what should be done.

By Mr. Venable:

Q. Now, when the doctor is looking into the patient's mouth, who does the talking, and who puts it down on the card?

A. I have seen the nurse do that. Make a chart page 43 } or card, and I have seen Mrs. Payne do it. I have seen Dr. Payne do it also. I have seen Mrs. Payne catch hold with her fingers or with the instrument, or glass, and tell the patient "this tooth needs to come out", and "this one needs to be ground or filled. In other words diagnoses the case.

Q. What was the position of the doctor as to this grinding or diagnosis of Doctor and Mrs. Payne?

A. They were supposed to follow the diagnosis.

Q. Were you, while there, proceeding as an independent licensed dentist, or to carry out their orders?

A. Mostly orders.

Q. By whom were these orders given?

A. I have had Mrs. Payne to instruct me as to procedure in cases, and make diagnosis, and in some cases where a tooth should be extracted, I have been instructed to fill it.

Q. What do you know about Mr. King working there?

A. I have seen him prepare teeth for bridges. I have seen him make bites for patients, adjust bites that had been previously taken, and I have seen occasions where the patient failed to bite correctly, and I have seen him fit on the bridge on the teeth. I have seen him extract teeth for negroes.

Q. I thought that he was a technician?

page 44 } A. Well, when I went there he was supposed to be employed as a technician, that is he does laboratory work, constructs plates from models and impressions presented by the dentists, but I have seen him prepare teeth on a patient, and adjust teeth in the mouth, and get them ready for vulcanization. I have seen him do the same about bridges.

Q. Was he employed there also, as you were employed by this company?

A. Yes.

CROSS EXAMINATION.

By Mr. Green:

Q. Who employed you, Mr. or Mrs. Payne?

A. Mrs. Payne.

Q. Did she tell you that you were to obey her orders, or the orders of Mr. Payne?

A. No, sir.

Q. You went there as a registered dentist?

A. Yes, sir.

Q. As a member of your profession you were required to make diagnosis for yourself?

A. Yes, sir, at times.

Q. That is your duty as a dentist?

A. All licensed dentists are supposed to do all the diagnosis.

Q. That is your duty?

page 45 } A. Yes, sir.

Q. It is your duty not to let anybody do that for you?

A. Yes, sir.

Q. Yet, you say you followed the diagnosis of these people, so made, whether it was correct or not?

A. I did not.

Q. Was it always correct?

A. Not always. There could have been other arrangement which I would have advised their doing.

Q. Your duty was to following their directions?

A. To follow their diagnosis. I know there was an occasion that I did not do it. I dismissed the patient rather than do it, than to do actually what I was advised to do.

Q. You dismissed the patient?

A. I did.

Q. You did nothing?

A. No, sir, nothing.

Q. Do you mean to say you have seen this man King take impressions—how did he take them?

A. He would stand right by me in the operating room.

Q. How often?

A. I don't know exactly, but a number of times. I have seen it done more than once, but I cannot call the number of occasions. I can recall three occasions.

Q. You state that you saw him on three occasions?

A. I do.

Q. Was not it usual for you to make the diagnosis?

A. I was supposed to do so.

Q. Was not it a fact that Mrs. Payne made the price?

A. No, not always. The prices were posted up there. A licensed dentist only is supposed to examine a patient's mouth. If they are not licensed they are not supposed to even examine the patient's mouth, the way I understand the regulations of this State. I have seen Mr. Payne take a plate out of a patient's mouth, and examine into the patient's mouth, and ask me if it should not be so and so. He repeated that a number of times.

Q. How many times?

A. I won't state the exact number of times, but I know there were occasions. I had no occasion to remember the number of times.

Q. Did he do that for all patients?

A. Not everyone. I have done that myself for most patients. Mrs. Payne, I never saw do it, she never did while I was in the office.

Q. Before you left here did you have any negotiation with anybody to go in business as an advertising dentist in Norfolk?

A. No, sir. I had a proposition placed before me. I never answered it, and I have not answered it to this day.

Q. Who from?

page 47 } Mr. Venable: I object to that.

Mr. Green: I want to show it is one of the witnesses here.

The Court: If one of the witnesses.

Mr. Venable: He made a proposition of partnership. Let them go ahead.

A. It was not one of the witnesses. It was a former employee.

By Mr. Green:

Q. Not one of the witnesses here today?

A. I don't know them all. I know the gentleman is Mr. George A. Taylor. He is not here.

Q. Did you go in the advertising business in Danville?

A. Yes.

Q. You have been there ever since?

A. Yes, sir.

Q. What is the name of your concern?

A. Dr. B. M. Williams.

Q. When you went there who did you first go with—who did you work for?

A. I worked for myself. I went in my own office under my own name. I had no connection with anybody at all in Danville. I had office in my own individual name.

page 48. } Q. Did you get a letter, while working for the United Dentists, Incorporated, signed by the Norfolk Dental Association?

A. I don't think it was signed by them? I tore it up.

Q. Did not it threaten to take your license away?

A. No, sir.

Q. What did it say?

A. As far as I can testify from memory they wanted to know what had been going on up there, and said my license might be in danger. No threat that they would take it away. I have no knowledge of that.

Mr. Venable: I object. Here is a typewritten letter with no signature, no legal identification that I know of. It is in typewriting. He is trying to read it into this record, a letter, which he cannot vouch for. It has no place in this record. I have not read it.

Mr. Coleman: This witness has testified he received a similar letter, and we ask whether or not after he received this letter if that was not why he gave up his position.

Mr. Venable: I don't want a long anonymous letter put into this record.

The Court: I don't know what it is until I hear page 49 } it.

Mr. Green: It was signed "Norfolk Dental Society".

Mr. Venable: There is no such society.

Note: The jury was asked to retire from the Courtroom.

Note: The letter was then read to the Court.

By the Court:

Q. Did you get a letter of that sort?

A. I never heard of a letter like that in my life.

The Court: I understand he did not get it.

By Mr. Green:

Q. Did not you take a letter of that kind to Dr. Mitchell?

A. I took a letter to Dr Mitchell, which I think I can pro-

duce, reading not like that. I never received any such letter as you have read. There were no threats in the letter.

Q. Was that letter carried by you to Dr. Mitchell and Dr. Simmons?

A. I never carried it to Dr. Simmons.

Q. Why did you carry it to Dr. Mitchell?

A. I heard he had gotten one, and I wanted to know, naturally, if there was such a thing as "Norfolk Dental page 50 } Society".

Q. What did the letter say?

A. I don't remember the exact wording. It was something in regard to this case that might possibly come up, and that I might be wanted to testify.

Mr. Green: I think it is not proper to show that.

Mr. Venable: We object.

The Court: Unless you find the letter he got,

Mr. Green: I am not going to introduce this letter.

Note: The jury returned to the Courtroom.

By Mr. Green:

Q. When you were working for the United Dentists, Incorporated, did you take a letter to show to Dr. Mitchell?

A. Yes, sir.

Q. What was in that letter?

A. Well, it said I was working there, and I might be in position to know what was going on.

Q. What?

A. What type of work was going on there.

Q. Is that all it said?

A. No. It said that I might be called on to testify as to what was going on.

Q. Is that all it said?

page 51 } A. To be prepared in case I was called on.

Q. Did not you tell us, while the jury was out, that the letter told you that you might lose your license?

A. No, sir.

By Mr. Venable:

Q. What did it say?

A. That there was a possibility I might be brought before the Court and my license might be revoked, I believe it said.

By Mr. Green:

Q. Then it said you were in position to know what was going on there?

A. Yes.

Q. That this case might come up, and be ready for it?

A. It did not say any particular case.

Q. What did it say about the case?

A. It said it possibly might come up, or something of that kind. I do not remember the exact words in that letter.

Q. You might get ready for it while you were there?

A. It did not say that.

Q. What did it say?

A. It said that I was in position to know what work was being done there.

Q. And that there was a possibility of your license being revoked?

A. Please state that again?

A. I say in that letter you received there was a suggestion made that there might be a possibility of revoking your license?

A. No, it said that I might be in danger.

Q. It said that your license might be in danger if you stayed where you were, in your position there with the United Dentists, Incorporated?

A. I don't remember exactly what it said.

Q. It stated to you that this case might take place?

A. It said it might.

Q. That you should be ready to testify?

A. That I might be prepared to testify.

Q. The letter told you you were in danger of having your license revoked, and said you had better be prepared to testify in this case?

A. The way I understood the letter was this—I don't know who wrote the letter, or anything about it.

By Mr. Venable:

Q. Was it signed by anybody?

A. Only a typewritten signature, a sheet of paper, plain yellow sheet of paper, no heading or anything.

page 53 } By Mr. Green:

Q. There was an address on it?

A. Yes, Dr. Williams.

Q. It was directed to your care of United Dentists, Incorporated, wasn't it?

A. No, I don't believe it was—yes, Dr. Williams, United Dentists.

Q. What did you do with that letter?

A. Took it home.

Q. What else did you do with it?

A. I showed it to the doctor working there,

Q. Who was that?

A. Dr. Barnett.

Q. What else did you do with it?

A. I showed it to Dr. Mitchell.

Q. And then you took it home?

A. I am not sure about that. I don't remember whether I gave it to him or not.

Q. Did not you take it to him, and he took it to Dr. Simmons?

A. No, sir.

Q. Were you scared?

A. No, sir.

Q. Why did you do that?

A. I heard he had received one, and I wanted to know what there was about it.

Q. After leaving there did you have a talk with page 54 } Dr. Simmons about his prosecution?

A. No, sir.

Q. Have you seen him?

A. Yes, I have seen Dr. Simmons, sure.

Q. When did you see him?

A. I saw him—I don't know just when it was, to be frank with you.

Q. Did you talk to him about testifying in this particular case?

A. This particular case—what case do you have reference to?

Q. This particular case, or any other case?

A. After the case was started, yes.

Q. Were you afraid that something would happen to you if you testified in this case?

A. Not a thing in the world.

Q. How long after you had gotten the letter before you quit the United Dentists, Incorporated?

A. I don't know the date of that letter, but I handed in my resignation on Sunday morning. I went down there for the specific purpose.

Q. You did not show the letter to Mr. or Mrs. Payne?

A. No, sir.

Q. Why didn't you do so?

A. It was none of their business. It was my page 55 } private mail.

Q. Was it the business of these other people?

A. It was optional with me to show my private affairs to who I liked.

Q. You didn't consider it your duty to the people by whom you were employed?

A. I considered it my own personal affair.

Q. There was a suggestion that you were in position to get evidence against these people?

A. I did not say that.

Q. That is what it implied?

A. It was not signed. I don't know who wrote it.

Q. You took it seriously enough to show it to these other people?

A. It was not that I was scared, or anything like that.

Q. You did not show it to these people?

A. No, sir.

Q. Did you have any talk, or conversation, with Dr. Barnett and Dr. Mitchell, who are witnesses here, as to getting these offices and starting with them?

A. Not a word.

Q. Did you ever hear that they were negotiating about those offices at that time?

A. What offices?

Q. Where the United Dentists, Incorporated, were?

A. By whom?

Q. By Mitchell and Barnett?

page 56 { A. No, sir. I knew somebody was, and I told Mrs. Payne who I thought it was.

Q. Who?

A. I told her I thought Dr. Silverman. I knew he was thinking about coming to Norfolk.

Q. You didn't know it was Dr. Mitchell?

A. No, sir.

Q. You did tell her you thought it was Dr. Silverman?

A. Yes.

Q. Did you do that to throw her off?

A. No. It was honest. I heard that he was coming to Norfolk, Dr. Silverman.

By Mr. Venable:

Q. Were you ever able to find out who the Norfolk Dental Society was?

A. No. I asked two other dentists if they knew who they were, and they absolutely did not know anything about it. No one seemed to know who they were. I thought they wanted to blackmail me.

By Mr. Green:

Q. Who did you think wanted to blackmail you?

A. I didn't know, or they were trying to scare me out.

Q. You thought they were trying to scare you out?

A. Yes. I do not know if that was it.

page 57 }

O. G. BARNETT,

being duly sworn, on behalf of the Commonwealth,
testified as follows:

Examined by Mr. Venable:

Q. Please state your name, age, residence and occupation?

A. Oliver G. Barnett; dentist. Now practicing in Lynchburg, Virginia.

Q. Dr. Barnett, how long were you employed by the United Dentists, Incorporated?

A. I was employed there from on about the 1st part of 1930 until the latter part of November, 1932.

Q. Two and a half years?

A. Yes.

Q. Now, during that time who had been operating that business?

A. Well, E. T. Payne had been business manager, directing, and when he was away Mrs. Payne was the manager. Sometimes when both of them were out King assumed that position.

Q. Now, during this time that you have been there will you tell the jury what you know and observed as to the way Dr. Payne and Mrs. Payne handled that business?

A. Well, when a patient would come in they were usually met at the door by one of the nurses, or Mrs. Payne or Dr. Payne himself, and shown into the booth, the chair which they were supposed to take. The name was taken mostly by Mrs. Payne. The patient would be in the chair, and while

I was making the examination Dr. Payne, or Mrs.
page 58 }

Payne would tell us to do this, that or the other.

Q. What do you mean by that?

A. Mrs. Payne or Dr. Payne, and King has done it at times. He has been around.

Q. Who made the diagnosis or directed what was to be done?

Mr. Green: Let him say what was done.

By Mr. Venable:

Q. You have already described what was done, as to who made the diagnosis.

A. That is the procedure that they had. They would greet

the patient when they would come into the office, and Mrs. Payne has diagnosed cases without a dentist being present, and Dr. Payne has done the same thing, and King diagnosed cases and told the patient what had to be done, or something like that, without the presence of any dentist whatever.

Q. Now, in your position there were you required by your employment there to do what the card was set up to do by Dr. Payne or Mrs. Payne?

A. Yes.

Q. What were you required, as an employee of the corporation, to do when Dr. Payne or Mrs. Payne presented you with a card?

A. I had to follow that card. That card was put there for what you should do, to follow it, what we were to page 59 } do for the patient.

Q. During this time have you kept a note of the time when Dr. Payne or Mrs. Payne did something for a patient?

A. I didn't keep any special note of every case, and no dates, or anything like that.

Q. State what you can recall. Do you remember where they did actual dentist work, either of them?

A. I remember there was a Mrs. Brown to receive a temporary plate, and we could not get it set properly, could not get it up, and Dr. Payne took it out of my hand and pushed it up, and she came back and complained after that, in a day or two that her mouth was real sore.

Q. What is the custom with reference to bridges and crowns and plates?

A. It is the custom, the first thing, to separate the teeth one from the other to allow the wire measure to go between the teeth, and the wire measure gets the circumference of the tooth near the gum, and we get what we call a wax bite, get the relation of the upper and lower teeth. The bridge is made in the laboratory, and get the teeth ready for the bridge.

Q. Do you take that in advance, take the impression before, or do you do it after?

A. It was not the general practice. The general practice is to do it before.

Q. Is that the proper way in which to do it?
page 60 } A. It is not the custom.

Mr. Green: I thought your Honor ruled that out.

The Court: Strike out the part that it was customary.

Mr. Green: I want to renew my objection.

Mr. Venable: This witness was there 2½ years. He did not take note of the names and times. He never expected to testify one way or the other.

The Court: I overruled the objection.

Mr. Green: I save the point.

By Mr. Venable:

Q. Which is the quicker way, to do the cutting and grinding afterwards, or in the beginning?

A. That procedure I have mentioned seems to be the quickest.

Q. Now, in the question of diagnosis, in speaking of the secretary and treasurer of this company, Mrs. Payne, on the question of diagnosis?

A. She would invariably diagnose a patient, and in two instances where she diagnosed, there was not any page 61 } dentist present at all, Mr. Vaden and Mr. McIntosh. Mr. McIntosh came to me and said—

Mr. Venable: Leave out what Mr. McIntosh said.

By Mr. Coleman:

Q. Did you see her with Mr. Vaden?

A. She was in the booth with him, and the card was filled out. Mr. Vaden said—

Mr. Green: I object to what Mr. Vaden said.

By Mr. Venable:

Q. Who was in the booth?

A. Mrs. Payne and Mr. Payne. It was the lower 6th tooth, and the bridge had to go through the process, and take the impression of the bridge, and when he took the impression of the bridge, Mr. Vaden would not allow him to put it in.

Q. Should it have been put in?

A. It did not fit.

Q. What do you think was the trouble?

A. They would not let me grind the tooth down to put the crown on the tooth to fit the bridge.

Q. Instead of making the bridge to fit the teeth?

A. Yes.

Q. Is that the way it should be done?

A. No. We take the impression, and get the page 62 } teeth ready and make the adjustment separate.

Q. On the question of extracting and cleaning teeth, and taking the bites?

A. I have seen them take bites. I have seen Mr. King extract teeth. I have never seen Mr. or Mrs. Payne pull any teeth, but I have seen King.

Q. What in reference to the bridge and plate being put in and taken out?

A. When we speak of that, the wax model, they had to see it, and to pass on it to see that the fit was correct. They were not left to us as to whether they were all right or not.

Q. The work had to be passed to Mrs. Payne and she had to see it, is that what you mean?

A. Yes, sir.

Q. Now, when it came to a question of Mr. King in the office, making a fit of bridges, plates or false teeth what was the regular custom for him to do?

A. King, when he was there, he usually assisted in some way to tell you how to do a thing. He invariably at times tried to arrange them in the mouth, and to grind them off, and put them in. The latter part of the time he made the crowns, they were made by him, by King, in the laboratory.

Q. Was that work done under the direction of Mrs. Payne, Dr. Payne or Mr. King?

page 63 } Mr. Green: Objected to as leading.
The Court: I suppose it is.

By Mr. Venable:

Q. Who took charge and gave directions?

A. When Dr. Payne was there he would give them, and Mrs. Payne when she was there.

Q. If neither one of them were there?

A. He would.

Q. You mean King?

A. Yes.

Q. How was Mr. Payne addressed by patients and people there?

A. Addressed as "Doctor Payne".

Q. How about King?

A. "Dr. King."

Q. About how was it when he talked on the phone?

A. Answering the phone he would say "Dr. Payne speaking".

Q. How about patients, when he introduced himself?

A. He introduced himself as Doctor Payne. When he would call over the telephone he would say "This is Dr. Payne, of the United Dentists". He would say this is "Dr. Payne talking", I worked there probably a month before I

knew. I was under the impression he was a dentist up until about a month.

Q. Well, now, what other things have you noticed during these years, as a custom. I am not interested in page 64 } some particular thing that might happen with reference to the office of this corporation?

A. Well, if we wanted to work there for them we had to do as they said do, and they gave the outline that we usually had to go by.

Q. How long have you been a licensed dentist?

A. Since 1921.

Q. Where is your home?

A. Spencer, North Carolina.

Q. Who fixed the prices after they had the diagnosis?

A. The prices were printed and placed on the wall, and those were the prices they had, and when the prices would vary the patient would discuss something like that, and I suppose—they had to consult Dr. or Mrs. Payne on a diagnosis made by Mrs. Payne or Dr. Payne, and there were occasions when a larger bridge put in, or a bridge was put in they dictated to the dentist what was to be done.

Q. Doctor, will you tell the jury what took place between you and Mr. Elmer T. Payne in reference to your testifying in this case?

A. The last Saturday night I was there he called me in the office and asked what was all this about, that they were going to put him out of business, and I told him I was not familiar with the matter. I had heard something about it, but I did not enter into a discussion, and he asked page 65 } me what I was going to do, and I said I would like to have some time to investigate before I could answer him thoroughly, and he asked how much time I would want, and I told him probably it would take a week, or three or four days, and he said that was too much, and he said "They are trying to put me out of business", but he said that "they could never do it". He had been drinking a little, and was half way crying, and he said there was not anybody in the world that he thought any more of than me, and he said "that anybody that testified on the stand against him he would get his gun and shoot them", and he wanted that specially for me and Mitchell.

Q. For you and Mitchell?

A. Yes. I asked if he wanted me to go to work, and I went home, and thought probably I might go back, but several weeks passed, and I saw him in front of the Law Building, I was mailing a letter, and I came face to face with him,

and I spoke to him as nice as possible, and he said "Good evening doctor, how are you", and I said "Dr. Payne, how are you getting along", and he said "What damn business is it of yours as to how I am getting along", and he said "I want you to know this proposition, that I am going to get even with you", and I stood there, and he kept cursing, and there were a lot of people on the street, women, and there became scared and began to run.

Q. He threatened to shoot witnesses who testified against him?

A. Yes, sir.

Q. Did you deliver that message to Mitchell?

By Mr. Coleman: Mitchell is still alive?

By Mr. Venable: Yes.

Q. Have you applied for a peace bond?

A. No, sir.

Q. Did you have any hesitation in coming here today to testify?

A. No, sir.

Q. You don't believe he is going to shoot you?

A. I hope not. I don't think so.

CROSS EXAMINATION.

By Mr. Coleman:

Q. Dr. Barnett, how long were you with the United Dentists, Incorporated?

A. I came there along about the 1st of March. I just can't recall the exact date, but I know it was in March?

Q. What year?

A. 1930.

Q. When did you leave?

A. The later part of November, 1932.

page 67 } Q. Did not you leave October 22, 1932?

A. It might have been October 22, yes.

Q. In the two years that you were there you drew a total salary of \$13,570.09, is not that right?

A. I don't recall the figure. I never added up exactly what I made while I was there.

Q. Did not you report to the Department at Richmond and paid on an income of \$4,250 in 1931 and \$5,280 in 1932?

A. I don't recall what I reported. I don't have any record of it.

Q. You were there with these people going on three years?

A. From the 1st of March, 1930, until the latter part of October, 1932.

Q. You received a salary of \$13,570.09?

A. I don't know.

Q. You did not have any office expense to pay out of that?

A. Yes.

Q. What did you have to pay?

A. Office expense. Incidentals.

Q. Where?

A. At the office. We had to pay for our own laundry.

Q. That did not amount to much. You paid for laundry of your own clothes?

A. Yes, and other incidentals.

page 68 } Q. You took a good deal of pride when you left the United Dentists, Incorporated, in the fact that you had been with them?

A. I did not think that I should be put on a *pdestal* because I had worked there.

Q. Look at this letter and see whether or not—as soon as you left the United Dentists, Incorporated, you immediately formed a partnership with Dr. Mitchell?

A. No, it was not a partnership.

Q. What was it?

A. We agreed that we would work on certain conditions, nothing was ever drawn up.

Q. It was an association?

A. Yes.

Q. Look at this letter, and state whether or not you have ever seen it before, and whether you sent it to people, and read it to the jury?

A. "Norfolk, Va. October 29, 1932. Mrs. C. J. Jordan, Tyner, N. C. Dear Mrs. Jordan: This is to advise you that I am no longer connected with the United Dentists. I am now associated with Dr. N. R. Mitchell at 126 Granby Street, opposite Childs Restaurant, one-half block from Main Street, and I will be glad to see all my former patients at this new location.

Dr. Mitchell and I absolutely guarantee all our work, and assure you that only the finest of materials and equipment will be used. Our prices are low enough to suit you.

It was a pleasure to have served you in the past, and am looking forward to seeing you again.

A recommendation to any of your friends who may need dental attention will be greatly appreciated. You may rest assured they will receive prompt and courteous treatment at all times. Please feel free to call on us at any

time for dental advice. Yours very truly, Oliver G. Barnett.

Note: The letter just read is filed in evidence as Exhibit "B".

Q. I notice you have on here your office hours "Hours—Daily 9 A. M. to 8 P. M. Sunday 10 A. M. to 1 P. M., and on there you have given your list of prices?

A. Yes.

Q. If you had not been giving this lady satisfactory work you would not have been soliciting her business?

A. I said "It was a pleasure to have served you in the past".

Q. Did you expect her to come back to you?

A. I was expecting her to come back to me.

Q. How many letters of that character did you send out?

A. I don't have any idea.

Q. Can't you give us some idea?

A. Probably 200 or 300.

Q. Who printed this letter head?

A. The Ideal Printing Company.

Q. How many did you have?

A. I think 400 or 500. I had not used them all.

Q. As soon as you left the United Dentists, Incorporated, you went with Mitchell, didn't you?

page 70 } A. Yes.

Q. As a matter of fact, had not you begun by taking down the names of people, patients who came to the United Dentists, Incorporated, and afterwards wrote them letters?

A. Yes.

Q. You made memorandum of peoples' names and addresses for several months before you left the United Dentists?

A. I did not write anything down there. I wrote them when I got home.

Q. Is that your idea of what you should do?

A. I had the privilege to write what I wanted to after I got home.

Q. Look at this picture, and say if you recognize this gentlemen?

A. Yes, Dr. O. G. Barnett.

Q. That is you?

A. Yes, sir.

Q. Read that advertisement?

A. "Dr. O. G. Barnett. A popular local dentist, formerly

with the United Dentists announces his *accosiation* with Dr. N. R. Mitchell in his offices at 126 Granby Street. He offers to his many friends and patrons guaranteed dentistry at very low prices."

Q. That is an advertisement in the Ledger Dispatch page 71 } patch of November 3, 1932?

A. Yes.

Q. You wrote this advertisement?

A. I think so.

Q. Are you the "Popular local dentist" whose picture is on this paper?

A. Yes. I considered it proper as I had quite a number of calls for me.

Q. This paper is the Norfolk Ledger Dispatch, dated November 3, 1932, is that correct?

A. Yes.

Note: The advertisement just referred to is filed in evidence as Exhibit "C".

Q. Will you look at this Virginian Pilot & Norfolk Landmark of Sunday, January 8th, 1933. Look at part 2 page 2 of this paper. Read that advertisement to the jury?

A. Yes.

Note: The advertisement headed Doctors Mitchell and Barnett, Dentists, as appearing in the paper referred to is filed in evidence marked Exhibit "D".

Q. When did you first commence to negotiate with Dr. Mitchell regarding going into business with him?

A. It has been before that. Dr. Mitchell left the United Dentists, and the reason why we were negotiating page 72 } ing, Dr. Payne put that plate in, we told Dr. Mitchell he was going to fire me next week, and I immediately began making plans to get out.

Q. How long did you stay after he told you he was going to fire you?

A. I don't remember.

Q. Was not Payne away from there about six months from sometime after the first of January, 1932, until about September, 1932, is not that right?

A. He was not there sometime along there.

Q. You and Mitchell were negotiating with H. C. Hoggard & Company for renting the United Dentists' quarters at Main Street?

A. No, sir.

Q. With Mr. Minton W. Talbot?

A. No, sir.

Q. Were not you in consultation with Mr. Mitchell about it?

A. No, sir.

Q. If Mitchell put your name to Hoggard and Mr. Talbot that was not right?

A. He did not mention my name.

Q. Did you know Mitchell was negotiating to rent these premises over the head of Mrs. Payne while Payne page 73 } was away?

A. No.

Q. Don't you know, in conversation with Mitchell, he did try to rent this place over the head of these people?

Mr. Venable: I do not see what the question of trying to rent an office has to do with this case.

The Court: I don't see the pertinancy of it. Go on and let the witness testify. I overruled the objection.

Mr. Venable: I note an exception.

By Mr. Coleman:

Q. You knew that Mitchell was negotiating to rent this place?

A. I had heard something about it, but I had nothing to do with it. That was Mitchell's business. It was not mine. They never told me their business, and I did not know it until it was all practically all over with.

Q. Don't you know you were with Mitchell every day?

A. I do not see him every day. Sometime three or four weeks I would not see him. I did not go to Dr. Mitchell's office. I was informed by Dr. Payne to stay out of that office. I was afraid of getting fired, and for that reason I did not go up there.

page 74 } Q. Did you get a letter from the Norfolk Dental Society?

A. I got a letter that was not signed.

Q. When did you get that letter?

A. Sometime in July.

Q. Do you remember what was in the letter?

A. I don't recall right now.

Q. How was it signed, on the typewriter?

A. I don't remember how it was signed—it was Norfolk Dental Society.

Q. And did you take that letter to Dr. Simmons and Dr. Mitchell?

A. Dr. Mitchell got it.

Q. You gave yours to Mitchell?

A. Mitchell got one, and he showed his to me, and I showed him mine. He showed me his first.

Q. Did Mitchell ever tell you that he was the man that was writing those letters?

A. No, sir.

Q. If you had not been doing something shoddy you would not have had those letters printed?

A. I only solicited them through friendship.

Q. Let us find out about that. Who is Mrs. C. J. Jordan?

A. She was referred to me by Mr. (pause) she had a half brother—his name is—I can't think of it now, but he was half brother, and he called me up.

page 75 } Q. You know this, that is one of the names of the patients that you wrote down when you go home, is not that right?

The Court: He said that.

By Mr. Coleman:

Q. Is it not a fact that most all of the ethical dentists those men who are not advertising, but try to carry their business without advertising, don't they all have their work done by technicians in the laboratory?

A. Yes.

Q. Is not a big part of it done by Mr. A. B. Fischborn, who runs the laboratory at the Medical Arts Building?

A. Yes.

Q. Is not it a fact that ethical dentists call in technicians sometimes to see where the defects is?

A. I don't know the custom here in Norfolk. I cannot speak for it.

Q. It is a custom at other places?

A. The only place I had been where they had a laboratory convenient was down here. I know that sometimes they are called in to look, and might make some suggestions.

Q. Who did your laboratory work after you went on Granby Street with Dr. Mitchell?

A. Mr. Drewry and Mr. Fischborn.

Q. Does he do work for the ethical dentists?

A. Yes, sir.

page 76 } Q. Did you call him in to look at plates or bridge work while there?

A. No, sir.

Q. As a matter of fact, in the making of false teeth, is not the bridge work, and preparation in getting everything to fit a most important part, until you get the bridge properly fitted?

A. They try those in to see if they are proper. It is left to us dentists to say whether they are properly made, or not. The technician must guarantee to make the plate just as we fit them.

Q. As a general proposition, how many times does a person come back before they get fitted?

A. Perhaps a great many times, but not always.

Q. But they do come back?

A. They do come back at times.

Q. Don't you know that 9 out of 10 patients do come back to get some adjustment?

A. Yes, sir.

Q. You told the jury about Payne going to shoot you?

A. Yes.

Q. When?

A. The night of October 22nd.

Q. Who was present?

A. Nobody.

Q. Where did that happen?

page 77 } A. In the office.

Q. Which other times?

A. It happened on Granby Street.

Q. Who heard it?

A. I don't know any of the names, but there were several women heard it.

Q. What time of day was it?

A. About midday.

Q. Right on Granby Street?

A. Right on Granby Street.

Q. No policeman came up?

A. I did not think it necessary to call a cop.

Q. You did not get out a peace warrant or make complaint through law?

A. No, sir.

Q. Who was the first person you told about it?

A. I told Dr. Mitchell.

Q. You tell Dr. Mitchell everything, don't you?

A. He said that he would shoot me, and I wanted to tell somebody that he had said he would shoot me.

Q. Did you get your gun when he threatened to shoot you?

A. I don't have a gun.

Q. You would not get a gun if anyone threatened to shoot you?

A. I could not get one if I wanted to.

Q. You had money, you had been making about \$13,000?

A. You have to get a permit. I might be a notorious character and they would not issue me a permit on that.

Q. Dr. Barnett I will ask you this question: Were not these proceedings started by Mitchell and yourself for the purpose of putting these people out of business so you could get the benefit of the advertisement that they had here?

A. I was sworn in here as a witness, and I haven't any connection with it, except I came here as a witness. I did not start it.

Q. When did you first hear that trouble was being started for the United Dentists so far as these proceedings were concerned?

A. I think the first intimation that I got was that letter.

Q. Then, what was the next?

A. Dr. Walker, and Dr. Warner and several others sent for me to come up to Mr. Venable's office I don't just remember what day.

Q. Was Levine up there?

A. No.

Q. When did you talk to Levine?

A. I did not talk until after we had left there.
page 78 } Q. Dr. Simmons was a very frequent visitor at your office, wasn't he?

A. I have never seen Dr. Simmons in there. I have not seen him in the office.

Q. Have you seen him anywhere else?

A. On the street.

Q. Did not you see him in Mr. Venable's office?

A. I saw him there this morning, yes.

Q. Tell the jury what was in that letter you got in July?

A. I don't recall. It was something about the kind of work we were doing there, that it should be stopped, that their would be action brought against him, something about King, working up there, that action would be brought against him, and wanted me to testify as to what I knew about it. I think that was about all.

Q. Didn't the letter say your license would be revoked if you didn't?

A. I don't think so.

Q. What became of it?

A. I don't know. I think I destroyed it. I did not want my wife to find out about the letter, and worry her.

Q. That was in July, and you stayed there until October?

A. Yes. It was until the latter part of October.

Q. Instead of Payne threatening and cursing you, did not he tell you another man wanted your position, and that unless you paid more attention to your duties, and
page 79 } took more interest in the work that he would have to make a change, and asked you to do better work, and attend to your business better, and also that he told you he heard that you had been to Newport News to try to get Dr. Thomas and some others to come over here to testify against him?

A. He did not tell me I went to Newport News. He asked me if Mitchell went to Newport News, and if I would stay with him I would do the right thing that he would give me an increase in salary, put me back on the old salary, put me on a commission, and I said "I won't make a contract until I find about it", and he did not say anything else to me, and I heard him say, and he looked like he was almost crying, and he said that he would shoot anybody that would testify against him.

Q. You went with Mitchell to Newport News to see Dr. Thomas?

A. Yes.

Q. You went there for the purpose of getting Thomas to testify against the United Dentists?

A. I don't know what Dr. Mitchell's purpose was.

Q. What was the conversation?

A. I did not hear all of it.

Q. What was the part you did hear?

A. I heard Dr. Mitchell tell him that they were going to summon him as a witness, and asked would he be willing to testify to what the conditions were, and Dr.
page 80 } Thomas said he did not know that he would let him know, and get in touch with him later on.

Q. And at that time, when you were making trips over there to see Thomas you were then in the employ of the United Dentists, Incorporated?

A. I only worked there one more week.

Q. At that time you were in their employment?

A. Yes, but my plans were made then.

Q. You still deny this, that there was a plan between you and Mitchell to put the United Dentists out of business so you could succeed them?

A. No, sir. We did not instigate it. We did not start it.

Q. You did not?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Venable:

Q. You have been asked a great *man* questions about your stirring up this suit against Mr. Payne. Did you have anything to do with this suit being brought to revoke his charter?

A. No, sir, nothing in the world.

Q. You were asked whether you would come into court and tell just what part they took in the business, did you do it, because you knew you had to do so?

page 81 } A. I did it because I did not feel like I was forced to it. I did it of my own accord.

Q. In your talk with me, when I discussed this matter with you of what D. Payne and Mrs. Payne did in the business, did you not say that you hoped—

Mr. Coleman: I object to what you told Mr. Venable.

Mr. Venable: He hoped he would not be brought into it.

Mr. Coleman: I move for a mistrial.

The Court: That ought not to be admitted.

Mr. Green: Will your Honor tell the jury to disregard it.

The Court: Disregard everything that occurred between Mr. Venable and Mr. Barnett.

Mr. Venable: My purpose was to show he came here as a witness against his will.

A. I said that what I did was on my own account.

By Mr. Venable:

Q. Have you gone outside to answer any questions, or made any statement except what is truthful here today?

Mr. Coleman: I object. That is for the jury to page 82 } say.

The Court: I sustain the objection.

By Mr. Venable:

Q. Do you feel that you have, in this matter, said anything that was not proper—

Mr. Coleman: I object. That is for the jury.

By Mr. Venable:

Q. When you got this anonymous letter in July it did not not scare you away, did it?

A. No, sir.

Q. You did not want your wife to be bothered with it?

A. I did not want my wife to be bothered with it.

Q. In reference to this letter you sent out, were they sent to people you had gotten through business, or people you knew yourself?

A. People that I knew that had been referred to me by personal friends.

Q. In each one of those letter you told them that you had disconnected your relations with the United Dentists, Incorporated, and were on your own?

Mr. Green: The letter speaks for itself.

The Court: I think he referred to the *anonymous* letter.

Mr. Green: No, sir.

page 83 } MRS. NELLIE SHAW,
being duly sworn on behalf of the Commonwealth,
testified as follows:

Examined by Mr. Venable:

Q. Your name is Nellie Shaw?

A. Yes, sir.

Q. Where do you live?

A. 1909 Charleston Avenue, Portsmouth.

Q. Were you at one time employed by the United Dentists?

A. Yes, I was.

Q. What was your employment there?

A. Working as a dentist assistant.

Q. How long were you with the United Dentists?

A. 7 weeks.

Q. 7 weeks?

A. Yes.

Q. When was that?

A. I went to work the week of Thanksgiving and worked until the middle of January, 1932.

Q. During the time that you were employed there I ask you to tell the jury what was the usual custom—procedure in which a person coming into the office was taken care of. I mean by that what was done from the time they entered the office until the time they left, and who did it?

A. Well, the first thing when a man would come into the office, we would receive them and send them to a
page 84 } chair, placed a towel around the neck and called
in a dentist. As a rule the dentist would diagnose
the case, and we made a report. At other times Mrs. Payne

or Dr. Payne would come in and offer to help in the diagnosis, and would tell the dentist to do such and such a thing. Sometimes they would say that the tooth did not need to be pulled but needed a crown or bridge, or something of that sort. Then at times Mrs. Payne and Dr. Payne would call in Dr. King and consult him to see what he thought of the matter.

Q. Have you ever seen Dr. Payne, Mrs. Payne or King do any actual work in the mouth of a patient.

Mr. Green: I object to that as leading. Ask her what she has seen.

The Court: I overrule the objection.

Mr. Green: I save the point. The question is leading.

By Mr. Venable:

Q. What have you seen them do?

A. I never saw Dr. Payne do the actual work. I have seen him diagnose the case, and I have seen him take bites to make impressions for false teeth. I have seen Dr. King extract teeth for colored people in the back. I have seen Mrs. Payne clean the cavity, and get it ready for filling, and page 85 } clean the tartar from the gums of teeth to be cleaned.

Q. In speaking of Dr. Payne how were you instructed as to what you were to call Elmer T. Payne and call John F. King?

A. I was introduced to them as Dr. Payne and Dr. King, and I always addressed them as that.

The Court: What do you mean by taking "Bites", is that a part of the dental business.

A. That means the wax impression.

By Mr. Venable:

Q. Tell what you mean by "Bites"?

A. Taking a bite, that means the wax, it is about so thick, and they slip that in the mouth, and close the mouth down naturally to get the natural position of the teeth by taking an impression.

Q. Taking the bite and the impression are practically the same thing?

A. They have to do both.

CROSS EXAMINATION.

By Mr. Coleman:

Q. Did Dr. Barnett and Mitchell work there while you were there?

page 86 } A. Yes, they both did.

C. P. PACE,

being duly sworn, on behalf of the Commonwealth, testified as follows:

Examined by Mr. William Venable:

Q. Your name is C. P. Pace.

A. That is right.

Q. By whom were you employed?

A. Norfolk & Southern Railroad.

Q. Your home address is 802 West 15th Street, City of Norfolk?

A. That is right.

Q. Have you, in the past two years been a patient of the United Dentists?

A. I could not say in the past two years. I think August 1930, was the last time I was up there.

Q. Please tell the Court and jury exactly what took place from the time you went in that establishment until the time you came out.

Mr. Coleman: If necessary I would like for the Jury to be withdrawn. The record will show that this witness has not been there since this corporation was formed, which was February 25, 1929.

By Mr. Venable: The witness said August, 1930. That is my understanding.

A. I think August, 1930.

Mr. Green:

Q. Do you know?

page 87 } A. I think it was the hot summer. I think so.
I couldn't swear to it. It was that hot August, 1930. I am quite sure in August.

Q. Do you think that or do you know it?

Mr. Venable: This witness has stated the time he thinks it was.

The Court: That is the best of his recollection.

Q. (Question read.)

A. I went up there to get a tooth out that was hurting me. I got there about 6:30—I got off from work at 5:30. Mr. and Mrs. Payne looked me over first then they called the doctor and he pulled it out.

Q. Did you tell them what was the matter?

A. No, sir. They called another doctor and he said it ought to come out, and he pulled it out. I asked Mr. Payne himself how much it would be to put another tooth in and he said \$20.00 for the crown and \$30.00 for a bridge, for bridge work. I had the work done, and I was going backward and forward, and after it was finished a short time one of the teeth came out, and I went back about it and he said they didn't guarantee bridge work.

Q. Who is this you are talking about?

A. Dr. Payne. I went back to get it put in and page 88 } the dentist was putting a crown on the tooth.

Q. Who did that?

A. The other dentist was working on it and a lady came in to get a tooth pulled, and he had put the cement in and Dr. Payne pushed it in place.

Q. Dr. Payne pushed it in place?

A. Yes. I finally got through. Finally the tooth came loose and I went back, and they wanted me to pay more, and Dr. Payne walked off in his office.

Q. Never mind about that. What I want to get from you is when you went there Dr. and Mrs. Payne looked into your mouth?

A. Yes, sir.

Q. From the time you went back there did Dr. Payne or Mrs. Payne do anything in your mouth?

A. Not until the last time.

Q. That is the time you spoke of when Dr. Payne pushed it in place.

Q. That was the last time. This lady came in there and the dentist went to wait on her and Dr. Payne held it in there for a second or two.

By Mr. Green:

Q. The dentist put it in there and he pushed it in and held it until it hardened?

A. Yes, sir.

page 89 } By Mr. Venable:

Q. Did he put his finger in your mouth?

A. Yes, sir.

Q. Have you any interest in this case?

A. No, sir.

CROSS EXAMINATION.

By Mr. Green:

Q. This bridge work was done at that time?

A. Yes, sir.

Q. If their records show you were there in '29, February 25th, the last time, would you deny it?

A. No. I was there many times. I think I was there in 1930.

Q. Did you pay them cash?

A. No, I paid \$10.00 and finished when the job was over.

Q. Did you give them a check?

A. No, sir.

Q. How much did you pay the next time?

A. I think \$20.00 when the job was finished, \$20.00 for the job.

Q. Your name is C. P. Pace?

A. Yes, sir.

Q. Here is their record "Bridge work December 30" would you deny that record?

page 90 } Mr. Venable: Who put those dates on there?

Mr. Venable:

Q. Did you ever live at 408 Front Street?

A. Yes, sir.

Q. You lived there when, do you know?

A. No, I could not say.

By Mr. Green:

Q. Were you living there when you had the work done?

A. When I first went there. I think it was August, 1930, the last time I was there.

Q. I understand the last time you were there was August 1930?

A. That was the last time. I can't recall the date, exactly.

D. C. LITCHFIELD,

being duly sworn on behalf of the Commonwealth testified as follows:

Examined by Mr. William Venable:

Q. Your name is D. C. Litchfield?

A. Yes, sir.

Q. Where do you live?

A. 1542 West 39th Street.

Q. You are employed by the Norfolk & Western Railroad?

A. Yes.

page 91 } Q. What is your occupation?

A. Carpenter.

Q. Have you ever had occasion to go to the United Dentists for treatment?

A. Yes, I had a tooth drawn and a new set made there.

Q. How long ago was that?

A. I think August or September. I am not sure.

Q. Last year?

A. When I got my teeth. My teeth stayed out 9 months, around 9 months before I had a new set made.

Q. That was 1932?

A. Yes, sir.

Q. They were made by the United Dentists?

A. Yes, sir.

Q. Who made the teeth for you?

A. Doctor there by the name of Barnett. He was the one that taken the impression. I could not tell who made them.

Q. Who fitted them in?

A. Dr. Barnett.

Q. Did Mr. Payne ever do any work in your mouth up there?

By Mr. Green: Ask who did the work?

page 92 } By Mr. William Venable:

Q. Did anyone else in that office do anything about your mouth?

A. There were three of them. At one time they pulled six, and another time six and another time pulled eight.

Q. Did anyone else when you first went in there do anything, who did you see first?

A. A lady there, Mrs. Payne, I suppose.

Q. What did she do?

A. She looked at my teeth and called Dr. Payne, and he looked at them, and said there could not be any of them saved. I asked if they didn't think some could be, and he said no. They took six out two different times, and I went back after that, two or three days, and had the rest, eight.

Q. They made a plate for you, and it was fitted in?

A. Yes, sir.

Q. Has the plate been satisfactory since that time?

A. Yes, with exception two of them came out.

Q. Have you the plate on now?

A. Yes, sir.

Q. When did those teeth come out?

A. Oh, in a week or two, one of them came out, and then the other came out about a few days later.

Q. What did you do about the ones that came out?

A. I went back up there, and Dr. Payne refused to put them back without he charged me a dollar, and I told
page 93 } him that if I had to pay anything I would pay
somebody else.

Mr. Green: I object to that, and I want to save the point.

CROSS EXAMINATION.

By Mr. Green:

Q. When did you first go up there about your teeth?

A. The first time that I went up there, I guess it was about a year and a half. I couldn't tell exactly. I never paid attention to it.

Q. Was not it in 1929?

A. I went up there in 1929 first and had them pulled.

Q. Was it Dr. Payne who told you that they could not be saved, at that time?

A. No. I had four, I think four taken out at that time, in 1929. In 1931, if I remember correctly, I went back and had the rest of them taken out in October, 1931.

Q. When was it that Dr. Payne told you that they could not be saved?

A. The second time I went up there.

Q. Did you go up there twice in 1929?

A. I could not tell about that. I am not positive about it.

Q. Did not you go there June 3rd, 1929, and they pulled five teeth?

page 94 } A. I went there in 1929, but I could not give
the date.

Q. They pulled five teeth?

A. Four or five.

Q. You went there five days later for your second visit?

A. In 1929 I made two trips, and had two more taken out.

Q. That was in 1929?

A. Yes, sir.

Mr. Green: I move to exclude his evidence as to what Dr. Payne said in 1929.

The Court: I understood him to say they were all taken out.

Mr. Green: He said on his second visit.

A. In 1931, I happened to remember the year, I had the rest of them taken out.

By Mr. Green: I understood him to say the second time he went there was the time Dr. Payne told him. I asked him when was the time Dr. Payne told him that none of his teeth could be saved, and he said on his second visit, and I asked if he did not go there the 3rd day of June and have five teeth pulled and he said yes. I asked him if he didn't go there the 8th day of June five days after, and have two pulled, and he said yes. That was two trips in page 95 } 1929 before the incorporation.

By the Court: I understood him to say in his answer that he went there and had them all pulled out.

A. In 1931 I went there to have the rest of them taken out. I went there in 1929, and in 1931 I went there to have the remainder of the teeth taken out. My teeth got so bad I couldn't eat, and I called up, and I went down there, and Dr. Payne looked at them, and he said that couldn't any of them be saved.

Q. That was in 1931?

A. Yes, sir. I asked him the price of taking them out, and what a plate would cost, and he gave me the price, and they went to work and took them out. There were three different ones.

Q. Three different men pulled your teeth?

A. Yes, sir.

P. H. VADEN,
being duly sworn on behalf of the Commonwealth, testified as follows:

Examined by Mr. William Venable:

Q. What is your name?

A. P. H. Vaden.

Q. What is your address?

A. 1085 West 39th Street.

page 96 } Q. Do you work for Gilpin Wholesale Drug-
gists?

A. Yes, sir.

Q. Have you been a patient of the United Dentists, Incorporated?

A. Yes, last year.

Q. L932?

A. Yes, sir.

Q. What did you have done?

A. I had a bridge put in—I had one made, but it was not put in.

Q. When you first went to the office of the United Dentists, Incorporated, who met you, who did you first see?

A. A lady, some lady.

Q. Did you know who she was?

A. No, I did not. I did not know then, but I know now.

Q. Who was it?

A. Mrs. Payne.

Q. This lady sitting here?

A. Yes, sir.

Q. After you had seen Mrs. Payne what did you do?

A. She diagnosed my teeth, and suggested what to be done, to have them out, and bridge work put in.

Q. And who did that work?

A. A doctor, one of the doctors in there.

Q. Did anyone else look at your mouth at any time and tell you what was the matter with your teeth?

page 97 } A. Up there?

Q. Yes.

A. No, sir.

Q. As I understand you Mrs. Payne was the one that looked at your teeth and told you what would have to be done?

A. Yes.

Q. Did she fix the price?

A. She gave me the price.

No Cross Examination.

At this point the further taking of evidence was adjourned for lunch.

AFTERNOON SESSION.

Norfolk, Virginia, February 15, 1933.

Met pursuant to the adjournment.

Present: Same parties as before.

page 98 } DR. B. M. WILLIAMS,
recalled, further testified as follows:

Examined by Mr. Venable:

Q. While you were working for the United Dentists, Incor-

porated, this morning you said something about two instances in reference to treatment of teeth. Will you explain to the jury what they were.

A. One afternoon late a colored gentleman came in there.

By Mr. Coleman:

Q. Who?

A. A colored gentleman. He said the tooth had been pain-ing him. It was not pain-ing him at that time, and I examined the tooth and saw it was too far gone to be filled, and in my judgment I told him it should be extracted, and he refused to have the tooth extracted and I dismissed him. Mrs. Payne saw it she thought I should have filled it and said if anything was wrong let him come back later. I had no further connection with it and dismissed him.

Q. What do you mean by dismiss?

A. I told him I did not care to fill it that it would give him pain.

Q. What was the other instance you speak of?

A. One day a colored woman, I suppose about 30 years old, she did not want false teeth, and on examination I refused to fill it, and Mrs. Payne thought that I
page 99 } should have done so.

Q. What did Mrs. Payne say about filling it?

A. She said to fill it and if it gave any trouble to let her come back.

Q. What about this crown that was mentioned?

A. I don't know anything about the crown.

Q. Now, in those two instances you say you did act contrary to orders?

A. Yes, sir.

Q. I will ask you whether or not they were teeth that should have been filled?

A. No, sir.

Q. Why?

A. One was a nerve exposed, and had been aching, pain-ing, and I suspected an *abcess* was forming, and if it had been filled, and this poison gas, or putrescent condition would cause pain, cause his face to swell, and it might prove serious. In other words it would prove detrimental to the health of the patient.

Mr. Green: I move to strike that out.

Mr. Venable: I want to show what the controlling officers required the dentists to do.

The Court: You would say that it was improperly done. That is all right. Those two illustrations.

page 100 } CROSS EXAMINATION.

By Mr. Coleman:

Q. Who was the colored gentleman that you referred to?

A. I don't recall his name.

Q. Can you describe him?

A. No, sir.

Q. Was he a tall dark man or a short yellow man?

A. I would not say he was so tall, but I would say, as far as that was concerned, he was dressed in blue overalls, and he had a mustache.

Q. Did he have one of those John Gilbert mustaches?

A. I am not familiar enough with that to know what that looks like.

Q. You know what I mean. Where were you educated?

A. Raleigh, North Carolina, and Chicago Medical College, dental surgery.

Q. Is that a reputable college?

A. Yes, sir. As a matter of fact it is looked upon as one of the best schools in the United States.

Q. You were a perfectly capable dentist, were you not?

A. Yes, sir.

Q. Were you receiving a good salary?

A. At that time \$80.00 a week.

Q. What did you finally get?

A. It had been reduced before that.

Q. You had been drawing \$80.00 a week?

A. Yes, sir.

page 101 } Q. You stayed there after that and filled teeth?

A. Yes, sir.

Q. That you ought not to have filled. Did you fill teeth that would cause people to suffer by having the teeth filled?

A. No. I said the filled tooth might have given the patient trouble, and it might not have given him trouble, but in my estimation, as far as my judgment was, I did not think it advisable to fill that tooth.

Q. You are a licensed dentist, and you are required to use your best judgment?

A. Well, yes.

Q. You don't have to do anything wrong about it, do you?

A. No.

Q. Well, now, if you thought it was wrong, why didn't you refuse to do it?

A. I wanted to hold my job.

Q. You are willing to do something wrong in order to hold your job?

A. I don't mean that, no, sir.

Q. What do you mean?

A. I might fill it against my own better judgment.

Q. Did you ever fill teeth against your judgment?

A. No. I might be mistaken. It is a mistake to fill a tooth that should be extracted, but to fill it would
page 102 } throw the poison through the body.

Q. During the time you were there Mr. Payne was away from January until September?

A. He was not at the office. I don't know where he was.

Q. He was away in January—what time did you first go there?

A. March 15, 1932.

Q. When did you leave?

A. October 15, 1932.

Q. During that period was Payne there?

A. Part of the time. Late in the summer he came.

Q. Don't you know that Mr. Payne did not get back there until September; that he had been gone from the time you went there to this place, and it had been operated by Mrs. Payne?

A. I don't know who owned and operated it.

Q. She was there all the time?

A. Yes.

Q. You were there for a few months before E. T. Payne left?

A. I don't know.

Q. You can remember the colored gentleman and the colored lady, still you cannot remember when Mr. Payne was there?

A. He came back late in the summer. I don't know when.

Q. Do you recall whether it was in August, during the summer, or September?

page 103 } A. In August—I do not say he came back in August. I consider August a summer month.

Q. Do you regard September as a summer month?

A. Well, it depends on how the weather feels.

Q. Do you mean to tell the jury that he came in August or September?

A. I don't know when he did come, to be frank with you, I don't know what day. I walked in there one day and he was there.

Q. Do you know the college that Dr. Barnett graduated from?

A. I understand he graduated from Richmond.

Q. The Medical College of Virginia?

A. Yes, sir.

Q. What is the reputation of that college, the dental department?

A. A good school, I have always heard.

Q. It is regarded as a first class dental school?

A. Yes, sir.

Q. It is regarded as one of the best in the country?

A. As far as I know.

RE-DIRECT EXAMINATION.

By Mr. Venable:

Q. Mr. Coleman has gone into the question of whether
page 104 { you would do anything wrong in the practice of
your profession. Tell the jury what was your
position while working there for this corporation?

A. Well, I had that first experience, when I was told to fill them, and if anything was wrong to let them come back and we would correct it. I went ahead on the next occasion, and Mrs. Payne thought this tooth should be filled. I put in a temporary filling, and that is supposed to last a year, after which you might put in a permanent filling. The first is a cement filling, and if you fill the cavity with that, and there are no germs, no bacteria, and it might be just as satisfactory as a permanent filling.

Q. I was not speaking of that so much, but the purpose of my question was were you your own free agent up there?

A. No, sir, not at all times.

Q. Did you ever refuse to do work up there?

A. I have dismissed patients where they wanted me to fill the tooth. I would treat the patients, and then let them go.

Q. What would be the result after that?

A. In that particular instance, where Mrs. Payne said it was best to fill the tooth and let him come back if there was anything wrong I dismissed the patient, telling him that it should not be filled, that it should be extracted.

Q. In other words, what I would like to find out
page 105 { from you is whether after this corporation employed you you were acting under orders from them, or whether you were acting on your own judgment?

A. I was acting under orders.

Q. From whom?

A. Mrs. Payne.

RE-CROSS EXAMINATION.

By Mr. Coleman:

Q. How old are you?

A. 36.

Q. How long have you been practicing dentistry?

A. I graduated June 3rd, 1924.

Q. Are you a strong healthy man?

A. No, sir.

Q. Are you capable of earning a living as a dentist without doing anything wrong, when a woman tells you to do it?

A. Yes.

Mr. Venable:

Q. Why did not you keep on staying there?

By Mr. Coleman: He testified to that. The Jury knows.

By Mr. Venable:

Q. If you know, and the jury knows, tell me what he said?

page 106 } By Mr. Coleman: I am not on the witness
stand.

By Mr. Venable:

Q. I will ask you that question?

A. Well, I had been working for some time to go in business for myself again. I had three locations in view. At the time I moved I made three trips out of town to look over these various localities. I decided that I wanted to go back in business for myself, and one Sunday morning I went down to the office and Dr. Payne was there, and I told him the situation, that I was going in business for myself, but I would work another week if he wanted me to, or I would go now if he wanted me to. He asked me to work another week, and I stayed another week, and my time was up, and they paid me my salary, and I left.

DR. N. R. MITCHELL,

being duly sworn on behalf of the Commonwealth testified as follows:

Examined by Mr. Venable:

Q. Please state your name, age and occupation?

A. N. R. Mitchell; age 45; dentist.

Q. At what time did you commence work for the United Dentists, Incorporated?

A. April 30th, 1929.

Q. That is you worked for them before they were incorporated?

A. Yes, sir.

Q. How long did you stay there after they were incorporated?

page 107 } A. Two years and a half.

Q. Doctor, where are you practicing now?

A. Practicing for myself, 126 Granby Street.

Q. How long have you been away from the United Dentists Incorporated?

A. A year and a half, just about.

Q. Did you go to work for yourself when you left their employment?

A. Yes, sir.

Q. When you first went there who was in charge of the office?

A. Dr. Payne.

By Mr. Green: That was before the incorporation?

Mr. Venable:

Q. After the incorporation you went on working for the corporation?

A. Yes.

Q. Now, will you tell this jury who managed this work for the periods you were with this corporation?

A. Dr. and Mrs. Payne seemed to be manager. They diagnosed most of the cases.

Mr. Coleman: The law says it must be done habitually. Ask if they did it regularly.

A. Whose duty was it?

page 108 } By Mr. Venable:

Q. After the incorporation who regularly made the diagnosis, how often did the Paynes make the diagnosis?

Mr. Green: Let him ask how the business was conducted.

The Court: He was there a year and a half and he ought to be able to tell.

By Mr. Venable:

Q. Go ahead.

A. The patient would come in and Mr. Payne or Mrs. Payne would seat them in the chair and call the dentist. They would proceed to diagnose the case. Dr. and Mrs. Payne diagnosed cases regularly, right along.

Q. Who made out the cards for what was to be done in the mouth?

A. Dr. Payne sometimes and Mrs. Payne.

Q. When those cards were turned over to the dentist were you instructed—were instructions given you as to what was to be done?

A. Who gave the instructions?

Q. Yes.

A. Dr. and Mrs. Payne.

Q. Both of them at one time, or how was it?

A. *Sometime* one, and sometimes both of them.

Q. Who gave the general anaesthetic up there in that office?

A. Well, some were given by Dr. West, some by Mr. Payne, but I think most by Dr. West and Mr. Payne.

Q. Now, during this time tell what you know about whether both of these people were working on bridges and filling teeth and all that kind of thing?

A. I never saw them work in the mouth filling
page 109 } teeth, doing filling or anything of that kind. I
saw Mrs. Payne scrape the lower teeth for a lady
once.

Q. Tell me something about the work of Dr. King—how were you introduced to Dr. King?

A. I was introduced to him as laboratory man, the technician.

Q. What has Mr. King been doing up there, what is his work?

A. His work was laboratory work.

Q. I am not talking about his work inside of the laboratory, but what he did when he came in contact with patients?

A. I have seen him work in the mouth.

Q. Yes.

A. I have seen Mr. King work in the mouth, make gold crowns, make bridges, several different times. I would not say how many.

Q. While you were there was a page in the Ledger Dispatch of April 28, 1931, a full page advertisement in which your picture appears, holding a pair of forceps with the tooth in your hand, and a lady smiling, and the advertisement reads, "It didn't hurt me a bit". In fact I did not know my tooth was out until Dr. Mitchell told me". Did you pull that tooth, sir.

A. No, I did not.

Q. Under what circumstances was that picture taken?

A. Well, Mr. Payne told me to get a pair of forceps and the tooth, and hold it up, the same as if I were
page 110 } extracting a tooth for the lady.

Q. Who did the lady come up there with, do you know?

A. The lady came up there with a paper man, I think Mr. Holmes.

Q. The man who was soliciting the advertisement?

A. Yes.

Q. Did you know there would be a representation in the newspaper as pulling this tooth, and the woman saying, "It did not hurt me a bit"?

A. No, I did not.

Mr. Venable: I offer in evidence the advertisement dated April 28, 1931.

Note: Filed as Exhibit E.

Q. Did you afterward clean, or do anything about this lady's teeth?

A. I cleaned her teeth, yes, sir.

Q. No teeth had been pulled out at that time?

A. No, sir.

Q. When she said, "It didn't hurt me a bit", it could not have hurt because she had not had it pulled.

A. No, sir.

Q. In the examination of some witness this morning it was stated, or intimated, that you were the instigator of this proceeding against the United Dentist Incorporated,
page 111 } did you do that or not?

A. No, sir, I had nothing to do with it.

Q. State whether or not you did, at the request of the Tidewater Association representative, go to Newport News to see some dentists there to see if they would come over here to testify after this suit was brought?

A. Yes, I did at the request of Dr. Simmons and Dr. Walker.

Q. What Dr. Walker?

A. Dr. Lewis Walker.

Q. Doctor, some witness was asked here this morning whether you and he had not tried to rent from Mr. Talbot the office at the corner of Main and Granby Street. Did Dr. Barnett have anything to do with it?

A. He did not. I tried to rent them.

Q. When was it you wanted to rent them?

A. I don't know just how long. I think 6 months ago.

Q. It has been a year and a half since you worked for these people?

A. Yes.

Q. Six months ago you approached Mr. Talbot?

A. Yes, through an agent.

Q. Why did not you rent them?

A. We agreed on the price, but he asked me to put up more cash than I could put up. That is what broke the deal up.

Q. That was after you had stopped working page 112 } with them?

A. Yes.

Q. What about taking bites and impressions of teeth in the office of the United Dentists, Incorporated?

A. I have seen Dr. and Mrs. Payne adjust false teeth. I have never seen them take bites or impressions.

Q. Now, about pulling teeth to make a bridge longer, or a bridge shorter, is it a fact that that was done?

A. Yes.

Q. You know that that was done?

A. Yes, sir.

Q. What instructions did you receive from Dr. and Mrs. Payne with reference to bridges?

A. Well, *sometime* they would suggest that a tooth should be extracted, and make a bridge. I know of one instance where the man had pyorrhoea and I thought it should not be put in at all.

Q. What was the usual and habitual custom of directions to you with reference to bridge work, how were they to be put in?

A. How they were to be put in?

Q. How you put them in?

A. Well, after the teeth were pulled, and the bridges were made the teeth were ground to fit the bridges. We make up the impression, and then grind the teeth to fit the bridge. That was the usual procedure.

Q. Was that under the direction of any one page 113 } in the office?

A. Dr. and Mrs. Payne directed it in the office.

Q. Is that the usual method of doing this work?

A. I would not say so. The teeth are ground before, and then the impression made, and fitted.

Q. How is it if the bridge don't fit, some error made in the bridge?

A. After we had ground the teeth and put them in, put the bridge in, but *sometime* it was impossible to fit them in, and then we had to grind the teeth enough to get the bridge on.

Q. And is it true after you make the grinding the teeth don't fit the bridge, you have to make the bridge fit the teeth?

A. In case of a misfit, you mean.

Q. Yes.

A. In case of a misfit the bridge would have to be made over, and grind the teeth to make the bridge fit the teeth.

CROSS EXAMINATION.

By Mr. Coleman:

Q. How long were you up there with the United Dentists, Incorporated?

A. Two and a half years.

Q. While you were there you drew \$18,841?

A. I could not say about that. I did not keep any memorandum of what was the full amount.

page 114 } Q. What was the salary you were paid?

A. My salary, for the first six months was \$150 a week, and sometimes extras.

Q. Sometimes you were paid for working overtime?

A. Yes.

Q. If their books show that you drew \$18,881 during the time you were there would you say that is correct?

A. I would say it is correct. I would not know what, as I did not keep account of it.

Q. You did not have to pay any office rent and did not have to buy any material, and did not have to go to any expense at all?

A. No expense at all.

Q. What you made was clear to you?

A. Yes, sir.

Q. And that is a right good salary?

A. Yes, sir.

Q. Where did you graduate?

A. The University of Maryland.

Q. When did you graduate?

A. 1918.

Q. When did you take the Virginia Dental Examination?

A. In 1918.

Q. When did you take it?

A. In June.

page 115 } Q. Where?

A. In Richmond.

Q. Have you practiced since that time in Virginia?

A. Yes, sir.

Q. Practiced elsewhere?

A. No, sir.

Q. You received the largest salary of any of the dentists employed by the United Dentists, Incorporated, did you not?

A. As far as I know.

Q. You were the high priced man?

A. I think so.

Q. Do you regard yourself as a capable dentist?

A. Yes, I do.

Q. Would you put in anybody's mouth any work that should not be there?

A. Under some conditions. If I am directed to do that by the man that I am working for.

Q. Suppose you were told to rifle a man's safe that you were working for, would you do that?

A. I don't guess I would.

Q. Are you certain about that?

A. Yes, I am certain about that.

Q. Who did you first approach to rent the quarters occupied by the United Dentists, Incorporated?

A. Who did I first approach?

page 116 } Q. Yes, who approached you, or who did you approach?

A. I first approached a gentleman named Judge Dey. I don't know his initials.

Q. Was he acting as broker in securing a lease, in the beginning, from Mr. Minton W. Talbot for the store at Main and Granby Street?

A. Yes, sir.

Q. Who else did you have representing you?

A. Not anyone.

Q. Did not you have H. C. Hoggard & Company?

A. No, I don't know them.

Q. You were acting through Judge Dey, is that right?

A. I don't know about that.

Q. Did you approach Dey, or did he approach you?

A. I approached Dey.

Q. How did you happen to approach Dey?

A. To rent a place of business.

Q. Is he a real estate dealer?

A. I don't know.

Q. Who introduced you?

A. Mr. Overstreet.

Q. Is not he a high pressure salesman or broker?

A. I could not say. I guess so. I don't know about that.

Q. I think I do, probably. How much did you offer to pay for the premises?

page 117 } A. \$125.00.

Q. How much were the United Dentists, Incorporated, paying?

A. I could not say.

Q. You knew they were paying \$92.50 a month for the premises there?

A. I didn't know. Mr. Talbot told me.

Q. You talked to Mr. Talbot?

A. Yes, sir.

Q. In answer to Mr. Venable why did you say you did not make the deal?

A. He demanded me to put up so much cash for the place.

Q. As a matter of fact, did not Mr. Talbot ask you to give him some references, some business references, and you told him you could not give any, and then you finally offered to give Mr. Naiman, in the Law Building Pharmacy?

A. No, sir. I gave him several.

Q. Did you give him reference in Roanoke?

A. I gave him in Newport News, and W. M. Bott here, and the Granby Pharmacy here.

Q. Did you give anybody in Martinsville?

A. No. Mr. Coe in Newport News.

Q. Did not you tell him you had to go through bankruptcy?

A. Yes.

Q. You went through bankruptcy although you were making \$18,881 a year for more than two years?

page 118 } Mr. Venable: I object to that.

By Mr. Coleman:

Q. Have you been engaged in any other business besides dentistry?

A. No, sir.

Q. Haven't you been conducting business other than as a dentist, doing nothing except practicing dentistry?

A. That is all.

Q. You have lost the money—did you invest it in a gold mine or silver mine like my brother Venable?

A. I lost my money, but not in a silver mine or a gold mine either.

Q. When did you first make application to Mr. Talbot for

the lease of the premises occupied by the United Dentists Incorporated, who were tenants, to put them out of business?

Mr. Venable: I object to the form of the question. That is not proper.

Mr. Coleman: I want to show the motive for what he is doing.

The Court: I overrule the objection.

Mr. Venable: I say that it hasn't anything to do with this case. I note an exception.

page 119 } By Mr. Coleman:

Q. When was the time you tried to rent the place from Mr. Talbot through W. W. Dey?

A. I could not tell the exact date.

Q. What month?

A. I think it was six months ago.

Q. More than six months?

A. I couldn't say. I don't have the date.

Q. Don't you know, as a matter of fact, it was last September when you thought the lease of the United Dentists was about to expire?

A. I think August or September. I could not say for sure.

Q. Don't you know it was June 21, 1932?

A. I don't know what month it was.

Q. Didn't you get a letter from Mr. Talbot?

A. Did I get a letter from Mr. Talbot? I don't remember that. I couldn't tell to save my life.

Q. Who were you going in business with at the time you were trying to get these premises?

A. I could not say that.

Q. Were not you negotiating at that time with Barnett?

A. No, sir.

Q. Were not you and Barnett together continuously?

A. Not continuously. He was working for the United Dentists, and I was working for myself.

page 120 } Q. You said that you went to Newport News upon the request of Dr. Walker and Dr. Simmons?

A. Yes.

Q. They were right much interested in the prosecution?

A. They seemed to.

Q. Why did you take Barnett with you to obtain information against these people?

A. I took Dr. Barnett along as company.

Q. Who did you see?

A. Dr. Thomas and Dr. Ford.

Q. Both of those had been former employees of the United Dentists?

A. Yes, sir.

Q. Both of them were practicing dentistry with office in Newport News?

A. Yes.

Q. Did you ask them to come over here?

A. I talked to them about it.

Q. Did not you ask them to come to Norfolk for conference?

A. I told them they would be summoned to Norfolk to testify.

Q. Did not you ask them to come over before the proceedings were instituted?

A. No, sir, not on my own hook, no, sir. I had no business to.

page 121 } Q. On whose "hook" did you do it, you must have made it on somebody *else* "hook"?

A. I went over there to see them for Dr. Walker and Dr. Simmons. That is what I stated.

Q. Were you so much interested in making the trip to Newport News to get information that would injure somebody else?

A. I was not so much interested. They asked me to go to see these men. I had worked with them, and knew them.

Q. What would be their object in getting you to go around and acting as detective.

Mr. Venable: I object. Here is a man working for another company.

The Court: He is trying to show what interest he had.

Mr. Venable: I object to the form of the insinuating questions. You have no right to insinuate.

Mr. Coleman: They don't want me to get at the truth.

Mr. Venable: That is highly improper. Why do you say that I don't want the truth to come out in this case.

Mr. Coleman: You are objecting to everything.

The Court: I have enough trouble here. I do not want to turn you over to the sergeant, but I don't see what else I can do.

page 122 } Mr. Venable: You may have to.

Mr. Coleman: I did not mean anything personal.

Mr. Venable: You inferred it.

Mr. Coleman: I have a right to ask the questions.

Mr. Venable: Yes, but I object to the form in which you ask them.

The Court: If you gentlemen, please, if you have any objections to make make them to me and I will rule on it. This cross firing backward and forward we will never get through. Make your objections to me and I will rule on them.

By Mr. Coleman:

Q. Why did you let it take you away from your business to look after this?

A. It did not take me away from business. I went over Sunday afternoon.

Q. Don't you advertise in the paper all hours day or night?

A. No, sir.

Q. As a matter of fact, you have been a little afraid the Tidewater Dental Association or the State Association people might make a little trouble for you?

A. How.

page 123 } Q. You know how. You know whether you have violated the law?

A. I have not violated the law. I don't know of any laws that I have violated. Do you?

Q. I don't know.

A. You talk like you do.

Q. All right. How many trips did you make to Newport News?

A. One.

Q. You were anxious to rent this place on Main and Granby Street?

A. Yes, I was anxious to move, and I offered \$125 a month.

Q. You knew that was more than the other people were paying?

A. I did not know until Mr. Talbot told me.

Q. At that time you knew that Payne had been away from Norfolk since January, and was out of town at that time, you knew he was in Georgia, and you were trying to rent it over this woman's head?

A. I was not trying to rent it over anybody's head. I made an offer for it.

Q. What you wanted to do was to take advantage of an advertisement which you said was a fake (Exhibit E) you wanted to get the benefit of it. You said you perpetrated a fraud on the public?

A. No, I did not say so.

page 124 } Q. Did not you tell the jury that you got the forceps and got the tooth, and then went through the pretense of pulling the tooth?

A. Yes, sir.

Q. You wanted the benefit of this fraud which you had helped to perpetrate on the public?

A. No. It was no benefit to me. I was working for a salary.

Q. What was your object in wanting to rent this old building, it is not at all modern?

A. I wanted it for business.

Q. It is not a modern office building?

A. No, sir.

By the Court: We all know the building there at the corner of Main and Granby Street.

By Mr. Coleman:

Q. I want to get this straight. I understand you saw Judge Dey with Mr. Talbot?

A. Yes, I did talk to Mr. Talbot a time or two.

Q. Look at this letter and tell me whose picture this is?

A. It is me and one of Dr. Barnett.

Q. How many of these letters did you send out?

A. I could not say. Dr. Barnett had those put out, and he paid for them himself. I don't know how many.

Q. How many did you send out?

A. I did not send any.

page 125 } Note: The letter as to which the witness is
being questioned has been heretofore copied in
evidence and marked filed Exhibit "B".

Q. How many did you see him send?

A. I don't know that I saw him send any.

Q. You knew your picture was on there?

A. Yes, sir.

Q. You were associated there together?

A. Yes, sir.

Q. Look at this picture?

A. That is me.

Q. Read that advertisement to the jury?

A. "Dr. N. R. Mitchell. Formerly Dean of United Dentists. Now in business for himself, 126 Granby Street opposite Childs' Restaurant. Best sets of teeth \$20.00. Porcelain fillings \$1.00, single extractions 50 cents." Is there anything wrong about it?

Q. What is the meaning of the word "Dean"?

A. They told me that.

The Court: The Jury probably knows that.

By Mr. Coleman:

Q. You were advertising yourself as "Dean"?

A. "Formerly."

Q. You thought that the fact you had advertised yourself as "Formerly Dean of the United Dentists, Incorporated" would help you in your business?

A. Yes.

Mr. Coleman: I file this advertisement as Exhibit "F".

Q. When was that advertisement put in?

A. I couldn't tell you.

Q. Was it three or four days after you left the United Dentists?

A. Not that long. I think within a week.

Q. What was your arrangement with Dr. Barnett?

A. My arrangement with Dr. Barnett?

Q. When he came up there?

Mr. Venable: What has that got to do with whether the United Dentists, Incorporated were practicing dentistry.

Mr. Coleman: I don't want to waste any time, I won't press that.

By Mr. Coleman:

Q. In making the diagnosis, who made the diagnosis of a patient's treatment?

A. I said that I made diagnosis. I did not do it always, no, sir.

Q. Who diagnosed them?

page 127 } A. Dr. Payne or Mrs. Payne diagnosed most of them.

Q. Diagnosed most of them?

A. Yes, sir.

Q. Mrs. Payne came there about the same time you did?

A. Mrs. Payne—I don't know. She was there when I got there.

Q. Don't you know the usual practice there regarding cards indicating teeth to be extracted, or those to be treated, don't you know that the nurse or attendant, whoever it is, that the dentist calls them out and the nurse puts them down on the card?

A. Sometimes.

Q. You checked them off, and she put them on the card?

A. Sometimes.

Q. Don't you then go ahead and make the treatment, is not that the practice?

A. Not the general practice.

Q. What is?

A. Dr. or Mrs. Payne will tell us what to do, and we always had to be guided by what they had said.

Q. Don't you know, that when a patient comes in there, they are put in the chair, and the dentists examine the patient's teeth, and these people have nothing to do with any treatment, but you make your report on the card of what is needed about the teeth, and then they put the price on the work. Is not that the practice there in page 128 } that office?

A. I don't mean to say that I have seen them diagnose all cases. They diagnose most of them. We always had to do what they told us or get out. That is why I got out, because I did not do something he told me to do.

By Mr. Venable:

Q. What was that?

A. He asked me to call up a patient and find out how long they would be in the hospital, and I told him I would not do it.

By Mr. Coleman:

Q. Did you get a letter signed "Norfolk Dental Association", threatening you with prosecution if you did not leave the United Dentists?

A. I did not get a letter to that effect at all. I did not get the letter until after I left.

Q. Have you got the letter?

A. Yes.

Q. Did Barnett bring his letter to you?

A. Barnett came up there with a letter, yes.

Q. Did Dr. Williams also bring a letter to you?

A. I don't know whether I saw Dr. Williams' letter or not. I know I read Dr. Barnett's.

Q. And did not that letter suggest that you were in a position to testify and give information which would put the United Dentists out of business?

page 129 } A. It did not say anything about putting them out of business. I have to testify to the truth.

As well as I remember I still have the letter, but I could not say just what was in it.

Q. Tell the jury about, substantially, what is in that letter?

Mr. Venable: What letter are you talking about, this anonymous letter they got?

Mr. Coleman: That same letter.

By Mr. Coleman:

Q. You did not get it until after you left?

A. No.

Q. Why would these other men bring the letter to you?

The Court: I don't think that he can tell us that.

By Mr. Coleman:

Q. While on the subject of this letter, did you have anything to do with writing it?

A. I did not.

Q. You deny positively you had anything to do with it?

A. I do.

Q. Did you ever take any of those letters to Dr. Simmons?

A. Yes.

Q. How many?

page 130 } A. One. That is all that I got.

Q. The letter you received was similar to the letter of Dr. Barnett and Dr. Williams?

A. I don't remember about Williams. I imagine the same thing. I don't remember reading Dr. Williams' letter.

Q. You, of course, when two men were bringing anonymous letters to you, you were curious about it—did not you think this was peculiar two men would bring you an anonymous letter?

A. They wanted to know if I had one like it.

Q. You did not get it until after they got theirs; you did not get it until after you left there?

A. That is right. I did not get it until I had left there.

RE-DIRECT EXAMINATION.

By Mr. Venable:

Q. Whoever the writer of that anonymous letter was, it was not written to you care of the United Dentists, Incorporated, but after you left?

A. It was written to me 126 Granby Street.

Q. And it was signed in typewriting?

A. Yes, Norfolk Dental Society.

Q. Have you ever been able to find any such society here?

A. No.

page 131 } Q. Have you investigated?

A. Yes, some.

Q. Did you find there was any such society, or was it a fictitious name?

A. There was not any such society.

Q. Do you recall any particular instance in which there was a decided difference between you and Dr. Payne as to what should be done?

A. Yes, I do recall Dr. Payne asked me to crown a tooth for a young fellow, and I told him the tooth was abcessing, and he insisted on having it crowned, and I did, and the patient came back in three or four days.

Q. You put on the crown?

A. Yes, and the patient came back in three or four days with right much swelling and lots of pain.

Q. Was there any contention about what you did for him?

A. I don't remember any. He got very mad about it. He insisted on me putting the crown on, and I thought the tooth was abcessed and it should not be put on. The patient came back two or three days after and had a great deal of pain and swelling, and I had to take it out.

Q. Did you have to put the crown on against your better judgment, as directed by him?

A. Yes, sir.

Q. Do you know the name of the patient?

A. No, I do not.

page 132 } Q. Do you know when it was?

A. No, I do not know the date.

DR. F. A. WOOD,

being duly sworn, on behalf of the Commonwealth, testified as follows:

Examined by Mr. Venable:

Q. State your name and age?

A. F. A. Wood; 55.

Q. What is your occupation?

A. Dentist.

Q. Where are you practicing now?

A. Richmond.

Q. Were you ever in the employ of the United Dentists, Incorporated?

A. Yes, sir.

Q. When was that?

A. 1931, November.

Q. How long did you stay there?

A. Three weeks.

Q. During the time you were there what did you see, if anything, Dr. and Mrs. Payne do.

A. I didn't see Mrs. Payne do anything out of the ordinary, just as a nurse would do when a case came in. I did see Dr. Payne take a set of teeth and grind them and put them in the patient's mouth.

Q. What, if anything else, did you see?

A. Well, Mr. King, laboratory technician, I have seen him grind two teeth to fit the crowns.

Q. You were there only a short time?
page 133 } A. Yes.

Q. Why did you leave?

A. Well, I was doing a piece of work, and Dr. Payne came by and saw it, and he touched me on the arm and took me to one side, and told me that was not the way he wanted it done. He wanted it done the way he wanted it done, and I asked him if that was the way he wanted it done and he said he did.

Q. Who did you say?

A. Dr. Payne. He called me from the patient, and said to put on a crown. I said it was a dead tooth, and I told him it should not be put on, that it would give him trouble?

Q. What do you mean by trouble?

A. Because to stop up the cavity, the canal so that it couldn't drain it would have no way to drain, and that it would abscess, cause his face to swell and give pain.

Q. Who was that?

A. He was a sailor.

Q. What happened then?

A. Mr. Payne heard me tell the man that, and he came up and told me "All right doctor we will go ahead and put the crown on anyhow. If it gives him trouble we will take it out, and give him credit for that crown on his bridge". I shook my head, and said nothing. And he took
page 134 } me off of that patient and put me on another.
Who he put on there I don't know. I gathered up my things and left.

Q. Why?

A. Because that man was on the high seas, and it would give him untold pain.

Q. Is there any other instance you know of during the short time you were there?

A. No, sir, that is practically about all.

Q. I will ask you if the dentists there wished to retain his position, would he do what he thought was proper for the patient?

A. I understood in order to keep your position you would have to do what Dr. Payne told you to do.

Q. And you decided to quit?

A. I decided to quit.

CROSS EXAMINATION.

By Mr. Coleman:

Q. Did you quit, or were you discharged?

A. Eh?

Q. Did you quit, or were you discharged?

A. I quit.

Q. Were not you discharged because your work was not satisfactory?

A. Well, no, sir, there was no question that it page 135 } was not satisfactory, nothing about that.

Q. You were getting a salary of \$100 a week?

A. Yes, sir.

Q. You left there entirely?

A. Yes, sir.

Q. Did you have your own office, or where did you go?

A. To my home, my own office in Richmond.

Q. Do you run an advertising office in Richmond?

A. Yes, sir.

Q. When you left Dr. Payne, where are you working now?

A. In Richmond.

Q. An advertising dentist?

A. Yes, not advertising, just at present. I have run an advertising office.

Q. Were you not let out because you were not a satisfactory dentist, and they were paying you a hundred dollars a week?

A. Nobody ever told me that.

Q. What did they tell you?

A. They didn't need me any more, but I had my instruments in my pocket ready to walk out.

page 136 } Mr. Venable: There are a number of advertisements filed as Exhibits with the notice of motion. and I would like to get Mr. Venable to read those, and put them in evidence.

Mr. William Venable: Advertisement of March 8, 1931, Virginian-Pilot, in that it charges fraudulent combination by reputable licensed dentist for the purpose of fixing exorbitant prices.

Note: The advertisement referred to is filed in evidence marked Exhibit "G".

Advertisement of September 11, 1932, Virginian-Pilot, in which it claims over 700,000 satisfied patients.

Note: The advertisement referred to is filed in evidence marked Exhibit "H".

Advertisement of March 24, 1931, falsely holding out E. T. Payne to be a licensed dentist with thirty years' experience in prosthetic dentistry.

page 137 } Note: The advertisement last referred to is filed in evidence marked Exhibit "I".

Advertisement of January 3, 1932, Virginian-Pilot in which they say the "The only difference in our work and that of high priced dentists is the cost".

Note: The advertisement referred to is filed in evidence marked Exhibit "J".

Advertisement of August 7, 1932, Virginian-Pilot in which it says "our bridge work is superior to any in Norfolk" and "This huge dental office has served hundreds of patients this week" and "Everybody knows our work is as good as high priced dentists do".

Note: The advertisement last referred to is filed in evidence marked Exhibit "K".

Advertisement of August 24, 1930, Virginia-Pilot in which it says "We make them fit where others fail".

Note: The advertisement last referred to is filed in evidence marked Exhibit "L".

Advertisement of November 23, 1930, Virginian-Pilot in which it claims "Most reliable" and "We are far superior and much more thorough than the small one chair dentist".

Note: The advertisement last referred to is filed in evidence marked Exhibit "M".

page 138 } Advertisement of January 7, 1932, Virginian-Pilot in which it says "safest" and "our bridge work is the finest in Norfolk".

Note: The advertisement just referred to is filed in evidence marked Exhibit "N".

Advertisement of January 10, 1932, Virginian-Pilot, in which it claims "Hundreds fitted where others have failed".

Note: The advertisement last referred to is filed in evidence marked Exhibit "O".

Advertisement of May 4, 1931, in the Ledger-Dispatch, in which they say "We save you $\frac{1}{2}$. Why pay more?"

Note: The advertisement last referred to is filed in evidence marked Exhibit "P".

Advertisement March 19, 1931, Ledger-Dispatch in which E. T. Payne and J. F. King are held out as practicing dentists, and it claims that they are leaders in "dental skill", "fine bridge work", "superior crown work", "perfect fitting plates", "have greatest number satisfied patients".

Note: The advertisement last referred to is filed in evidence marked Exhibit "Q".

Advertisement of February 23, 1931, Ledger-Dispatch in which it says "Thousands of satisfied patients treated at our office testify to our reliability", and "Patients who used to swear at other dentists' bills—now swear by our high grade dental work. The only difference is the price".
page 139 } "We save you half."

Note: The advertisement last referred to is filed in evidence marked Exhibit "R".

Advertisement of March 15, 1931, Virginian-Pilot in which it says "Leadership because of our superior dental skill" and "We are supreme in Norfolk" and advertises E. T. Payne the president of the said corporation, as a practitioner of dentistry in that organization and with thirty years' experience.

Note: The advertisement last referred to is filed in evidence marked Exhibit "S".

Advertisement of January 1, 1931, *Virginian-Pilot*, in which it says "United Dentists have made it possible for you to have your dental work done at reasonable prices" and "There is a profit of from 700 per cent to 1,000 per cent on all bridge work, fillings, etc., at the prices charged by high priced dentists in Norfolk", and "Only the rich can afford such prices".

Note: The advertisement last referred to is filed in evidence marked Exhibit "T".

Advertisement of October 5, 1930, *Virginian-Pilot*, in which it claims "If you pay more than we charge you—you are throwing your money away".

Note: The advertisement referred to is filed in evidence marked Exhibit "U".

page 140 } Advertisement of September 28, 1930, *Virginian-Pilot*, in which it says "The United Dentists is the only dental office in Norfolk that will replace any unsatisfactory work free of charge", and "Only highly trained dentists allowed to practice in this office".

Note: The advertisement last referred to is filed in evidence marked Exhibit "V".

Advertisement of December 20, 1931, *Virginian-Pilot*, in which it claims "Dental work far superior to any in Norfolk in or near same price range", and "Our superior methods, finer materials, better mechanics, enable us to give you better work", and "The safe place for dental work".

Note: The advertisement last referred to is filed in evidence marked Exhibit "W".

Note: All of the above advertisements were filed in evidence.

The Plaintiff rests.

page 141 } W. B. STANT,
being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Coleman:

Q. What is your name?

A. W. B. Stant.

Q. What is your occupation?

A. Merchant.

Q. What kind of business?

A. Grocery.

Q. Where is your place of business?

A. Ocean View.

Q. How long have you been in business?

A. About 12 years.

Q. Mr. Stant, since October 5, 1929, have you, and any members of your family, in your presence, been treated by the United Dentists, Incorporated?

A. Yes, sir.

Q. Have you been to the United Dentists, Incorporated, frequently since October, 1929?

A. I have, yes.

Q. What did you go there for?

A. The last time I was there to get a plate made. I was there just a few days ago to have the plate fitted.

Q. Did you visit the place for dental work for yourself?

A. Yes, sir.

page 142 } Q. Were you ever there with Mrs. Stant, your wife?

A. I can't say I was.

Q. You have been there with your wife, haven't you?

A. Yes, sir.

Q. When your wife and yourself were treated, and your teeth fixed, who diagnosed, and made the examination of your mouth and gave the *treatment*?

A. Different dentists in there.

Q. Did Dr. Payne or Mrs. Payne treat your mouth?

A. No, sir.

Q. Did they have anything to do with it?

A. Nothing at all, any more than Mrs. Payne would meet me when I would come in, and would ask me what I wanted, and she would look up my card to see what was on it. She was on the business side of it.

Q. Did she have anything in the world to do with making the examination, or the plate being fitted in your mouth?

A. No, sir.

Q. Do you recall the names of the dentists who treated you?

A. I remember, when I first went there it was an older man there.

Q. Do you recall being treated by Mr. Mitchell?

A. Is he the man there?

Note: Dr. Mitchell was asked to come into the page 143 } Courtroom, which he did.

Q. Do you recall seeing Dr. Mitchell there in that office when you first went there?

A. I think his face is familiar. I would not be positive.

Q. Do you know E. T. Payne?

A. Yes, sir.

Q. Do you know Mrs. Payne?

A. Yes, sir.

Q. Did either of them treat you while you were in there?

A. No, sir.

Q. Did they suggest the kind of work to be done?

A. No, sir.

Q. Did you know Mr. King, the technician there?

A. I can't say I do.

Q. Did Payne or his wife examine your mouth?

A. No, sir.

Q. Did anybody except dentists examine your mouth?

A. No, always the dentist.

Q. Was that the same condition when your wife went there?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Venable:

Q. What did you say your business was?

A. Merchant, grocer.

page 144 } Q. Now, you have gone to the United Dentists, Incorporated, and have taken your family there for treatment from time to time?

A. Yes, sir.

Q. You know only with respect to the times when you were there?

A. Yes, sir.

Q. How long have you known Dr. and Mrs. Payne?

A. Since I have been going there.

Q. How do you address them?

A. Mr. Payne?

Q. Did you call him Mr. Payne?

A. Yes, sir.

Q. Have you ever called him Dr. Payne?

A. I couldn't say that I have.

Q. You don't know whether you have or not?

A. No.

Q. You don't know whether numbers of people spoke of him as doctor, or not?

A. No, sir, I do not.

Q. How well have you known him and Mrs. Payne?

A. How well have I known them?

Q. Have you ever visited them?

A. At their place of business.

Q. Only at their place of business?

page 145 } A. Yes, when I had work done.

Q. You said something about when you would go in you would be met by Mrs. Payne or Mr. Payne, and that they would get out your card?

A. Yes, when I would go in there to have any work done they would look up the card to see how long it had been since I had been there, and what had been done. The first time I went there the card was made, and then when I would go back there they keep a record of it, I think. I am not familiar with that at all.

Q. The last time, do you recall, had you gotten your teeth?

A. No, sir.

Q. Are you being treated right now?

A. Yes, sir.

Q. Were you in there very recently, how recently?

A. I think I was in there Monday, I think it was.

Q. Did they say anything to you about coming down here to testify?

A. Yes.

Q. They asked if you would testify that the work was satisfactory?

A. If I would testify if the work had been satisfactory.

Q. And you told them that you would?

A. Certainly.

Q. It was satisfactory. You haven't gotten it
page 146 } yet?

A. I expect to get them.

Q. You expect to get the teeth?

A. Yes.

Q. How soon?

A. Tomorrow.

Q. You expect to get them tomorrow?

A. Yes, sir.

Q. When this bite was taken—do you know what a bite is?

A. Yes.

Q. Did you know that it was one of the most difficult things to do accurately in the making of a set of teeth, to get the correct impression so it would fit exactly?

A. I suppose it is.

Q. You say when you were up there last week neither Mr. or Mrs. Payne took the bite for you?

A. Of course, they did not.

Q. Well, you would not hardly expect them to do that when this suit is pending?

A. How is that?

Mr. Coleman: I object. That is a question for argument.

Mr. Venable: Perhaps it is.

By Mr. Venable:

Q. How long has this suit been pending, do you page 147 } know?

A. No, sir.

Q. Any way, while this suit was pending when you were up there neither Dr. Payne or Mrs. Payne tried to diagnose the case, or do anything in your mouth?

A. They have not since I have been going there, the last four years, either of them.

Q. During that time you have been treated by first one dentist and then another?

A. Four members of my family have.

RE-DIRECT EXAMINATION.

By Mr. Coleman:

Q. You said that you had a set of lower teeth in 1929?

A. Sure.

Q. Now you are having an upper set made?

A. Yes, sir.

Q. The lower were entirely satisfactory?

A. Absolutely. I have them on now.

Q. Have you been wearing them ever since that time?

A. Yes, sir.

Q. As the result of the satisfaction they gave you you carried your wife there?

Mr. Venable: I object to that question as leading. Of course some of them were well pleased. I am not saying they were not.

page 148 } By Mr. Coleman:

Q. In 1929, did anybody but the dentists fit your teeth?

A. No one but the dentist.

By Mr. Venable:

Q. How do you know they were dentists?

A. I suppose when people go around in the uniform they must be dentists. It was not Dr. Payne or Mrs. Payne.

Q. You say the dentist who examined you was Dr. Thomas, an older man?

A. Yes, sir.

Q. Do you know that he was a dentist?

A. Yes, sir.

By Mr. Venable: You know what he told you.

W. C. CLARK,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. You were on the jury this morning?

A. Yes, sir.

Q. Did you have any work done by the United Dentists, Incorporated?

A. Yes, sir.

page 149 } Q. Have you had any work done since 1929?

A. Let's see—1930—November, 1930, October or November, I am not sure which.

Q. When you went there did Mr. or Mrs. Payne have anything to do with diagnosing your condition?

A. No, sir.

Q. What was done when you went there?

A. I was having trouble with my teeth. They were loose, and required attention, and Mrs. Payne said "Why, Mr. Clark, our Dr. Thomas is the man that will look after that for you", and I went over to the chair, and Dr. Thomas performed that particular service. He removed the lower teeth at that time, I think, at that time, 8 or 9.

Q. Did Mrs. Payne look at your mouth or examine it?

A. No, sir. I told her I had *pyorrhoea*, and she said "Let me see your teeth", she looked, but she did not do anything to my mouth.

Q. Did she tell Dr. Thomas?

A. Do you want me to say what she told me.

Q. Did Mrs. Payne fix a card then?

A. Yes, sir.

Q. Who gave her the information on which she fixed the card?

- A. Dr. Thomas.
- page 150 } Q. Did your wife go there?
- A. Yes.
- Q. Did you go with her?
- A. Yes.
- Q. Did Mrs. Payne, Mr. Payne or Mr. King examine her mouth and diagnose it?
- A. No, sir.
- Q. Who did that?
- A. Dr. Mitchell.
- Q. Did Dr. Mitchell give Mrs. Payne the information to put on the card?
- A. I presume he did. I did not do it.
- Q. Did Mr. King examine you?
- A. No, sir.
- Q. What is your business?
- A. Jones Cold Storage place.
- Q. You knew nothing about this case until this morning?
- A. I did not know anything until I got into court this morning.

CROSS EXAMINATION.

By Mr. Venable:

Q. What reason have you for saying that you had pyorrhea—you knew yourself, I understand that you had pyorrhea?

A. I had been told that by other dentist.

Q. Other dentists told you you had pyorrhea?

page 151 } A. Yes, and I knew it myself.

Q. You went up and spoke to Mrs. Payne, and she looked in your mouth?

A. I did not know who she was until I went into the place.

Q. She asked you to let her see your teeth?

A. I told her I had pyorrhea, and she looked in my mouth.

Q. She said "Let me see your teeth," that is correct, isn't it?

A. Now, I am not sure whether she said to let her, or whether I said to look at them.

Q. I have got here what you said. The jury heard it "Let me see your teeth"; anyhow she did look at your teeth?

A. She did look at my teeth, but I won't say positive what she said.

Q. Do you want to withdraw your first statement?

A. I don't want to make a *mistatement*.

Q. I don't want you to make any. Anyhow, Mrs. Payne

did look at your teeth, and then you went to Dr. Thomas?

A. Yes, because he was the man to pull the teeth.

Q. She sent you to Dr. Thomas because he was the man who pulled teeth?

A. In that particular condition, that pyorrhea condition.

Q. All right. Well, having looked into your mouth and said "Dr. Thomas is the best man for your par-
page 152 } ticular case"—

A. Yes, that is right.

Q. Then she went with you over to Dr. Thomas?

A. She directed me to Dr. Thomas.

Q. You got up n the chair and Dr. Thomas and she both looked into your mouth then?

A. I don't think she was at the chair at all. She stayed at the desk. She may have gone over to Dr. Thomas' chair, but she left and went back to the desk after that.

Q. Did Dr. Thomas pull the teeth as you said required?

A. After consulting with me.

Q. After looking at your teeth, you said something was said about pulling the teeth because she directed you to this man?

A. I did see her when I went in, and I knew that my teeth were in bad condition, and I made the statement that I thought that they should come out, and she said to see Dr. Thomas. He can tell you about that.

Q. You went to Dr. Thomas and he pulled the teeth out?

A. After consultation with me.

page 153 } MRS. ELLA M. LUNDE,
being duly sworn, on behalf of the defendant,
testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Mrs. Lunde.

Q. Are you engaged in business?

A. Yes, sir.

Q. What business?

A. Hair dressing business.

Q. With whom?

A. Lunde & Griffith.

Q. Where located?

A. 148 Granby Street.

Q. Chamberlaine Building?

A. Nusbaum Building.

Q. The corner of Granby and Plume Street?

A. Yes, sir.

Q. Did you have the United Dentists, Incorporated, do any work for you?

A. Yes, sir.

Q. Have you had it done recently?

A. I think about three months ago.

Q. What did they do?

A. They did some extracting and some bridge work.

Q. When you went up there who met you when page 154 } you went in?

A. I went in the office there, and Mrs. Payne was sitting there.

Q. What happened then?

A. She called a dentist, I think his name was Barnett, or something like that. I think his name was Barnett.

Q. What happened then?

A. I had just had some extracting done and my gums were quite sore, and he said that he would rather not put the work in then because my mouth was so sore, and he didn't do anything that time, and I went back two or three days later and he took the impression.

Q. Did Mrs. Payne examine your mouth?

A. No, sir.

Q. Did she tell you what was needed to be done?

A. No, sir.

Q. Did she tell the dentist what he had to do?

A. No. He told me what had to be done.

Q. Did you know Mrs. Payne when you went there?

A. I had never seen her before. I had had so much work done, and I got stuck so badly, that I had to go somewhere.

Q. When was this?

A. About three months ago.

Q. Did Mr. or Mrs. Payne ever tell the doctor what to do?

A. Dr. Payne nor Mrs. Payne neither one. I never saw

Dr. Payne until after the work was done. He was page 155 } not there at the time.

Q. Do you know Mrs. Payne any other way except in a business way?

A. No, sir. I never met her before I went to have work done. I have so many customers that come to me, and I try to do satisfactory work, and that is what I want done.

CROSS EXAMINATION.

By Mr. Venable:

Q. You say this was about three months ago?

A. Yes, sir.

Q. That would put it sometime in November?

A. I couldn't tell. I could look it up.

By Mr. Green:

Q. You are not certain about the time?

A. Not certain, but I think about three months ago.

MRS. IRMA V. HELLMICH,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Mrs. Irma V. Hellmich.

page 156 } Q. Where do you live?

A. Llewellyn Avenue.

Q. Is your husband engaged in business in the city of Norfolk?

A. Manager of the Theatre Parking Station.

Q. Did you ever have any work done in the last year by the United Dentists, Incorporated?

A. I have.

Q. Can you remember the time?

A. I have been there several times since 1928, off and on.

Q. Have you been there since 1929?

A. Yes, I was there in 1931.

Q. When you went there in 1928 who diagnosed your case—what happened when you went in there?

A. When I went in they met me at the door, and asked my name, and then took me into the doctor, and he told me what it was necessary to have done.

Q. Did Mrs. Payne tell you what to have done?

A. No, sir.

Q. Did she tell you at any time what to have done?

A. No, sir.

Q. Did Mr. Payne?

A. No, sir. As I have said, when I went in I was met at the door and they got my name, and I went in the dentist chair, and deposited my money as I went out.

page 157 } Q. You have been there on more than one occasion since 1929?

A. Yes, sir.

Q. Did you receive any different treatment on any occasions?

A. None at all.

Q. You were there in 1931?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Venable:

Q. Did you know anybody there when you went in?

A. No, I did not. I did not know a soul.

Q. Who first spoke to you when you first went in?

A. I think a nurse met me at the door when I went in.

Q. Who introduced you to Dr. Payne, how did you meet him?

A. I don't remember. I told him my name, and he asked what I wished to have done, and he showed me to the dentist chair.

Q. Did he tell you who he was?

A. Why, I don't know that he did. He said he was manager there.

Q. Did he have a white coat on?

A. No, sir, he did not.

page 158 } Q. He said he was what?

A. I don't remember exactly. I don't know what he told me.

Q. What happened when you went in?

A. I went in they met me at the door, and took my name, and then took me into the dentist chair, and a doctor came.

Q. That was in 1928?

A. That was the first time.

Q. How long before you went back there?

A. I went back there every three or four weeks until I finished.

Q. When you went back the second time how did you speak to Dr. Payne, what did you say to him?

A. I said "Howdy do", I imagine.

Q. Did you call him by his name?

A. I called him Mr. Payne.

Q. You called him Mr. Payne?

A. Yes, sir.

Q. Did not people seem a little surprised that you called Mr. Payne instead of Dr. Payne?

A. I did not know anyone there to be surprised.

Q. When you went back there the second time, when was that?

A. I imagine in 1929. I don't know exactly the
page 159 } date, but I went there continuously for some-
time.

Q. You don't know who it was that looked in your mouth?

A. No, I do not. I think Dr. Spencer was the first one that waited on me.

Q. Who have you been talking to about this case before you came up here?

A. Beg pardon?

Q. Did you talk to Dr. Payne about this matter before you came up here today?

A. No, sir.

Q. Anybody?

A. Just my friends.

Q. Who are your friends?

A. Mrs. Lunde and I came up together.

Q. You and Mrs. Lunde came together?

A. Yes, sir.

Q. Did anybody talk to you at all?

A. No, sir.

Q. Not a soul?

A. No, sir.

Q. No one knew what you would say?

A. Not even Mrs. Lunde. We never talked the case over.

Q. You just came here, and nobody talked to you?

A. No, sir.

The further taking of evidence in this matter was adjourned until tomorrow.

page 160 }

MORNING SESSION.

February 16th, 1933.

M. W. TALBOT,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Coleman:

Q. Your name is what?

A. Minton W. Talbot.

Q. What is your occupation?

A. Attorney at law and handle real estate.

Q. Do you own the premises on Main Street occupied by the United Dentists, Incorporated?

A. It belongs to my sisters.

Q. It belongs to your sisters, but do you have the renting of it?

A. I handle it for them, and I have an office in the building.

Q. They have been there for a number of years?

A. Five or six years, something of that kind.

Q. Did you have any conversation with Dr. Mitchell regarding renting the premises?

A. Yes. He approached me first through Judge W. W. Dey, who came to see me to negotiate a lease for Dr. Mitchell, and I told Judge Dey that he was not in the page 161 } real estate business, and that it would be necessary for me to see some real estate agent, and I told him that he was not a regular real estate agent, was not a licensed real estate agent, and to have a real estate agent see me about it. He did so, and sent in a formal offer through the firm of H. C. Hoggard & Company, who have an office in the Dickson Building.

Q. Do you recall about the time you had the conversation with him?

A. It was following the receipt of this letter that I got in contact with Dr. Mitchell to see if we could agree on the terms of the lease. There were a number of terms.

Q. How soon after the date of that letter?

A. Some few days, I think. This letter is dated June 21, 1932, and I had two or three interviews.

Q. What year?

A. Last year, 1932.

Q. Did Dr. Mitchell attempt to negotiate with you for the lease of the premises?

A. Yes. He repeated this offer of \$125 a month, which was about \$35.00 more than I was getting through the United Dentists, Incorporated. They were paying me \$92.50. He wanted to take a five year lease. I tried to interest him in other premises, but he said he wanted those.

Q. Did Dr. Mitchell know the amount of rent page 162 } the United Dentists were paying?

A. I don't recall about that.

Q. Is your office in that same building?

A. Yes.

Q. On the same floor?

A. On the same floor, other end.

Q. Do you have occasion to go into the offices of the United Dentists?

A. I have dropped in there at various times.

Q. In your visits there have you ever seen E. T. Payne. Mrs. Payne or Mr. King operating on any patient?

A. I have never seen Dr. Payne or his wife operating. They seem to be sitting around the desk doing the work of cashier, making up the records, and keeping the books. I am not sure who is Dr. King.

Q. He is the technician?

A. They had a good many operators there whose names I did not keep up with. I was around in there right often.

Q. Did you actually see Mr. Payne and Mrs. Payne?

A. Yes.

Q. Did you ever see them looking in anybody's mouth?

A. No.

Q. What would you see?

A. The patient would come in the office Dr.
page 163 } Payne or his wife would approach them and make
the appointments for them and refer them to the
office where the dentist's chairs were.

Q. You were aware of the fact that Payne was not a dentist?

A. I have always understood he was not a dentist, but was handling the company's affairs.

Q. As a matter of fact, he told you that he was not a dentist?

A. I don't recall specifically about that. It was my understanding that he was not. He had placards at the entrance door giving the names of two or three or four dentists that were employed, and his name never appeared as being a dentist.

Q. His name appeared as E. T. Payne, did it not?

A. Yes, sir, I believe so.

CROSS EXAMINATION.

By Mr. Venable:

Q. Doctor, in your visits to this office, I presume you were a casual visitor—Mr. Talbot?

A. Yes, sir.

Q. Now, I notice that you speak of this gentleman as "Dr. Payne", everybody else calls him "Dr. Payne", don't they?

A. I believe so.

page 164 } Mr. Green: Mr. Venable just called you "Doc-
tor".

By Mr. Venable: We will all be doctors here directly.

A. I am a lawyer. I believe it is common in most professions of that kind they said "doctor".

By Mr. Venable:

Q. You, of course, do not mean to tell this jury anything that happened in this office except what you observed as a

casual visitor. Would you go there daily, three months or six months?

A. I would probably drop in there to see about repairs and various items there were complaints about. There was scarcely a week passed that I would not be in there once or twice.

Q. On those occasions, do you say, that in the last two years you have been going in there once or twice a week?

A. I should say once or twice a week. I have been going in there to look after various items in the way of repair, steam heat and matters of that kind.

Q. Your interest was not in what was going on there, but in getting your rent?

A. I did not have to go there after the rent. They paid the rent. I was interested in the progress there.

Q. Your interest was in the building on account of your sisters, who owned it?

page 165 } A. Yes.

Q. Do I understand you to say that you do not rent any property except through rental agents?

A. I do not, no, sir. I act through rental agents.

Q. When Judge Dey came to see you with reference to the matter, you didn't want to negotiate with him, but wanted to negotiate through a rental agent so there would be some commissions for them?

A. He was looking for the commission himself.

Q. You thought it better to do it through a rental agent than a man who is not a rental agent?

A. I think the law contemplates that.

Q. Dey wanted a commission, but you would rather give it to a rental agent?

A. I think that is the proper way.

By Mr. Green:

Q. You wished to deal through a licensed real estate agent?

A. The law of Virginia recognizes the real estate business. I find that people doing business do not care about dealing with curbstome agents.

Q. Judge Dey used to be judge of the Juvenile Court?

A. Yes.

Q. Did you hear Dr. Mitchell testify yesterday?

A. No, I was outside.

Q. You say that was in June, 1932?

page 166 } A. Yes, that is the record.

Q. In all these years do you have the United Dentists work for you?

A. I have been going to the same dentist for 20 years.

Note: The letter referred to in the evidence of Mr. Talbot dated June 21st, 1932, is filed as Exhibit "X".

MRS. RIDIA CASS,
being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Mrs. Ridia Cass.

Q. During the year 1932 were you a patient of the United Dentists, Incorporated?

A. Yes, sir.

Q. At various times during that year?

A. Yes, twice in that year.

Q. Did you make more than two visits there?

A. I made a visit when I went to have the impression, and then I went to have the teeth made afterward.

Q. You went several times?

A. Yes, sir.

page 167 } Q. Can you tell the jury now, so that they can
hear you, exactly what the procedure was when
you first went there?

A. What I went for and all?

Q. What dental work you went for?

A. To have an impression made for a plate. I was recommended to Dr. Barnett, and Dr. Barnett made the impression for my teeth, and I went back to see what the dentist was going to do. I went back and had a filling put in, and they called a man by the name of Dr. Williams, who put the filling in my tooth.

Q. Who met you in the reception room?

A. Mrs. Payne.

Q. What did she do?

A. She asked me what I wanted to have done, and I told her that I wanted to have a plate made.

Q. What did you do then?

A. I told her I was recommended to Dr. Barnett, that he had been recommended to me by someone, and asked whether I could see Dr. Barnett.

Q. Did she take you to Dr. Barnett?

A. Yes, sir.

Q. Did she examine your mouth?

A. No, Dr. Barnett.

Q. Did she tell you what sort of bridge you needed?

A. No, Dr. Barnett did.
 page 168 } Q. Did you have a brother who was a patient there?

A. Yes, last summer when he was on a visit here I took him to the United Dentists.

Q. Was there any different proceeding in that case than in yours?

A. No difference at all.

Mr. Green: I notice that Drs. Williams, Barnett and Mitchell are in the room, and if you are going to recall them in rebuttal I would like for them to be excluded.

Mr. Venable: I have no idea of calling them.

Mr. Coleman: We may want to recall them.

Note: Drs. Williams, Barnett and Mitchell retired from the courtroom.

CROSS EXAMINATION.

By Mr. Venable:

Q. How many people were in the office when you first went up there?

A. Mrs. Payne was in the office, and I don't recollect whether two or three doctors there, and a nurse.

Q. You, having heard of Dr. Barnett, called especially for him?

A. Yes, I had been told by someone that knew
 page 169 } Dr. Barnett, that did have work done there, and that if I went to the United Dentists to ask for Dr. Barnett.

Q. You asked for Dr. Barnett and were taken to Dr. Barnett?

A. I was.

MARSHALL WHITE,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Marshall White.

Q. What is your occupation?

A. Ship carpenter.

Q. Do you do any work besides working on ships, in the carpentry line?

A. Yes, sir.

Q. Did you ever do any work in the United Dentists' office?

A. Yes, sir, I fixed the office up for them.

Q. How many times did you work up there?

A. I guess I worked up there two months, off and on.

Q. While you were working there did you work at different periods?

A. Different times.

Q. Did you notice how they conducted business? page 170 }

A. Well, they had some dentists there to do the business. Mr. Payne and Mrs. Payne, they run the business. They didn't have anything to do with the dental business.

Q. What did they do when a patient came in?

A. They had a nurse, and she turned them over to the doctor.

Q. Did you ever see Mr. Payne or Mrs. Payne look in anybody's mouth?

A. No, sir.

Q. Did you ever see them examine teeth in anyway?

A. No, sir.

Q. Did you ever have any work done there?

A. Yes, sir.

Q. Did you carry your wife there?

A. Yes, I did.

Q. Did Mr. or Mrs. Payne do any work for her?

A. No, sir.

Q. Did King examine her?

A. No, sir. He is not a doctor. He was not in the dentist part. He made the teeth, I guess.

Q. Did anybody diagnose your teeth and tell you what was needed except dentists?

A. No, sir.

Q. Did your wife have any work done there?

A. Yes, sir.

Q. Did you go with her?

A. No, sir. We did not go together.

page 171 } CROSS EXAMINATION.

By Mr. Venable:

Q. What time was it you went there to fix this office first?

A. What?

A. What time was it you went there to fix this office first?

A. I couldn't tell the date. I reckon it must have been in 31 and 32.

Q. Who employed you to do the work?

A. Mrs. Payne.

Q. Mrs. Payne?

A. Yes, sir.

Q. And what work did you do?

A. I fixed up the office. I put the woodwork up and painted it all over, and put the screen doors up.

Q. How long did you work there the first time?

A. Well, I would work maybe a week the first time. I made some repairs for them in the laboratory for two or three days, and while I was there I painted some for them.

Q. While you were making repairs in the laboratory you were interested in attending to making those repairs, were you not?

A. I did work right in the office, did fix up the whole office.

Q. I don't question that you did the carpenter page 172 } work, while working there, what work did you do, what carpenter work?

A. I fixed the ceiling.

Q. What ceiling?

A. Around over the place.

Q. Did you put the ceiling on the floor, or on the wall?

A. I put it from the floor up about 5 or 6 feet.

Q. Fixing the booths, you mean?

A. Yes.

Q. While you were doing that there was not anybody working on patients?

A. The place was full all the time.

Q. Were you there driving nails and building booths, and they were working all the time?

A. I didn't do much driving nails, I did the best I could. I didn't hear anybody complain.

Q. Were you working by the day?

A. Yes, sir.

Q. Was there any interference with your work when you were putting the booths in?

A. I did not hear any of the customers complain.

Q. Of course you tried to conduct yourself to bother people as little as possible?

A. Yes, sir.

page 173 } Q. How many days' work did you have in the laboratory?

A. About two days. That was the length of time.

Q. Who was back in the laboratory?

A. Dr. King and his assistant. I don't know his name.

Q. Who introduced you to Dr. King?

A. I don't know as anybody did. When a carpenter goes into work he ain't introduced, all that he knows he finds that out for himself.

Q. Why do you call him "Dr. King"?

A. How is that?

Q. Why do you call him "Dr. King"?

A. I heard everybody call him Dr. King.

Q. You call Dr. Payne, Dr. Payne, don't you?

A. Sometimes. Some people call him Mr. Payne and some E. A. Payne.

Q. You never heard anybody say E. A. Payne?

A. No, sir—I heard them say Dr. Payne.

Q. You always called him Dr. Payne?

A. That is just generally the way. You meet a man, and maybe he is not a doctor, but you might say, "Good morning, doctor", or "Good evening, doctor".

Q. That is what you did?

A. Yes, sir.

Q. You did not stop in doing your carpenter work to hear what Mrs. Payne or Dr. Payne would say to a patient when they would come in to the room?

page 174 } A. They were in the office. He had a little office there. They didn't stay on the floor.

Q. They talked to their patients in the office?

A. Yes, when somebody would come in there to have work done, they would come in the office, just as if I would go to your office I would have to consult you.

Q. And people who came in there did consult with Mr. and Mrs. Payne about it, as far as you could say, one way or the other?

A. They would have to do that, would they not? They did not do any work.

Q. You did not see them actually do any work, I understand, but when a patient came in they talked to Dr. Payne or Mrs. Payne in the office, but what they said you don't know?

A. I wasn't there to hear that. I had my work to do. They would call the dentist. I know when I went there they had the dentist examine my teeth and take an impression.

Q. I don't question that at all.

A. That is all I know about it.

page 175 }

W. L. CARTER,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your business?

A. Auction business.

Q. You are W. L. Carter of the Carter Auction Company?

A. Yes, sir.

Q. How long have you been an auctioneer?

A. 25 years, I guess.

Q. Did you ever have any work done in 1931 by the United Dentists, Incorporated?

A. I would not like to say 1931. I have had work done up there twice.

Q. What happened when you had work done there?

A. It was satisfactory to me.

Q. When you went in see about your teeth who met you?

A. I did not know one doctor from another. I was met at the door, and asked who I was, and what I wanted, and that is all I can tell you.

Q. Did Mr. or Mrs. Payne meet you?

A. I think the nurse met me.

Q. What did she do?

A. She asked me to have a seat, and I waited, and I was waited on in about ten or fifteen minutes.

Q. Who waited on you?

A. One of the doctors.

page 176 } Q. Did Mrs. Payne examine your mouth while there?

A. I cannot say she did.

Q. Did Mr. Payne?

A. I never saw him to know him then. He didn't do anything for me.

Q. Did she do anything for you?

A. No, sir.

Q. Did either of them diagnose your case and tell you what was to be done?

A. No, sir.

Q. Who did your work?

A. The dentists, and I paid them for it.

C. F. LEE,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What business are you in?

A. Manufacturing agricultural lime and fertilizer.

Q. Your place of business is in the Board of Trade Building?

A. Yes, sir.

Q. Did you ever have any work done by the United Dentists, Incorporated, in 1930 or 1933?

page 177 } A. Yes, sir.

Q. When you went there who met you at the door?

A. A young lady, as far as I recollect. I know they took me in to Mr. Payne.

Q. What happened then?

A. He turned me over to the dentist, and I had an extraction.

Q. He turned you over to a dentist?

A. Yes.

Q. Did you see Mrs. Payne there?

A. Yes, sir.

Q. Did she examine your mouth?

A. No, sir.

Q. Did she tell you what was the matter with you?

A. No, sir.

Q. Did Mr. Payne tell you anything?

A. No, sir.

Q. Do you know a man there named King, that worked there?

A. I don't know him by name. I know by going there that there were assistants there.

Q. Did anyone ever work on you, or diagnose your case except the dentist?

A. That is all.

page 178 } CROSS EXAMINATION.

By Mr. Venable:

Q. Do you know who pulled your tooth?

A. One of the assistants. I don't know the man's name.

Q. One of the assistants?

A. Assistant, I think.

Q. Who?

A. I don't know his name, but one of the dentists.

Q. You say the young lady met you and turned you over first to Dr. Payne?

A. Yes.

Q. How were you introduced—you say the young lady met you at the door?

A. Yes, sir.

Q. Now, did she take you and introduce you to Dr. Payne?

A. Yes. I didn't know Dr. Payne's name. He was there, and I told him that I wanted a tooth taken out.

Q. What did the young lady, did she just hand you over, and didn't say anything by way of introduction, or anything?

A. Not that I remember now. It was in 1929 the first time I ever went there.

Q. You know Dr. Payne now, don't you?

A. Yes.

page 179 } Q. Was that the man you were turned over to by the young lady who met you?

A. I couldn't swear to that.

Q. The first time was in 1929?

A. Yes. I had an aching tooth, and I went there, and had it pulled out.

Q. Were you suffering much?

A. I could not tell. I only knew it was aching, and I wanted it pulled.

Q. You had an aching tooth. That was not the first one you had had pulled out?

A. No.

Q. Some one pulled it out, you don't know who?

A. It was a dental office.

Q. Somebody had the forceps, but you don't know the man who pulled the tooth?

A. No.

Q. Somebody in the office took a pair of forceps and pulled the tooth. It was not Dr. Payne?

A. No.

RE-DIRECT EXAMINATION.

By Mr. Green:

Q. The dentist was the only man who did pull the tooth, or had anything to do with it?

Mr. Venable: Objected to as leading.

page 180 } By Mr. Green:

Q. Did any other man do anything except the man who pulled the tooth?

A. I went there that first time and one man pulled the tooth, and another man pulled another tooth when I had another aching tooth.

Q. You went there several times?

A. Yes, sir.

Q. Not only in 1929?

A. No, sir.

Q. How many other times?

A. I think I had four teeth extracted at different times, but what date I don't know.

Q. Did Mr. Payne ever have anything to do with looking in your mouth?

A. Nothing whatever.

Q. Did Mrs. Payne?

A. None whatever.

Q. Did they tell you you needed anything particularly or didn't need anything particularly?

A. No, sir.

By Mr. Venable:

Q. How old are you?

A. 71.

Q. You didn't need anybody to tell you what tooth was aching that you wanted pulled out?
page 181 } A. Well, hardly.

Q. When the tooth was aching you made up your mind that you wanted to have it pulled?

A. I did so.

Q. It annoyed you, and you wanted the tooth pulled out?

A. Yes, sir.

Q. You did not need anybody to tell you it needed pulling out, did you?

A. No, sir.

Mr. Green:

Q. Did you have any bridge work done?

A. I had a set of teeth made.

Q. Did Payne or his wife diagnose your case?

A. No, sir.

Q. Did they tell you what you needed, or make an examination of your mouth?

A. No. They turned me over to the assistant.

Q. What do you mean by the "Assistant"?

A. One of the dentists.

Q. Would you know the name of the dentist?

A. I just called him doctor like anybody else would. I didn't know his name.

By Mr. Venable:

Q. You knew you had all of your teeth out, and you wanted some false teeth?

page 182 } A. Yes, sir.

Q. You went up there and said you needed a set of false teeth?

A. Yes, I had made up my mind to get them.

Q. And somebody in that office, you don't know who the person was, but he was a dentist, and took the impression and afterwards you went and got the teeth?

A. Yes, sir.

W. W. DOYLE,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. Where do you live?

A. 1716 DeBree Avenue, Norfolk, Virginia.

Q. What is your occupation?

A. Electrician, Norfolk & Western.

Q. Did you have any work by the United Dentists, Incorporated, in the years '30 and '32?

A. Yes, sir.

Q. Did your wife have any?

A. Yes, sir.

Q. Did you go there with her?

A. Once or twice.

Q. Tell the jury when you went, you and your wife went in on either occasion, who met you?

page 183 } Mr. Venable: I have no objection to your telling him as to the time.

By Mr. Green: 3/5/30.

By Mr. Venable: See if he remembers.

By Mr. Green:

Q. What happened when you went there in 1930?

A. Well, they had to put in four teeth, and a crown in my mouth.

Q. Who met you when you went there?

A. Some doctor. I don't know what his name is, some dentist. I don't remember his name.

Q. When you went in there did you meet the dentist?

A. I met Mrs. Payne and asked her what it would cost to have it done.

Q. Did she examine your mouth?

A. No, sir.

Q. Did she tell you what you needed?

A. I knew what I wanted. She sent me in to the dentist and he told me how many teeth would have to come out, and what would have to be done, and then she told me what it would cost to do it.

Q. What did she do when you first came in, did she examine you?

A. No. She told me the cost, and the dentist
page 184 } told me what had to be done.

Q. How did you get to the dentist?

A. She turned me over to the dentist, and I got in the dentist chair, where the dentist was.

Q. You say the dentist examined you?

A. Yes, sir.

Q. Who told you what was necessary to be done?

A. The dentist. He told me how many teeth it would be.

Q. What did Mrs. Payne tell you?

A. She told me how much they cost.

Q. Did she examine your mouth?

A. No, sir.

Q. Did Mr. Payne?

A. No, sir.

Q. When your wife went there the first time did you go with her?

A. Not the first time.

Q. Did you go with her the second time?

A. Either the second or third time I went with her. I can't remember positively.

Q. You don't know what she had done?

A. She had a lot of extra teeth put in, both bottom and top. I don't remember just how many, but they were put in on a partial plate.

Q. When she went there, and you went with her,
page 185 } was there any different procedure than the time
that you went there to have this bridge?

A. I went there while she was having it made. I don't know whether two or three times.

Q. You went there on different occasions and had different work done?

A. I have been there several times.

Q. Do you remember—did you go there with her every time?

A. No, not every time.

Q. What did she had done at the time you did go?

A. They were working on the plate.

Q. Was that the first time you had been there?

A. The first time I had been there with her. They had been doing some work several days on the plate.

Q. At the time you were there did you ever see Mr. or Mrs. Payne examine any patient?

A. No, sir, I did not.

Q. Or tell them what was the matter with them?

A. No, I did not.

CROSS EXAMINATION.

By Mr. Venable:

Q. You were only interested in your own work when you went there?

A. That is correct.

page 186 } Q. You were not interested in what somebody else was doing there?

A. No.

Q. You say you had some work done, and that it was satisfactory to you?

A. Yes, sir.

Q. It was satisfactory?

A. Yes, sir.

D. C. CARR,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your business?

A. Ledger Dispatch, advertising department.

Q. Did you ever have any work done by the United Dentists Incorporated?

A. Yes, sir, had a tooth pulled.

Q. When?

A. About two months ago, I should say.

Q. Had you been there prior to that time?

A. No, sir.

Q. You had never been there before?

A. No, sir.

Mr. Green: I don't think what has happened since this case was brought is competent evidence.

page 187 } R. L. ALEXANDER,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What business are you in?

A. Painting and contracting business.

Q. How long have you been in that business?

A. 37 years.

Q. In the City of Norfolk?

A. Yes, sir.

Q. Have you ever been a patient of the United Dentists, Incorporated?

A. I have.

Q. Has your wife ever been a patient?

A. She has.

Q. When your wife went there did you go with her?

A. Yes, except one time. I don't think I missed but one time.

Q. Were you with her the first time she ever went there?

A. Yes, sir.

Q. When you went there for dental work?

A. Yes, sir.

Q. Tell us what the procedure was when you page 188 } and your wife went up there?

A. We went in the room, and the nurse happened to be present in the room, and the people were coming, and she asked me to take a seat, which I did, and the nurse comes in, and she has a card, and she asked my name and what I desired to have them do, and told me that she would call me when my turn came, and when my turn came I was invited to the dentist chair.

Q. Do you know Mr. Payne?

A. I know him by sight.

Q. Do you know Mrs. Payne?

A. I have seen her face up there, I am quite sure.

Q. Did either one of them examine your mouth and tell you what ought to be done?

A. No, sir.

Q. Who did?

A. The dentist.

Q. Who did the work in your mouth?

A. I had a tooth pulled, it has been some months ago, about a year, or a year and a half, I had my teeth cleaned, and some time between then I was up there to see about my teeth, about pyorrhea.

Q. When your wife went there what was the procedure at this time?

A. They same as when I went there, about the same procedure.

page 189 } By the Court:

Q. Could you fix what date that was?

A. In the neighborhood of 5 years ago.

Mr. Venable: I ask that that be stricken out.

By Mr. Green:

Q. Did she go there in 1931?

A. It has been about 5 years, I think. If she has, it is not to my knowledge.

Q. If you don't know, don't say anything about it. Do you know a man named King up there?

A. Only one dentist that I recall to mind, and that is Dr. Mills there.

Q. You say you are a contractor and painter, is that in a small way?

A. I paint anything from a woodhouse to the Cavalier Hotel. I painted and decorated the Cavalier Hotel.

CROSS EXAMINATION.

By Mr. Venable:

Q. Five years ago you had some work done there?

A. Yes, sir.

Q. And then did you have any more?

A. About two months ago I had a tooth pulled. About a month.

page 190 } By Mr. Venable: That is not admissible.

A. About two months ago I had a tooth pulled, and about a year, or something like that I had my teeth cleaned.

Q. About your teeth being cleaned, you knew what you wanted done when you went there—you went there to have your teeth cleaned?

A. Yes, I did.

Q. That has been about a year ago?

A. Yes, sir.

Q. When was the time you were there before that?

A. Well, I think, as near as I can remember, in between that time and the time of having my teeth pulled. In other words, between within a year or a year and a half.

Q. Was the tooth aching when you went up there?

A. Not so badly.

Q. The Court ruled out as to what happened after the suit was brought. When you went there to have your teeth cleaned

about how long ago? How often in your life have you had your teeth cleaned. It is quite evident that that was not the first time you had them cleaned?

A. Not by a dentist, but by myself.

Q. How often do you have them?

A. I have them cleaned when I think they need it.

Q. You dropped into this office and told them
page 191 } what you wanted done?

A. Yes, and I had a tooth extracted.

Q. That was about a year ago?

A. That was about a year ago.

By Mr. Green:

Q. Now, Mr. Alexander, the first time you went there—

Mr. Venable: I object to that.

Mr. Green: We will show the time by other *witness* that you went there.

The Court: With that assurance from counsel you may go ahead.

By Mr. Green:

Q. When you went there to have your teeth examined for pyorrhea, when did you go there to have your teeth examined for the pyorrhea?

A. I think it has been along about within a year.

page 192 } DR. J. L. MEARS,
being duly sworn, on behalf of the defendant,
testified as follows:

Examined by Mr. Coleman:

Q. Are you a graduate licensed dentist?

A. Yes, sir.

Q. Where did you graduate?

A. University College of Medicine, now the Medical College of Virginia.

Q. That was merged with the Medical College of Virginia?

A. Yes.

Q. When did you graduate from the University Medical College?

A. 1906.

Q. Since that time you have been a licensed dentist?

A. Yes, sir.

Q. Were you Professor of dentistry in either one of the colleges?

A. A couple of years associated—two or three years University College of Medicine.

Q. Were you ever employed by the United Dentists, Incorporated?

A. Yes, sir.

Q. In what capacity?

A. Dentist.

page 193 } Q. Do you recall when you were there?

A. I went there the 1st time in 1928.

Q. Did you, after that work for them?

Mr. Venable: 1928 has nothing to do with this case.

The Court: No.

By Mr. Coleman:

Q. Did you work for them in the fall of 1929?

A. Yes, sir.

Q. November 1929?

A. I think so.

Q. Did you work for them the 1st of January, 1931?

A. Yes, sir.

Q. How long?

A. I think six months at that time.

Q. During that time were you familiar with that office?

A. I think so.

Q. Can you tell the jury the manner in which it was conducted?

A. Similar to any other dental office.

Q. Describe the procedure when a patient would come in?

A. They would meet the patient at the door, take the name and address, and turn the patient over to the dentist, and the dentist would make the examination, and the nurse would write the card up as the dentist made the examination.

page 194 } nation.

Q. Would you call off the information for the nurse to write on the card?

A. Yes, sir.

Q. Is that their practice?

A. Yes, sir.

Q. Is that the practice in dentistry?

A. I have always done it.

Q. Is that the practice of all dentists in their offices?

Mr. Venable: I would like to know if he knows.

The Court: If he can say, he can testify.

By Mr. Coleman:

Q. Could you name other dentists who practice there?

A. Yes, sir.

Q. Is that the practice of other dentists there?

A. Yes, sir, at that time.

Q. During the time you were there did you see anybody examine anybody's mouth except duly licensed dentists?

A. No, sir.

Q. Did you see E. T. Payne or Mrs. Elizabeth Dudley Payne examine any mouth, and tell the dentist what to do?

A. I never did.

Q. Did Mrs. Payne ever force you to do work differently from what you regarded as your best judgment?
page 195 }

A. No, sir.

Q. Did she ever suggest what you should have done in any patient's mouth?

A. No, sir.

Q. Were you at liberty to exercise your best judgment and skill in the performance of your work?

A. I certainly was.

Q. Did you ever see King, the technician perform any of the dental work, or do that work?

A. No, sir.

Q. Do most dentists have technicians in their office, or do they have work done in laboratories by technicians away from their office?

A. I don't know as I could answer that question. I think that they do. I think they do have the technicians to do their work. I don't know that most of them are able to support a technician in their office.

Q. In both making a plate or a bridge the dentist takes an impression with plaster paris?

A. Some use one preparation, and some another.

Q. As a matter of fact the impression is made of plaster of paris, or wax?

A. Yes, sir.

Q. That is turned over to the technician to do the work by?

A. Yes, sir.

page 196 } Q. When did you leave the United Dentists, Incorporated?

A. I think the 1st of July, 1931.

Q. The 1st of July, 1931?

A. Yes, sir.

Q. What have you been doing since that time?

A. Practicing in Richmond.

Q. Are you an advertising dentist in Richmond?

A. No, sir.

Q. You never conducted an office of your own account, as an advertising dentist?

A. I did advertise once, yes.

Q. How many years ago has that been?

A. I think the 1st part of 1930, or the latter part of 1929, somewhere along there.

Q. In Norfolk, was it not?

A. Yes, sir.

Q. Were you in the office at the time Dr. Barnett was there?

A. Yes, sir.

Q. Did you ever see Mr. Payne give any directions and make a diagnosis for Barnett?

A. No, sir, I never did.

Q. Did Barnett ever tell you anything of that kind?

A. No, sir.

Q. Were you closely associated with him there?

A. As one of them.

page 197 } Q. Were you there with Mitchell?

A. Yes, sir.

Q. Did you hear Mitchell make any complaint to you, or to anybody that he was compelled to do work the way that Mr. Payne or Mrs. Payne wanted it done against his own free will and judgment?

Mr. Venable: I object to that as highly improper.

Mr. Coleman: They were together.

By the Court: Go ahead.

By Mr. Coleman:

Q. Could you hear what anybody said from one booth to another booth?

A. I think so. If you were busy you would not possibly listen, but some things you would hear.

Q. Did you ever see anything of that kind going on there?

A. What is that?

Q. Mr. Payne or Mrs. Payne directing either Barnett or Mitchell as to how they should do the work?

A. No, sir.

Q. Or what should be done?

A. No, sir.

Q. Did either Barnett or Mitchell ever make
page 198 } any statement to you about it?

Mr. Venable: That is highly improper.

Mr. Green: The probabilities are they would have mentioned something like that.

The Court: I don't think so. If they had made complaint. I don't think it is relevant, or bears on the credibility.

CROSS EXAMINATION.

By Mr. Venable:

Q. You say you are now practicing in Richmond?

A. Practicing dentistry in Richmond.

Q. How well do you know Mr. King who is up in this office?

A. How well? I was associated with him the whole time I was there.

Q. Is not it a fact that Mr. King is engaged to be married to your daughter now?

A. No, sir.

Q. They are not engaged to be married?

A. No, they are already married.

Q. They are married?

A. Yes, sir.

page 199 } J. F. KING,
being duly sworn, on behalf of the defendant,
testified as follows:

Examined by Mr. Coleman:

Q. What is your name?

A. J. F. King.

Q. How old are you?

A. 32.

Q. What is your occupation?

A. I am a dental technician.

Q. How long have you been a dental technician?

A. Approximately 15 years.

Q. Where did you learn your trade, or calling?

A. I started working in an office.

Q. Where?

A. Sedan, Kansas, when I was just a kid.

Q. How long have you been in Norfolk?

A. Approximately 5 years.

Q. Who did you work for when you first came to Norfolk?

A. The United Dentists.

Q. Did you ever work in any other laboratory in Norfolk?

A. Yes, the Virginia Dental Laboratory.

Q. Does the Virginia Dental Laboratory do work for dentists generally in Norfolk?

A. Yes, sir.

Q. Do you know about how many?

A. No, I have not any idea.

page 200 } Q. How long has it been since you worked for the Virginia Dental Laboratory?

A. Two and a half or three years.

Q. How long did you work there?

A. About a year.

Q. Who was the proprietor of the Virginia Dental Laboratory?

A. A. B. Fischborn.

Q. How long did you work there?

A. Approximately a year, a little less than a year.

Q. Do you recall any dentists in Norfolk who had work done there while you were working for the Virginia Dental Laboratory?

A. Yes, sir, several.

Q. Give the names of some of them.

A. Dr. Simmons, Dr. Alexander, Dr. A. C. Cook and most of the dentists in Norfolk.

Q. Did any of those dentists, whose names you called, call on you to look at a plate before the completion of the work, look in the patient's mouth?

A. Dr. Simmons did.

Q. While you have been employed by the United Dentists have you pulled anybody's teeth?

A. I never pulled a tooth.

page 201 } Q. You never pulled a tooth in your life?

A. No, sir.

Q. Tell the jury what is a technician's work?

A. The dentists take the impression of a tooth, or the entire mouth, and they make the impression of different kinds of impression material, or to take a bite to get the proper relations of the two jaws, and they send it back to the laboratory, and the technician makes it up according to the impression, and he works on it until it is finished up, and then he takes it back to the dentist.

Q. In other words when—

Mr. Venable: Let him testify.

By Mr. Coleman:

Q. When a dentist has a plate or a set of teeth, or puts in different kind of bridge work do the dentists do that work?

A. Not as a rule. That is the reason dental laboratories are flourishing today.

Q. What do you make those plates and the different kind of crowns from?

A. From the impression taken by the dentists.

Q. Made by whom?

A. The dentist.

Q. Did you ever grind anybody's teeth while you were working for the United Dentists?

page 202 } A. No, sir.

Q. Did you ever grind anybody's teeth in your life?

A. No, sir.

Q. Did you ever examine anybody's mouth and tell them the kind of work they needed?

A. No, sir.

Q. Did you ever take an impression?

A. No, sir.

Q. There has been testimony here that you pulled two or three negroes' teeth, is that right, or not?

A. I never pulled a *negro*'s tooth, and never worked on a patient.

Q. Have you ever held yourself out as a doctor to anybody?

A. No, no one.

Q. Does anybody ever call you doctor?

A. Yes, sir.

Q. Did you ever for *Dr. Barnett, Mitchell or Williams*, or any dentist in the United Dentists place ever grind any plate, or everything of that kind?

A. I have assisted all three of them on occasions. I have assisted them.

Q. How?

A. I make the crown, and they put it in the mouth. The dentist cuts the tooth down, and they try them in the mouth, and if they do not fit exactly they are sent back, page 203 } and are made to fit.

Q. Did you use your judgment, or follow instructions of the dentist?

A. We worked together in that respect.

Q. That is done after they had made the impression?

A. After they have made the necessary preparation.

Q. Is that the usual practice of dentists with technicians generally?

Mr. Venable: I object. The law fixes that.

The Court: We want to know what he does.

By Mr. Coleman: That is all.

CROSS EXAMINATION.

By Mr. Venable:

Q. You are the Mr. King who married Dr. Mears' daughter?

A. I am.

Q. Two years and a half that you have been here, there has been quite a number of dentists employed there?

A. Yes, around 20, in the neighborhood of 20.

Q. You mean that very one of those dentists used the same preparation, and you worked together getting the bridge work and crowns fitted?

A. That is true.

page 204 } Q. Everybody around the office called you Dr. King?

A. No, sir.

Q. Generally?

A. Well, sometimes.

Q. Have you been introduced by Mr. Payne as Dr. King?

A. I don't recall that I have.

Q. Do you know a Mr. Litchfield, a patient by the name of Litchfield?

A. I don't recall the name, no.

Q. Do you know Mr. Vaden?

A. Mr. Vaden?

Q. Mr. Vaden?

A. How do you spell the name?

Q. V-a-d-e-n?

A. I have heard the name.

Q. Do you know Mrs. Marvin?

A. That name is familiar also.

Q. Did not you put a bridge in her mouth?

A. I have not actually put a bridge in anyone's mouth. It is not my duty.

Q. What is your pay up there?

A. \$60.00 a week.

Q. Do you own any stock in this company?

A. No, sir.

Q. Now, I understand from you that you positively deny that you pulled any teeth up there?

page 205 } A. That is true.

Q. Do you know Dr. Mitchell, Dr. Barnett and Dr. Williams?

A. I do.

Q. How many times, in the last two years, have you made bridge work—fitted bridge work in the people's mouth?

A. I never fitted a bridge in a patient's mouth.

Q. How many times have you put a crown on the tooth in a patient's mouth?

A. I have never done that either.

Q. You never did?

A. No, sir.

Q. How many times have you taken impressions?

A. I have never taken an impression.

Q. Is not it a fact that you work on most of the darky patients, negro patients that come in there?

A. No. I do the technical work, that is all.

Q. Do you know Mr. Pace, who had some bridge work done?

A. Who?

Q. C. P. Pace?

A. I don't recall the name.

Q. Do you know Mr. McIntosh?

A. I have heard the name. I don't recall the patient.

Q. Do you know a *negroe* woman named Teresa
page 206 } Ancheka?

A. It seems like I have heard that name before.

Q. Did not you put a bridge or crown in for this girl?

A. I could not say what they put in up there for every patient, I don't know.

Q. Who is the boss up in that room?

A. The United Dentists, Elmer Talmadge Payne.

Q. When he is not present who assumes his duty—he is president of the company?

A. I think so. I don't know.

Q. When he is away, who, in his absence, takes his place and gives directions?

A. His wife.

Q. Mrs. Payne?

A. Yes, sir.

Q. When both of them are away have not they frequently put you in charge of the office?

A. I don't recall any time they have ever both been away, only to step out in the street for a few minutes, possibly.

Q. Then you are not left in charge of the office?

A. No, sir.

Q. What are you left in charge of?

A. To take the cash.

Q. You take the cash, but you don't call that taking charge of the office?

page 207 } A. No, sir.

Q. Do you make the agreement about what the cash will be?

A. No, sir.

Q. You meet patients when they come in and send them to the dentists?

A. I have done that.

Q. You are a general utility man, in whom they have confidence, and leave the office in your charge?

A. I don't think the office was ever left in my charge. I never understood it that way.

Q. Is not it a fact that Mrs. Payne will give orders to the dentists as to how to do this, or that?

A. No, not at all.

Q. Do you recall a sailor who came there, named Henry Hart?

A. I don't recall the name.

Q. Don't you recall a sailor that you put a plate in for him, made it fit?

A. I did put in a plate for him?

Q. Yes.

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. You worked together with all the dentists that have been in the office, in bridge work crowns and
page 208 } things of that kind?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Coleman:

Q. When you say worked together you mean in what way you worked together?

A. Assisted the dentist.

Q. In what way?

A. As I explained to the gentleman awhile ago whenever a bridge was to be made the dentist prepared the tooth, and took the impression, and gave it to me, and I made it up, and then when it would be put in the mouth sometimes the dentist would get me to look at it with him, might have to make some change in it, as to the length, or something of that kind.

Q. Does he call on you for assistance, or do you volunteer your services?

A. They usually call on me.

Q. Is the work you do strictly mechanical?

A. Absolutely.

Q. Mr. Venable asked you about being in charge. As a matter of fact, is not Mrs. Payne there 365 days a year, every day from 8 o'clock in the morning until 8 o'clock at night?

A. She is there constantly.

page 209 { Q. Don't she go to lunch?

A. She does not go to lunch.

Q. She stays there from eight o'clock in the morning until eight o'clock at night?

A. Yes, sir.

By Mr. Venable:

Q. How long do you stay there, that long?

A. Not very often recently. When the business is better I did stay there.

Q. What are your hours?

A. Eight to six.

Q. Eight in the morning until six in the afternoon?

A. Yes.

Q. How much time for lunch?

A. As much as I want. I seldom take any off.

Q. Then your hours are dependent on what you have to do?

A. Correct.

Q. If your work is light you are off as much as you please?

A. I would not say that. I am supposed to be there until six o'clock every day. If there is anything important I am there very late.

Q. Who do you ask when you want to go out?

A. I ask them.

page 210 { Q. Who?

A. Mrs. Payne or Mr. Payne.

Q. You can go out when you get ready if there is no work ahead?

A. I usually tell them if I am going to step down the street.

MR. S. W. JOYNER,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Coleman:

Q. What is your name?

A. S. W. Joyner.

Q. Where do you reside?

A. 1601 West 48th Stret.

Q. Have you had occasion to go to the office of the United Dentists, Incorporated, within the last year or so?

A. Yes, sir.

Q. Have you been there frequently?

A. Yes, sir.

Q. What was the occasion of your going there?

A. I had some work done for myself and also took my family there.

Q. You took your family there?

page 211 } A. Yes, sir.

Q. When you went there did Mrs. Payne or E. T. Payne do any work for you, or look in your mouth, or the mouth of any of your family?

A. No. The dentist there did the work that I had done, and had worked for my family before.

Q. Who examined your mouth?

A. I don't believe I can call the doctor's name—Thomas or Thompson. This doctor, one of those that worked there five or six years ago.

Q. When was the last time you were there?

A. I don't remember exactly.

Q. Have you gone there within the last three years?

A. Yes, I had a tooth extracted and a bridge about two months ago. I cannot remember the exact date, but it was six weeks or two months.

Mr. Venable: I ask your Honor to strike that out.

The Court: Yes.

LELAND E. HOLMES,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Coleman:

Q. What are your initials?

A. Leland L. Holmes.

page 212 } Q. What is your occupation?

A. Advertising Department Ledger-Dispatch.

Q. How long have you been in the advertising department of newspapers in Norfolk?

A. About ten years.

Q. Before you went on the Ledger Dispatch who were you working for?

A. The Virginian-Pilot. I have been in the newspaper offices since 1916. I used to be news man there.

Q. Will you look at this advertisement and state whether you know anything about it?

A. Read it?

Q. Were you present when that picture was taken?

A. Yes, sir.

Note: The paper referred to has been heretofore filed in evidence marked Exhibit E.

Q. Did you see the woman in the chair?

A. Yes, sir.

Q. Do you recall whether you saw anything about her that indicated that a tooth had been extracted?

A. I paid no particular attention to her.

Q. Did you talk to her directly after she got out of the chair?

A. Yes, sir.

Q. Did she make any statement to you?

page 213 } A. Yes, sir. In fact, we have made it a rule in advertisements that we must see the person giving the testimony, or we won't run it.

Q. That is your rule?

A. Very frequently we have people come to our office, some man mad with his wife, and wants to run an ad to say he will not be responsible for her bills. We don't take those ads unless they are signed. The same way with this.

Q. Did you get a signed statement from Mrs. Louise Harper as to whether or not that is true?

A. I could not say as to her first name, but Mrs. Harper.

Q. Did you go with Mrs. Harper to the United Dentists' office?

A. Yes, sir.

Q. For what purpose did you go?

A. To have her tooth pulled.

Q. Did she know the United Dentists before she went up there?

A. I don't know.

Q. This is taken within the office?

A. Yes.

Mr. Venable: That is not evidence.

page 214 } By Mr. Coleman:

Q. Did you see the photograph taken?

A. I could not say as to whether I actually saw it or not. I know that I directed the photographer how I wanted it

taken, to show up as you see it here. Then I had an artist to make a little circle around the tooth.

Q. Were you present when the cameraman snapped that?

A. I don't remember. I may have been or I may not have been.

Q. Did you get authority from Mrs. Harper to publish the picture before you published it?

A. Yes. We went here, and I explained it, and that is why we had to have the letter.

Q. Did you get an affidavit from her of the fact before you published the advertisement?

A. Yes.

By Mr. Green:

Q. Both of those are contained in this letter?

A. Let me see the letter. It usually is. I am not absolutely clear on it.

Q. Did that letter contain confirmation of authority to publish that picture?

A. Yes, sir.

Q. Who wrote this letter?

page 215 } A. I typed it.

Q. You typed it?

A. Yes, sir.

Q. What was your purpose?

A. To cover my newspaper for anything that might happen, if I did not have a record of it.

Q. You got this with confirmation of authority?

A. Yes.

Q. When was it written?

A. It is probably dated.

Q. At the time this picture was taken?

A. Immediately after.

Q. Where was it taken?

A. In the United Dentists office. This letter was written at the time.

Mr. Green: I submit that we are entitled to introduce this letter, showing written confirmation by Mrs. Harper.

The Court: It is not the best evidence. Cannot you get her.

A. She is a Navy woman, and I think is on the west coast at this time.

By Mr. Green:

Q. You know you got confirmation of authority page 216 } to do it at that time?

A. Yes.

The Court: I don't think that is the best evidence.

Mr. Green: We save the point as to not letting us get it in.

The Court: Note your exception.

By Mr. Green:

Q. How often did you visit the office of the United Dentists in 1929?

A. When I was with the Pilot I went there, and when Mr. White was there, when the papers merged, I have been there once or twice a week, and many times three or four times a day. I have been there three or four times a week.

Q. Did you have opportunity to observe the procedure up there when a patient came in?

A. Yes, sometimes I have had to wait up there, and been there an hour at a time.

Q. Did you observe the procedure when a patient came in?

A. You could not help but see.

Q. What would happen?

page 217 } A. I would describe it very much like the procedure of any ordinary dentist office where there was a secretary.

Q. What was done?

A. They would come in and either Mr. or Mrs. Payne—as a rule a nurse would take their names, would get a card and take their name and address. Of course, I don't know what they did with the card. I have seen them do that, and it is very much the same procedure as any dentist would have, and then they would go in the dentist chair.

Q. Have you seen Mrs. Payne or Mr. Payne examine anybody's mouth and tell them what was the matter?

A. No, sir.

Q. Did you ever see Mr. Payne?

A. No, sir.

Q. Did you ever see King do it?

A. He is the technical man.

Q. Did you ever see him do it?

A. No, sir.

Q. Did you ever hear him give instructions to any dentist?

A. No, sir.

Q. You say you have been there two or three times a week?

A. Yes, sometimes every day.
page 218 } Q. Stay there for sometime?

A. I have frequently sat there getting up a statement for an hour or more, getting up an ad.

CROSS EXAMINATION.

By Mr. Venable:

Q. At the time you were writing these ads you were interested in the business for your paper, and to get what you considered a proper advertisement to go in your paper?

A. Yes.

Q. You would go there, as you say, from week to week, and get these advertisements almost daily for the last two years?

A. I had a contract with Dr. Payne along in 1931, and then they signed another contract the latter part of last year, and now we have a contract for a year.

Q. Now, that is as good contract, almost as much so as one of your mercantile customers?

A. Yes. It is a good contract. It is as good as a department store. A good advertisement.

Q. Naturally you would be going there and writing up these numerous advertisements?

A. I wrote practically all while I handled the account.

Q. You would go into the office and Dr. Payne
page 219 } would talk to you, and you would get what he wanted in an advertisement, and do it that way?

A. Sometimes he would do it and sometimes I drew the copy in the office and would take it up there to him.

Q. While you were in the office?

A. Yes.

Q. Your business was the newspaper business, not dental business?

A. I had a little work done there. I had my teeth cleaned there once.

Q. That is all right. Was it your business, or did you have it in mind at all anything about how a patient would be treated, or were you looking after your own business?

A. I was looking after my own business there. There had been considerable controversy on one or two occasions, complaint made by ethical dentists, and we always went into everything, as the paper don't want to publish anything or any kind of advertisement that is not proper.

Q. You mean complaints had been made by whom?

A. Some of the ethical dentists.

Q. Now, there has been filed here a number of advertisements, some of which have been filed as Exhibits. I will get my son to show you some of these, and you page 220 } may read them.

By Mr. William Venable:

Q. Were you with the Pilot or the Ledger?

A. I left the Pilot the latter part of February, 1932.

Q. Were you with the Pilot in 1932?

A. With the Ledger in 1932. I wrote all the copies for the Ledger.

Q. Were the copies always submitted to the company before they were published?

A. They may have been or they may not have been. I don't think I have shown the Doctor an ad now for possible six weeks.

Q. Now, you said you knew about the picture Mr. Green showed you. I ask you if this was not during the campaign that was gotten up in which the papers were giving some percentage off?

A. That particular ad was run for the women, who were putting on a golf tournament, National wide tournament, and they were giving a percentage of it to help.

Q. And this lady, who was a member, in this advertisement, was she not a Naval Officer's wife?

A. Yes, sir.

Q. Did you make the proposal to her to have the picture taken?

A. I told her they were offering this percentage.

Q. Did you have any letter from the husband, the Naval Officer, the husband of this woman before you page 221 } published his wife's picture.

A. No, sir.

Q. You say you did see the tooth which was in the forceps held by Dr. Mitchell?

A. I saw the tooth in the forceps.

Q. A tooth in the forceps, but you don't know that it was a tooth that came out of this woman's mouth?

A. I couldn't say.

Q. You don't know whether the tooth was extracted or not?

A. No, sir.

Q. Didn't you say you marked around the tooth?

A. I directed the drawing of the circle around it to bring it out.

Q. What was the price for making that ad?

A. I will have to figure a little for that.

Note: The advertisement about which the witness is being interrogated has been heretofore filed as Exhibit "E".

Q. How much did the woman get?

A. Nothing.

Q. How much did the cause that you were working for get?

A. I don't know exactly. I think we donated from 8 to 10 to 20 per cent.

Q. Was it as much as 20 per cent?

page 222 } A. I don't remember. I don't know just what that advertisement cost, but it was to help as far as they could, to put this thing over, to make it a success.

Q. You don't know what you got from the United Dentists for that?

A. I don't think I got anything. If I did I didn't know anything about it.

Q. You did not see her have the tooth pulled?

A. No, sir.

Q. Dr. Mitchell testified that he did not *pulled* the tooth for her, but cleaned her teeth after this picture was taken, and this tooth was a tooth that he got and put in the forceps, and was put there to have this picture taken. If he says that, you are not prepared to deny it, are you?

A. I don't know whether she had the tooth pulled or not.

Q. In that advertisement don't it say "It did not hurt me a bit"?

A. It said that.

Q. If she did not have a tooth pulled out of course it did not hurt her?

A. (Witness gave a slight laugh.)

Q. Who did you talk with about this advertisement?

A. It was signed by E. T. Payne.

Q. Who did you talk with?

page 223 } A. I call him doctor, just the same as I would call Dr. Bowden.

Q. Did everybody in the office call him doctor?

A. I think probably most of them did. He is not a dentist. When I first handled the account I thought he was a dentist, but found out that he was not.

Q. You put his name and his picture in the paper. There is a difference between a dentist and a licensed dentist?

A. He told me he was not a dentist. He was manager and director.

Q. Still you run an advertisement in your paper saying that he had had 30 years' experience in one branch of dentistry?

A. Mechanical dentistry. I believe he is a mechanical dentist, a technician, or whatever way you explain it.

Q. You say 30 years' experience as a prosthetic dentist?

A. I thought prosthetic meant mechanical dentistry.

Q. You were using the word dentist in the advertisement improperly?

A. (No answer.)

Q. There was never any complaint from Dr. Payne to you about an advertisement when you read them to him?

A. No.

Q. You read them any number of times?

page 224 } A. Only one to be used as prosthetic. I thought it meant technical dentist.

Q. Did not you know that the statute of Virginia provided that a man who uses the word "dentist" in connection with his name in an advertisement is violating the law, and is deemed to be practicing dentistry?

A. No, sir.

Q. It was ignorance—I don't mean offensively, you did not know that this advertisement of him, his picture in the paper of March 24, 1931, in which you say "30 years' experience in prosthetic dentistry"—do you know how many times that was in?

A. They never run but once. I don't recall it.

Q. Would you not say to the public, when you presented an advertisement of him, with his picture, and say in, in big type, in big black type "The man who created the idea" and you say "E. T. Payne, President of the United Dentists, Incorporated, 30 years' experience in prosthetic dentistry, the man who created the idea", did you think that was the right statement?

A. I think he had 30 years experience in mechanical dentistry.

Q. You did not know prosthetic dentistry means fitting teeth in the mouth?

A. I understood it meant the manufacture.

page 225 } Q. Then, if it was a mistake it was an innocent mistake on your part, because you did not know that it did not mean the mechanical man?

A. No.

Q. I hand you an advertisement of the Ledger Dispatch March 19, 1931, in which you have a picture of Dr. Mitchell, Dr. Barnett, Dr. Mears, J. F. King, technician, and Dr. Payne,

—you don't call him Dr. Payne—but you call him “Mechanical Dentist”, and in this advertisement it reads “Leaders all!” in lower prices, reliability, dental skill, fine bridge work, superior crown work, perfect fitting plates, greatest number of satisfied patients”. That was prepared and published in your paper with their approval?

A. Yes.

Note: The paper just referred to has been heretofore filed in evidence marked Exhibit “Q”.

Q. All right, sir. Do you recall another ad in which the United Dentists, Incorporated, claimed to have “seven hundred thousand satisfied patients”?

A. No, sir.

Q. Do you remember an advertisement of February 23, 1931, offered in evidence, which is in these words: “Thousands of satisfied patients treated in our office page 226 } testify to our reliability Norfolk’s largest dental establishment patients who used to swear at other dentist’s bills—now swear by our high grade dental work—the only difference is the price”?

Note: The paper just referred to has been filed in evidence marked “R”.

A. Yes.

Q. You remember that, do you?

A. Yes, sir.

Q. Did you get any letters as to who these thousands of patients were?

A. They have an index there. I did not see all of it, but I know that they have an index system, and they have fifty thousand index cards there. I could not tell you how many cards they have in all.

Q. Do you remember writing an advertisement against the Dental Trust in Norfolk?

A. No, show me the copy. I do not remember it.

Q. You say “thousands of satisfied patients treated at our office testify to the reliability”. Did you get testimony of the thousands?

A. That is a sweeping proposition. They are all satisfied. That is perfectly all right. I have talked to numbers of patients who have been there, and they have expressed themselves as satisfied. page 227 }

Q. You won't say how far that went?

A. I have seen them within a certain length of time. I have been handling these advertisements, these contracts, and should say there were more than a thousand.

Q. You don't mean to say that you have seen personally a thousand?

A. I did not say that, but when I have been there, I have been sitting there at the desk preparing these advertisements, and I have heard people come in and would say that they were thoroughly satisfied with the work. There might be five to ten people in the office being waited on.

Q. These are all in evidence. I think I understand about what your position was. It is a business rather than a profession?

A. What do you mean?

Q. You speak of ethical dentists—I imagine you draw some distinction between ethical dentists and this company?

A. I think that term speaks for itself. They do not advertise. Ethical dentists, my impression is that is a dentist who does not advertise.

Q. At least a dentist did not put out that kind of a claim?

A. I consider that the ethical dentists—the ad-
page 228 } vertising dentist paid for his advertising.

Q. If he paid for his advertising he is ethical?

A. No, that is not what I mean. I think they call them unethical dentists if they advertise.

RE-DIRECT EXAMINATION.

By Mr. Green:

Q. This picture of Mrs. Harper ran how many times?

A. Once.

Q. I believe you say you advertised Mr. Payne as a prosthetic dentist?

A. Yes, sir.

Q. As a prosthetic dentist—did you think a prosthetic dentist was one who made plates?

A. I have always thought a prosthetic dentist was a mechanical dentist.

Q. That is a part of prothetic dentistry?

A. I think so.

Q. That is what you intended by that?

A. Yes, sir.

By Mr. Venable:

Q. You are a practical man, and a man running an advertisement saying he has had 30 years in prosthetic dentistry,

would not the average public look upon him as a dentist, advertising himself as a dentist?

A. I don't know what it means.

page 229 } Q. As a practical man, would not the general public be *mislead* by his saying that?

A. I don't know that they would if they knew. I knew he was not a dentist. He was in business, business manager of the proposition.

Q. You have advertised him as a dentist of 30 years experience?

A. Mechanical dentist.

Q. Publishing him in the paper, along with the other doctors, seeing him advertised in that way?

A. He was the boss.

Q. If you did not know what is meant you should not expect the public to know?

A. I thought it was the word to use, as he called Dr. Mitchell "Dean of dentists".

By Mr. Green:

Q. You called Dr. Mitchell "Dean of Dentists"?

A. Yes, sir.

page 230 } HUNTER M. WHITE,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green.

Q. What is your name?

A. Hunter M. White.

Q. What is your business?

A. Advertising.

Q. What?

A. Virginian Pilot.

Q. Did you write this advertisement appearing in the Virginian Pilot November 11, 1932?

A. Yes. I have not handled all the copies for the Pilot.

Q. You handled this one advertising that they had over seven hundred thousand satisfied patients?

A. It should be seventy thousand. It was a typographical error.

Q. Do you all make typographical errors?

A. We make them often.

Q. Did you submit a proof of this to the United Dentists?

A. No, sir, unless we had a large ad and they asked for it, we did not have time.

Q. You know that it was a typographical error?

A. Yes, sir.

By Mr. Venable:

Q. It should have appeared seventy thousand?
page 231 } A. Yes, sir.

By Mr. Green:

Q. Have you been to this office frequently?

A. The United Dentists, they have not advertised in our paper this year.

Q. Before that time, have you been there frequently?

A. I go there once a day.

Q. Did you see patients there?

A. Yes.

Q. Did you notice how they were treated?

A. No, not specially. I have seen the dentist called to attend to them, and they would go in the room where the dentist was.

Q. Did you ever see Mr. Payne or Mrs. Payne examine into anybody's mouth when you were there?

A. No, sir.

Q. Did you see them direct the dentist what to do?

A. No, the only thing they would tell them the price.

CROSS EXAMINATION.

By Mr. Venable:

Q. In the nature of things, the communication between you and the United Dentists up there would be as to the nature of the advertisement that you were writing?

A. I was not interested enough to pay much
page 232 } attention to anything else. I was there to get
the ad. That was my business.

Q. You published the article *containing* the 700,000 and you say that should be 70,000. Did they ever send a similar advertisement changing that publication?

A. I don't know whether an advertisement was run after that or not. I did not pay any more attention to it. Of course, it was published that way, and it was, or should have been seventy thousand. Six hundred and thirty thousand is the only difference.

Q. When you went there you went there strictly to attend to your business?

A. Yes. I went there on business. I did have a few teeth pulled there over five years ago.

Q. Your relationship with them had been very satisfactory?

A. Yes, never had any trouble.

Q. When you went in there to speak to Dr. Payne did you call him "Dr. Payne"?

A. I call him doctor Payne, the same as I would call those druggists in Burrow-Martins.

Q. How long before you found out he was not a licensed dentist?

A. I asked him that at first, and we always want to find out those things so we will know what we are doing.

Q. Have you ever run an advertisement re-
page 233 } resenting Payne as the chief man up there in that
office, along with a picture?

A. I think we did have his picture, but we run it as manager. I think we had his picture.

Q. In your paper as what?

A. As manager. We never run him as "doctor".

Q. You never made an advertisement in your paper that Dr. Payne, or Mr. Payne was a dentist?

A. No, we referred to him as E. L. Payne, or whatever his initials were.

Q. You have never published his name as a licensed dentist?

A. No. I was not interested in that. We were interested in—we knew they had a license, and we wanted to keep within the law. We did not have a chance to get other dentists.

Q. When you were there, of course, you saw patients come in and out?

A. That was not a matter I paid any particular attention to.

Q. You were there for the advertisement?

A. Yes. If anything would have happened I would see.

Q. If someone came in there you would not notice it particularly, you were interested in getting the contract with them, is not that so?

page 234 } A. The way the condition was, we wanted to
get the advertisement. We had to be particular.
We had to handle things with kid gloves. We had to be particular what we put in the paper.

Q. As to whether one man in the office did something there in the office, you would not put that in your paper anyhow?

A. I was not there to see what they did. I went there to get the ad.

By Mr. Green:

Q. You say you had some work done there?

A. Yes, sir.

Q. Did Mrs. Payne or Dr. Payne diagnose your case?

A. No. Mitchell, Barnett or Williams, whoever was working there then.

Q. Did they advise what was to be done?

A. They did not. The dentist told me what I needed. I told them what I wanted done.

Q. Did Mr. or Mrs. Payne have anything to do with it?

A. Mrs. Payne, when I went there to have work done, did the same as any other nurse would do.

Q. As a newspaper man you did not want to publish what was wrong?

A. I would not do that anywhere else.

Q. If you saw them doing wrong, you would not
page 235 } want to publish it?

A. No, sir.

Q. Were you paying particular attention to that?

A. Yes, sir.

By Mr. Venable: I object to his putting words in the man's mouth.

Mr. Green: He put words in there and I want to take them out.

The Court: That is a leading question.

A. B. FISCHBORN,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Coleman:

Q. How long have you been in Norfolk?

A. Approximately seven years.

Q. Where do you come from?

A. Chicago.

Q. What is your occupation?

A. Dental technician in the laboratory.

Q. What is the name of the laboratory?

A. Virginia Dental Laboratory, Incorporated.

Q. Where is the office located?

page 236 } A. In the Medical Arts Building.

Q. What is your work, with ethical dentists?

A. Yes.

Q. What do you do for dentists?

A. The Prosthetic end of it.

Q. What do you mean by "prosthetic end" of it?

A. Making different types of work, gold crowns, bridges and work of that kind.

Q. That is generally recognized as prosthetic dentistry?

A. Yes.

Q. That is generally recognized by people in that profession?

A. Yes.

Q. Did you ever do any work for Dr. Simmons and Dr. Walker?

A. Just which Walker?

Q. There are two or three of them?

A. Not that I know of. The son of Dr. Walker happens to be a specialist in certain branches of dentistry.

Q. He, of course, charges five times as much as any other dentist?

Mr. Venable: I object to that.

By Mr. Coleman:

Q. He specializes on pulling teeth?

A. I believe so.

Q. There is another that puts in bridges, and things of that kind?

page 237 } A. Dr. Walker? I couldn't tell.

Q. Did you ever work for them?

A. For Dr. Walker, no, I have not.

Q. How many dentists in Norfolk do you do prosthetic work for?

A. I could not tell exactly how many. Approximately 70 or 80 per cent. I would not say that we do it all.

Q. You are frequently called into business offices of dentists to look at work fitted in, and to see if you have to make adjustments?

A. Yes, we are called on sometimes probably *one* or twice a week.

CROSS EXAMINATION.

By Mr. Venable:

Q. Are you called on to go to dentists' offices to deliver work?

A. No. We have boys to do that, errand boys.

Q. Then, what do you mean by being called on to go to dentists' offices?

A. On occasions some of the patients cannot decide exactly

what type of reduction they intend to have done, so usually we are called on to help the patient decide on what to do.

Q. What dentists have you been called to go and help him to make a diagnosis, or what is proper to go in the mouth?

page 238 } By Mr. Green: They don't call that diagnosis.

A. Do I have to mention the names, do I have to do that?

By the Court: Yes.

By Mr. Venable:

Q. Name any number that you have?

A. I just said I think Dr. Miller.

Q. What Miller?

A. Walter Miller.

Q. Did you ever do any work in the mouth of the patient?

A. I am not supposed to do that.

Q. You never do that?

A. I used to do it in Germany, and Switzerland.

Q. But not in Norfolk?

A. No, sir.

Q. Have you done any work in the mouth of a patient, or any patient for any doctor or doctors in the City of Norfolk?

A. No. It is illegal for me to do that. I never do. I am not supposed to.

Q. Doctor, do the dentists get you to bring up to their offices types of work?

A. They do at times. We have samples of the different kinds of work, and we sometimes take them to the dentist's office.

page 239 } Q. You take them there for the doctors to let the patient see?

A. Yes, sir.

Q. That is as far as your assistance to the dentist has gone?

A. That is what it is, yes.

Q. Then, there is no objection to that?

A. (No answer.)

RE-DIRECT EXAMINATION.

By Mr. Green:

Q. Haven't you been sent for after you have made a plate for them, been sent for to take the plate to the dentist, so the patient could see how it would fit?

A. Yes, we usually keep most of our impressions, and the dentist wants to see how it is, and what the work may happen to be.

Q. You have frequently done that, if they want to see?

A. Of course we do that, if they wish it.

Q. Did you come to look at me in Dr. Walter Miller's office?

A. I can't remember.

Q. You were notified from your office to come and look at me so as to advise in some way?

A. I could not remember. There are so many page 240 } people I could not tell.

By Mr. Venable:

Q. Did you ever do any work in Mr. Green's mouth?

A. I don't think so, sir.

MRS. MARGARET EZELL,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your profession?

A. Nurse, graduate nurse.

Q. Where did you graduate from?

A. Sarah Leigh.

Q. How long ago?

A. 1925.

Q. Have you ever worked for the United Dentists, Incorporated?

A. I have.

Q. How long have you worked for them?

A. Over a year.

Q. What are your hours there?

A. Well, they alternate. Some days from nine until six, and other days until eight.

Q. You are there every day for a considerable number of hours?

A. Yes, sir.

page 241 } Q. Do you know what the practice is when a patient comes there for dental work?

A. The patient is sent to the dentist.

Q. What happens when a patient comes in the office?

A. When they come in they are met at the door, and we get their names, and write it on a card, and they are sent in to the dentist chair, and they make the examination.

Q. Who does the diagnosing?

A. The dentists. We only fill out the cards as the dentist gives them to us. The dentist tells us what has to be done, and we also give an estimate on the work.

Q. If a patient has been there before what do you do?

A. We look up a card of the record that we keep for reference. A new patient we always get a card and fill it out. The card has a chart of all the work that has been done, if the patient has been there before.

Q. Did Mrs. Payne do that work as well as yourself?

A. Yes, and any of the girls who have been there long enough to understand the charts do it also.

Q. Did you ever see Mr. Payne diagnose a case?

A. Never.

Q. Have you ever seen her examine in a patient's mouth?

A. Never.

Q. Have you ever seen Mr. Payne examine in a patient's mouth?

A. No, sir.

page 242 } Q. Have you *see* Mr. King do dental work?

A. No, sir.

Q. Have you ever seen Mr. or Mrs. Payne do any dentistry work at all?

A. No.

Q. Did you ever hear Mr. or Mrs. Payne give any directions to the dentist as to how he should do his work?

A. No, sir.

Q. Did you ever diagnose a patient?

A. No, sir.

Q. How long have you been working for them?

A. Over a year.

CROSS EXAMINATION.

By Mr. William Venable:

Q. Your name is Miss Margaret Ezell?

A. Yes.

Q. I understand you have been working there for over a year?

A. Yes, sir.

Q. Were you there when a lady by the name of Mrs. Shaw worked there?

A. No, sir.

Q. Your duty, as I understand, is to meet patients when they come in the office, get their name and find out whether they have been there before, and then place them
page 243 } in the chair, and put the towel around their neck,
is that what your duties are?

A. I do that part of the time. I meet them part of the time, and I assist the dentist.

Q. Did you ever have any work done there yourself?

A. Yes, I have.

Q. You had a crown put on a tooth, didn't you?

A. Yes, sir.

Q. Dr. King put that on?

A. No, he did not.

Q. Who did?

A. I don't remember whether Dr. Williams or Dr. Barnett.

Q. Dr. Williams was there at the time?

A. Yes, I think he was.

Q. Do you know he was there at the time the crown was put on?

A. Yes, I think he was.

Q. Mr. King was there?

A. I don't remember.

Q. Are you sure Mr. King did not put it on?

A. (Witness nods her head, indicating yes.)

Q. How do you address E. T. Payne up there, when you speak to him?

A. Mr. Payne. On occasions I have called him doctor, as I call the dentists doctor.

Q. What do you call Mr. King?

page 244 } A. Mr. King.

Q. Did you ever call him Dr. King?

A. Maybe I have. I don't do it when I think of what I am saying.

Q. Who is the boss up there?

A. (Pause.)

Q. Your employer?

A. Well, I was employed by the United Dentists, Incorporated.

Q. You were?

A. Yes.

Q. You say when a patient comes in, a new patient, if he has not been there before, has not been in the office before, then you take his name down, and make out a new card for him, and ask him what he thinks his trouble is with his mouth, and what he wants to be done?

Mr. Green: I submit that she has said nothing of that sort.

Mr. Venable: I am asking her what she did.

By Mr. William Venable:

Q. When a new patient comes into the office of the United

Dentists, and there is not a card made up, is not it the procedure that you take one of these cards, put the name down on the card, and where they live?

A. Yes, sir.

page 245 } Q. You put on the card what they want done?

A. No. The dentist decides that.

Q. You put down the name and address?

A. The name, address and date, and the name of the doctor who waits on the patient.

Q. Does Mrs. Payne do the same thing?

A. Yes, sir.

Q. Have you ever seen Mrs. Payne, when a patient comes into the office, look in the mouth, and say "I think you have got pyorrhea, and I think they ought to come out", have you seen that?

A. I never have seen her do that. She calls the dentist to examine the patient's mouth.

Q. Have you see Dr. Payne do that?

A. I cannot say that I have.

E. T. PAYNE,

being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Elmer T. Payne.

Q. What is your occupation?

A. I am operating a dental office, sir.

Q. Partners, or a corporation?

page 246 } A. A corporation.

Q. What relation do you hold to that company?

A. President.

Q. Do you pretend to be a licensed dentist?

A. No, sir.

Q. Do you hold yourself out as a licensed dentist?

A. No, sir.

Q. Have you ever had any experience in prosthetic dentistry?

A. I have had experience in mechanical dentistry.

Q. What is that, explain?

A. Making artificial teeth.

Q. How long have you been doing that?

A. About 30 years.

Q. Have you acted in that capacity for any Government?

A. Yes.

Q. When?

A. During the World War.

Q. Who are the stockholders of the United Dentists, Incorporated?

A. Myself, Mrs. Payne and Mrs. L. B. Bowie.

Q. Who owns most of the stock there?

A. Mrs. Payne.

Q. How much does she own?

A. 13 shares.

Q. How many shares in all?

A. 15.

page 247 } Q. In 1932 were you here during the whole time?

A. No, sir.

Q. What part of that year were you away from here?

A. I left here, I believe, the 13th of January, 1932.

Q. What time did you get back?

A. About the 1st of August of the same year.

Q. What is the business procedure or method, when a patient comes in there for treatment, from the time they enter the door until they go?

A. Usually the nurse takes the name and shows them into the chair to have an examination.

Q. Did Mrs. Payne ever enter the booth herself?

A. Only to take down what the dentist tells her to put on the card.

Q. Did you or Mrs. Payne ever examine the patient's mouth?

A. No, sir.

By Mr. Venable: Ask whether Mrs. Payne did.

By Mr. Green:

Q. Did Mrs. Payne ever examine in a patient's mouth?

A. No, sir.

Q. Did you ever see her examine in a patient's mouth?

A. No, sir.

Q. Did you ever hear of her examining?

A. No, sir.

page 248 } Q. Did you ever examine a patient's mouth?

A. No, sir.

Q. Did you ever attempt to diagnose?

A. No, sir.

Q. Did you ever grind the teeth?

A. I never put my finger in a patient's mouth since I have been up there.

Q. Did you ever tell any dentist what he was to do for a patient?

A. Never.

Q. Did you ever give directions as to what he should do?

A. Only on the mechanical part of it.

Q. The advertisement has been produced here, right over there on the desk before you. Do you remember the occasion when that was taken?

A. Yes, sir.

Note: The advertisement referred to is that on which Mrs. Harper appears, heretofore filed as Exhibit "H".

Q. Dr. Mitchell testified that he never pulled that tooth, and that you instructed him to get the forceps and put the tooth into it and stand there when they took the picture, and he didn't know what it was done for?

A. No, sir.

page 249 } Q. Did the lady have the tooth pulled?

A. I did not see the tooth pulled. She certainly was spitting blood, and if she didn't have a tooth pulled I don't know why she should have done that. I was out in the office.

Q. What did Mitchell tell you?

A. He said he pulled the tooth.

Q. Did you tell Mitchell to get a tooth for that purpose?

A. No, sir.

Q. Have you ever been mistaken for Dr. Mitchell?

A. Quite often.

Q. Do you keep *at* sign at the entrance of these people who are in it?

A. Yes, sir.

Q. Have you got a sign there of yourself?

A. There is supposed to be one there.

Q. Did you put one there?

A. Yes, sir.

Q. What does it say?

A. "Managing director—E. T. Payne, Managing Director."

Q. Is this one of the signs that comes from that entrance (showing witness a sign)?

A. It looks like it. It usually is there.

Q. What is this sign?

A. Mr. King, the technician.

Q. On your sign was the word "Doctor"? before your name?

page 250 }

A. No, sir.

Q. Is there a doctor there named Dr. Turner?

A. Yes, sir.

Q. Is his sign up there?

A. His sign is there this week.

Q. That is his sign?

A. Yes.

Q. Who else is there?

A. Miss Ezell, the nurse.

By Mr. Venable: Those are tacked up at the front door.

By Mr. Green: They were pulled down.

Q. Do you always keep similar signs there?

A. Yes, to the best of my remembrance.

Q. What was it, from your memory of it?

A. E. T. Payne, Managing director.

Q. Did you ever have the word "doctor" before it?

A. No, sir.

Q. Did the sign you use always read that way, all these years?

A. Yes, since the corporation was formed.

Q. Did you ever hold yourself out as a dentist?

A. No.

Q. Have you held yourself out as a dentist anywhere?

A. Never.

page 251 } CROSS EXAMINATION.

By Mr. Venable:

Q. Did you ever hold yourself out anywhere as a dentist?

Mr. Green: I intended to ask as to Norfolk.

Mr. Venable: Do you want to limit it to "Norfolk"?

Mr. Green: I did that.

Mr. Venable: Very good. I will limit myself to Norfolk.

By Mr. Venable:

Q. Don't you wear a white coat just like any of the others that work in your office?

A. I have, yes, sir.

Q. Is there anything in your deportment up there that would lead people to believe you are a doctor?

A. It is not my intention. I have not intended it to be.

Q. And on your card you have your name as "Managing director"?

A. Yes, sir.

Q. Of this establishment?

A. Yes, sir.

Q. You do direct this establishment?

A. In a business way, yes, sir.

page 252 } Q. The business of that corporation is to make money, isn't it?

Mr. Coleman: That is a natural conclusion.

Mr. Venable: He can answer it in anyway, or you can answer.

A. I think anybody ought to know that. It looks like that all of us would know that.

Q. It is to make money?

A. Yes, sir.

Q. You have no license to practice for this corporation, for the corporation to practice dentistry in Norfolk?

A. No, sir.

Q. Is not the reason for that that the corporation could never stand an examination?

Mr. Coleman: I object. That is a conclusion of law.

The Court: I suppose it is.

By Mr. Venable:

Q. Is the corporation such a person as it can stand an examination before the Board?

Mr. Green: I object to that.

The Court: That is a question of law.

Mr. Venable: All right, sir.

page 253 } By Mr. Venable:

Q. Are not you supposed to receive, from the Examining Board, a certificate, as all other dentists have to have before they can get a license to practice dentistry?

Mr. Green: I object to that.

The Court: Of course they have not a license.

Mr. Coleman: They don't have to get it.

By Mr. Venable:

Q. Your company is practicing in Norfolk without that permission, by reason of an examination, and are not licensed by the Commissioner of the Revenue?

Mr. Green: I object to that.

Mr. Venable: Is not that correct?

Mr. Coleman: There is no provision in the law for that.

The Court: I overrule the objection.

Mr. Coleman: We object, on the ground that the law does not require a dental company to get a State or City license, but requires each dentist to pay the prescribed license.

By Mr. Venable:

Q. Have you ever had a license to practice dentistry?

A. No, sir.

page 254 } Q. When you say you are Manager of these dental parlors, that is what you are, as I understand?

A. Yes, sir.

Q. You hire the men?

A. Yes, sir.

Q. You fire the men?

A. Yes, sir.

Q. And the men who you hire have to take their orders from you, do they not?

A. In a business way, yes.

Q. If they are going to stay there, to some extent, they have to take orders from you?

A. Yes.

Q. How many men have you had hired and fired up there in the last—since the company was formed?

A. I would have to see the book. I suppose 20.

Q. In two years, or a little better, you have had 20, roughly?

A. No, sir, not since the company was formed.

Q. How many, we would like to know?

A. I cannot exactly tell that. It is on the book.

Q. You have not that in mind?

A. Not since the corporation was formed—I would say ten.

Q. Before the corporation was formed, you page 255 } would say as many as 20?

A. I am not sure.

Q. After the corporation was formed you put the word "Incorporated" after the United Dentists?

A. Yes.

Q. You worked in the same way?

A. Yes, sir.

Q. Who are the *director* of this corporation?

A. Myself, Mrs. Payne and Mrs. Bowie.

Q. The same original directors?

A. Yes, sir.

Q. Were two of your directors always present, practically always present, you and Mrs. Payne?

A. Well, yes.

Q. Do you mean to tell this jury that in the last three years you have never made a diagnosis of a tooth?

A. I certainly do.

Q. That you have never said to the doctor "I want the work done this way"?

A. No, I never have.

Q. Do you know Mr. C. P. Pace, a man employed by the Norfolk & Western?

A. I do not.

Q. Did you recognize him yesterday as he came up here to testify, as the man you yourself put a crown in for him?

A. I never saw the man. I never done anything
page 256 } like that. I couldn't have seen him.

By Mr. Venable: All right, sir. Stand aside.

MRS. ELIZABETH DUDLEY PAYNE,
being duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Green:

Q. What is your name?

A. Elizabeth Dudley Payne.

Q. Do you hold any official position with the United Dentists, Incorporated?

A. Yes, sir.

Q. What is it?

A. Secretary and Treasurer.

Q. Do you give your personal attention to that business up there?

A. I do.

Q. How much of your time are you there?

A. I have been there since the corporation was formed, except two months when I was ill, practically every day.

Q. How long are you there every day?

A. From eight in the morning until eight in the evening, most of the time. I would not say every day, but
page 257 } every day I am in the city. I visit my mother once a year. for a week.

Q. Some witnesses testified here as to work, and they were a little indefinite as to the time the work was done. Among those witnesses was a lady by the name of Lunde can you tell when you did work for Mrs. Lunde?

A. Yes, we keep an accurate record of the dates.

Q. What is the date?

A. You have the card there. I cannot recall exactly. I remember several months ago, but I can tell you by the card.

Q. Was that card made up at the time?

A. Yes, sir.

Q. Is that the card you had a record of in the office?

A. Yes, sir, July 25, 1932.

Q. Can you tell, from this card, what work was done for Mrs. Lunde?

Mr. Venable: She might have some memory. She can refresh her memory.

A. This card was made in April, and she was there in July again.

Q. That is what she testified yesterday, and that is the actual date?

A. Yes.

Q. Those are the actual dates that she was page 258 } there?

A. Yes, these are the dates.

By Mr. Green: Mrs. Payne, pick up those cards up there and call out the names.

Mr. Venable: Are these given her to refresh her memory, the records which she made.

A. I did not make all the cards.

Mr. Venable: They were made in due course and it is the original record.

By Mr. Green:

Q. Alexander—what day was that work done? Mr. Alexander said he had his teeth cleaned on July 17, 1931?

A. By Dr. Spencer. It says he called on May 17, 1932, but did not have anything done that day. There is no record of what took place. I think he came in to talk about his gums on December 13.

Mr. Green: I wanted to show the time.

Mr. Venable: Mr. Alexander said he had two teeth pulled a couple of months ago.

By Mr. Green:

Q. When was that work done, according to your record?

A. July 1931.

Q. What date?

page 259 } A. July 17, 1931, cleaned. December 13, 1932, extraction.

Q. In between there he said he called?

A. There was nothing done.

Q. What is the date?

A. May 17, 1932.

Q. He came there then to ask about pyorrhea?

A. Yes.

Q. Mr. W. L. Carter is the next one here. When did he come?

A. On January 16th, 1931, he had preparation for a crown. January 22, 1931, he had a cleaning. May 26, 1931, a filling and a cleaning. On October 3, 1931, he had a crown. On November 7, 1932, a cleaning.

Q. That is since this suit was instituted?

A. Yes.

Q. What is the next name?

A. Mr. W. W. Doyle.

Q. What did he have?

A. May 20, 1929 had an extraction. March 5, 1930, a filling two extractions, January 11, 1932, he had a bridge.

Q. What is the next name?

A. Mr. Marshall White. His work was done May 24, 1929 before the incorporation. Mrs. Ridia Cass, June 30, 1932, had an impression for a plate, and—that was June 30, 1932, and on July 5th, it was adjusted.

page 260 } Q. All of that occurred in 1932?

A. Every bit of it.

By Mr. Venable:

Q. That is the lady who called for Dr. Barnett?

A. Yes, sir. September 14th.

Mr. Green:

Q. Who is the next?

A. August 4, 1932 her brother. That is all you have given me. Mr. W. C. Clark, November 22, 1930, had an impression made up. Mrs. Clark had a plate made.

By Mr. Venable:

Q. She was not here?

A. No. Mr. W. B. Stant, November 21, 1929, he had a plate made. November 13, 1931, he had a new upper plate made. On April 8th, 1932, he had five teeth extracted. The other date is recent. I think his wife and daughter. Mrs. Helmich.

Q. What date is hers?

A. I don't think she knew the date. On August 12, 1931, she had a partial upper plate, and on August 18, she had an impression that day. September 18, 1931, she had an impression for a crown. September 25, it was delivered, and December 30, 1931, she had a partial plate.

Q. Now, Mrs. Payne, you see this sign here?
page 261 } A. Yes.

Q. That is a sign giving the name?

A. Yes, sir.

Q. Is that your name?

A. No, that is my husband's name.

Q. That is a sign we did not have here awhile ago?

A. Yes, sir.

Q. Elmer T. Payne, Manager, United Dentist, Incorporated?

A. Yes.

Q. Did you have every dentist's name?

A. Every dentist has to have his name.

Q. They have to have the sign up?

A. Yes.

Q. Dr. Turner and Dr. Green, those are the names up there now?

A. That is right.

Q. Don't the law require you to keep those signs up there?

A. The law requires us to keep the name of the dentist up there. I don't know whether you have to have every employee, or not. We have the regular dentist. We keep the name of the dentists in the office.

Q. Every dentist is there?

A. Yes.

Q. Did you ever represent yourself, Mr. King, or your husband, Mr. Payne, as dentists?

page 262 } A. I have not.

Q. Any sign up there showing that they were dentists?

A. No, sir.

Q. Has your husband compelled anyone to call him doctor?

A. Not anyone.

Q. Has anybody ever ordered to call him that?

A. No indeed.

Q. Now, Mrs. Payne will you give the jury an outline of the procedure in that office since you have been in the business of the corporation?

A. We usually have from one to two assistants, girls, nurses. We would rather have graduate nurses, and they meet the patients, and sometimes I have acted as nurse my-

self, but the nurse, whoever she is, is to assist the doctor, helping, by writing the cards for the doctor, and when they come in she finds out whether they are new patients, and if they are a card is made out, but if they are old patients the first thing to be done is to look up the old record and put it down on the same card, and then the patient is taken into the operating room.

Q. What is put on the card?

A. It is looked up, to see whether it is an old card, looked up to see what has been done, and what is needed to be done, and the doctor who did the work, the doctor making the diagnosis. The patient is in the chair, and the doctors diagnose what is to be done, and the nurse, or myself, write page 263 } down on the card what the doctor tells, and they will ask what the cost will be, and we cannot tell them how much until we know just what is to be done.

Q. The prices are fixed?

A. We have fixed prices, and we give them the regular scale of prices.

Q. Did you ever attempt to diagnose or tell a person what was the matter with the teeth, or not?

A. I have not.

Q. Did you ever diagnose them?

A. No, sir.

Q. Did you ever examine a patient's teeth?

A. No, sir.

Q. Did you ever tell them what was the matter?

A. No, sir.

Q. You are not a dentist?

A. No. I don't think anybody would take me to be one, and I do not think that I have ever been taken for one.

Q. Did you ever tell a patient what he must have done?

A. No, sir.

Q. Have you ever given directions to the dentist what he should do?

A. No, I have not.

Q. Have you ever told a dentist what he should page 264 } have done, as you heard Dr. Barnett say?

A. I heard him say that, but I have never done it.

Q. While you were away at any time is Dr. Payne there or when Dr. Payne is away are you there?

A. A portion of the time he was away for several months last year, and I have been away for six weeks when I was ill, and with that exception, those several occasions, I am always there.

Q. Did you ever see Dr. Payne work in a patient's mouth?

A. I never have.

Q. Did you ever see him examine a patient's tooth?

A. No.

Q. Did you ever hear him give directions to any dentist as to how they should do work?

A. I have not.

Q. Now, how about Mr. King, have you ever seen him do dental work?

A. I have not.

Q. What does he do, what is his business?

A. He is not a dentist, but a mechanic, and he stayed back in the laboratory most of the time, a technician, and does the construction work.

Q. Have you ever seen him adjust a crown, or put on crowns?

A. I have not.

page 265 } Q. Adjust any?

A. I have never seen him touch a patient's mouth. He does the mechanical part of it.

CROSS EXAMINATION.

By Mr. Venable:

Q. Mrs. Payne, I understand you to say that you have never done any of the things these witnesses testify to here?

A. I didn't quite understand you?

Q. I say that you have never seen any of the things that doctor Mitchell, Dr. Barnett and Dr. Wood testified to?

A. They testified to a good many things. I don't know which you have in mind.

Q. As in regard to you?

A. They testified to some things in regard to me.

Q. You say you have never put your hand or instrument in a patient's mouth?

A. I never had an instrument in my hand—except sterilizing—I never used an instrument in anybody's mouth. I never had an instrument in my hands over a patient. I have sterilized instruments, and assisted the nurse in things like that.

Q. Did you ever diagnose a case?

page 266 } A. Never.

Q. You have never told a patient what they should have done?

A. No, sir.

Q. Have you never told a dentist what he should do in a patient's mouth?

A. No, sir.

Q. Mr. Litchfield, who says that both you and your husband talked about this bridge that he should have in his mouth?

A. I don't remember his saying that.

Q. Did you have a conversation with Mr. Litchfield in reference to whether or not he should have pulled out certain teeth, or not, and advising him not to do it?

A. I have not.

Q. You never gave advice to any patient?

A. I don't remember Mr. Litchfield saying that. Are you sure he did? I don't remember him saying I gave him any advice. I did not. I never gave him any advice or to anyone.

Q. Do you recall what he said about your examining him first, and calling Dr. Payne there?

A. I remember he said he came up with some tooth broken off, and my husband told him it would be a dollar for repair, and he refused to pay it.

Q. You didn't hear his testimony then?

A. I was present all day yesterday, and I do page 267 } not remember him saying that.

Q. Don't you recall his saying you examined him first, and there was a conference between you and Dr. Payne about certain of his teeth had to be pulled?

A. I could be mistaken. I don't remember that.

Q. Did that happen, or not?

A. I don't believe that I remember the time Mr. Litchfield was in the office.

Q. You couldn't remember about that?

A. I remember he had been a patient. I don't remember the occasion he speaks of. We handle so many patients up there. I only know that I have not diagnosed any patients. That is always left with the dentist.

Q. Did not you diagnose Mr. Clark, and tell him what it was?

A. I did not. According to my record, I can explain what happened. I don't remember the occasion he was in there. I could not remember every patient at the time.

Q. And you say you never made a diagnosis of any patient?

A. No I did not. He came back later and Dr. Barnett made the examination.

Q. If you made the diagnosis of a patient's case you would not put it down on the card to convict yourself?

A. I write some of the diagnosis from the dentist's directions.

page 268 } Q. If you made a diagnosis you would not write it down on the card?

A. Do you think any sensible person would accept my diagnosis, or even let me talk to them.

Q. Have you told the doctors that they must put in bridge work because you would get more money for it?

A. Do you think a patient would ask my advice?

By The Court: Just answer the questions.

By Mr. Green: The witness has answered the questions.

A. I have not made any diagnosis.

By Mr. Venable:

Q. You have not told any of these doctors, you or Dr. Payne, what to do?

A. Not what to do for a patient.

Q. That you wanted a crown put on his tooth instead of pulling it, that you would only get a dollar for that?

A. I have never done that.

Q. Have not you told them to do that instead of extracting it?

A. I have not done it.

Q. If you had done those things would you not remember it?

A. I have not done it. I think that covers your question.

May I explain something. I think there is some
page 269 } confusion about the diagnosis. I don't believe
any of those witnesses yesterday could say that
I diagnosed the case. I want to explain the way it is done.

Q. Go ahead?

A. The card is made up as the doctor makes the diagnosis. Then, after the diagnosis is on the card they will come to me or Dr. Payne to figure out what we are going to charge. There is a scale of prices containing the correct amounts to be charged. It is possible we have talked with them about that, about which they will have done, and how much money they can pay. This is done after the dentist makes the diagnosis. That is the way the contract is made. They sign the contract for certain work to be done. The patient will say "I will have this bridge done first", and I will say to the doctor "This lady will have the bridge", you might call that instruction from me, but he has made the diagnosis. That is what I wanted to make clear.

Q. That is your version of it?

A. Yes, that is correct.

By Mr. Green:

Q. Is that what takes place?

A. That is what takes place.

page 270 } The further taking of evidence in this matter
was adjourned until 3 o'clock.

AFTERNOON SESSION.

Norfolk, Virginia,

February 16, 1933.

Met pursuant to adjournment.

E. T. PAYNE,
recalled, on behalf of the defendant testified as follows:

Examined by Mr. Green:

Q. Yesterday Dr. Barnett testified that you called him into the office and asked him something about these proceedings, and what he was going to testify, and that you threatened that you would kill any man that would testify?

A. That is not true.

Q. That you jumped on him about talking to Dr. Thomas, and threatened to kill him?

A. Jumped on him?

A. I don't mean figuratively?

A. I asked him about it.

Q. What happened then?

page 271 } A. Well, we began to discuss the question, and
naturally, when I heard that I knew he was not
loyal, and I did not want to keep him.

Q. What did you say to him?

A. We discussed it. There were no threats made by either one.

Q. Did you threaten to shoot him?

A. No, sir.

Q. Did you threaten to hit him?

A. No, sir.

Q. He said you met him on Granby Street, and that you turned around and began to curse him, and attracted a crowd of ladies?

A. I never did that. I met him. I have seen him several times.

Q. Did you curse him?

A. No.

Q. Did you threaten him then?

A. Never in any way.

Q. How long did he stay in your employ after going to Newport News?

A. It was Saturday that the conversation was held, and it was the day that I let him go?

Q. You let him go that day?

A. Yes, sir.

Q. One other question. Dr. Mitchell testified on page 272 } one occasion there arose a question as to whether a crown should be put on a man's tooth, or the tooth should be extracted, and you told him to put the crown on, and not to extract the tooth?

A. I never did that.

No cross examination.

The defendant rests.

Mr. Venable: There has been much discussion here about the meaning of the word prosthetic dentistry. I would like to read the definition of the word as given from the Standard Dictionary just what the word means.

Mr. Green: I object to it as evidence.

Mr. Venable: The evidence is where a man represents himself as a dentist, or pretends to give information.

Mr. Green: We object to that.

The Court: I will instruct the jury about it.

Mr. Venable: Very good. That will be entirely page 273 } satisfactory.

The jury retired.

Mr. Green: I want to move that this case be dismissed. This provision is, the statute provides that any corporation which wilfully fails to use any of its essential functions for a period of two years, or which wilfully or habitually misuses any essential corporate function. Now, as I understand, it has to be almost habitually done. As I understand the word habitually, means constantly. There is no evidence here to sustain that. That is all I have to say.

The Court: There is enough to go to the jury on the testimony of Dr. Mitchell and Dr. Barnett.

Mr. Green: I except to that. I move to exclude all the evidence as to the advertisements, because advertising is the use of an essential corporate function. There is nothing to show that it has been wilful or habitual. I move to exclude all of that evidence.

The Court: I overrule your motion.

Mr. Green: We save the point on that.

page 274 } Thereupon, after all the evidence was in, the plaintiff offered instructions marked Plaintiff's Instructions Nos. 1, 1 a, 1 b, 2, 3, 4, 5, 6, 7, 8, as hereinafter set forth, and the defendant offered certain instructions marked Defendant's Instructions Nos. 1, 2, 3, hereinafter set forth, which were granted by the court, and at the same time the court gave to the jury an instruction hereinafter called Court's Instruction. The said instructions thus given to the jury are all the instructions given on the trial of this case, the court having refused to grant certain instructions requested by the defendant and set forth in Certificate No. 2, hereafter.

INSTRUCTIONS.

Plaintiff's Instruction No. 1.

The Court instructs the jury that the statute law of Virginia defines the "practice of dentistry" as follows:

"Any person shall be deemed to be practicing dentistry, who used the word dentist, dental surgeon, the letters DDS, DMD, or any letters or title in connection with his or her name, which in any way, represents him or her as engaged in the practice of dentistry, or any branch thereof, or who advertised or permits to be advertised by sign, card, circular, handbill, newspaper or otherwise that he or she can or will attempt to perform dental operations of any kind, or who shall diagnose, profess to diagnose, or treat or profess to treat any of the diseases or lesions of the oral cavity, teeth, gums or the maxillary bones or shall extract teeth, or shall correct malpositions of the teeth or jaws, or shall take impressions, or shall supply artificial teeth as substitutes for natural teeth, or shall place in the mouth and adjust such substitutes, or do any practice included in the curricula of recognized dental colleges, or administer or pre-
page 275 } scribe such remedies, medicinal or otherwise, as shall be needed in the treatment of dental or oral diseases, * * * and nothing in this section shall interfere with the performance of mechanical work, or inanimate objects only, for licensed dentist, by any person employed in or operating a dental laboratory; * * *."

You are further instructed that the statute law of Virginia provides

"No person shall employ or give aid, or assist any per-

son not regularly licensed to practice dentistry to perform any dental operation upon human beings in this State."

and you are instructed that the word person as used in the next preceding paragraph extends to, includes and means "a corporation". (Granted.)

Plaintiff's Instruction No. 1 a.

The Court instructs the jury that if you believe from the evidence that the United Dentists, Inc., by or through its President, or its Secretary and Treasurer, or the employee King knowingly, intentionally and habitually performed any of the acts set forth in the preceding instruction, or aided and abetted in the performance of any of the provisions there set forth, this constitutes a willful and habitual misuse of its corporate functions, and your verdict should be for the plaintiff. (Granted.)

Plaintiff's Instruction No. 1 b.

The Court instructs the jury that if you believe from the evidence that E. T. Payne and Elizabeth Dudley Payne, the president, and secretary and treasurer of the de-
page 276 } fendant corporation, or either of them managed
and operated the dental parlor of the defend-
ant and that they or either of them hired and fired all other employees and exercised such control over the licensed operating dentist employees that required them to carry out the directions of the said officers or either of them as to the work to be done in the mouths of patients or lose their positions as employees of the corporation and that neither of the said officers were licensed dentists and that this was the habitual method used in managing and directing the work of the operating dentist then the corporation by reason of such conduct of its officers was guilty of wilfully and habitually misusing its corporate functions. (Granted.)

Plaintiff's Instruction No. 2.

The Court instructs the Jury that the statute law of Virginia provides as follows:

"Any corporation which shall * * * wilfully and habitually misuse any essential corporate function, shall thereby forfeit its charter. * * *."

You are further instructed that any corporation which knowingly, intentionally and habitually violates the laws regulating the practice, or conduct of the profession or business

which its charter authorizes it to practice or conduct thereby wilfully and habitually misuses its essential corporate functions.

And you are further instructed that the conduct, knowledge and intent of the President and Secretary and Treasurer of a corporation and performed and gained in the con-
page 277 } duct or practice of the business or profession of
the corporation is by the law imputed to the corporation and it is liable and responsible therefor. (Granted.)

Plaintiff's Instruction No. 3.

The Court instructs the jury that the statute laws of Virginia prohibits any person from engaging in the practice of dentistry, or any branch thereof, as either assistant or employee of an unlicensed dentist, without having passed the examination and received a certificate from the Virginia State Board of Dental Examiners licensing such person to practice dentistry in this State. (Granted.)

Plaintiff's Instruction No. 4.

The Court instructs the jury that if you believe from the evidence that E. T. Payne, while President of the defendant, has habitually examined the teeth and mouths of prospective patients, made diagnoses and advised patients what work should be done and has habitually issued instructions to licensed dentists employed by the defendant as to the treatment and work to be done, then the defendant has wilfully and habitually misused its essential corporate function and you shall find for the plaintiff. (Granted.)

Plaintiff's Instruction No. 5.

The Court instructs the jury that if you believe from the evidence that Elizabeth Dudley Payne while Secretary and
page 278 } Treasurer of the defendant, has habitually examined the teeth and mouths of prospective patients, made diagnoses and advised patients what work should be done, and has habitually issued instructions to licensed dentists employed by the defendant as to the treatment and work to be done, then the defendant has wilfully and habitually misused its essential corporate function and you shall find for the plaintiff. (Granted.)

Plaintiff's Instruction No. 6.

The Court instructs the jury that if you believe from the evidence that the defendant has wilfully and habitually attempted to obtain practice by the publication or circulation of

false claims or misleading statements of its art, skill or knowledge, or by false advertisement of its methods of treatment or practice, then it has wilfully and habitually misused its corporate function and you must find for the plaintiff. (Granted.)

Plaintiff's Instruction No. 7.

The Court instructs the jury that if you believe from the evidence that J. F. King, an employee of defendant, at the direction or with the knowledge of the President and the Secretary and Treasurer, or either of them, has habitually extracted teeth for patients or fitted bridges and artificial teeth in the mouths of patients of defendant, then said defendant has wilfully and habitually misused its essential corporate function and you should find for the plaintiff. (Granted.)

page 279 } *Plaintiff's Instruction No. 8.*

The Court instructs the jury that the Virginia Statute makes it unlawful for any person not a licensed dentist to use the word "*dentist*", or any title in connection with his name, which in any way represents him to be engaged in the practice of dentistry, or any branch thereof, and you are further instructed that *prosthesis* is defined by Webster's Dictionary to mean the addition to human body of some artificial part to replace *on* wanting, as a leg, an eye or a tooth, and that prosthetics is defined by the Standard Dental Dictionary to be a general term signifying the making and adjusting for any part of the body of an artificial substitute.

If, therefore, you believe from the evidence that E. T. Payne, President, while on duty as President, Manager or Director, in the dental parlor of the defendant, habitually permitted or required that he be addressed as Dr. Payne by other employees of the corporation in the presence of patients, and habitually described himself as Dr. Payne when talking over the 'phone of the corporation in discussing the business of the corporation, and habitually directed or permitted his picture to appear in a newspaper advertisement describing him as having had "30 years experience in prosthetic dentistry" with a view of deceiving the public, you are instructed that these acts constituted a wilful misuse of the corporate function of the defendant. (Granted.)

The defendant offered the following instructions numbered 1, 2 and 3.

page 280 } *Defendant's Instruction No. 1.*

The Court instructs the jury that the defendant had the right to exercise its corporate functions in a lawful way and

is not liable to have its charter forfeited, unless it has wilfully and habitually misused an essential corporate function; and in this connection the jury are instructed that wilfully means on purpose and that habitually means customarily; and unless the jury are satisfied from the evidence that the defendant wilfully and habitually misused an essential corporate function, they should find the defendant not guilty. Occasional misuse of its essential corporate functions, even if believed to have existed, are not sufficient to convict the defendant. Granted.)

Defendant's Instruction No. 2.

The Court instructs the jury that under the law of Virginia the defendant had the right to continue to conduct the business of dentistry in a lawful manner and the fact that the defendant's president and directing manager, Elmer T. Payne, and Secretary and Treasurer, Elizabeth D. Payne, were not licensed dentists did not of itself constitute a misuse of defendant's essential corporate functions, if said officers did not in fact practice dentistry themselves as defined in Plaintiff's instruction #1. (Granted.)

Defendant's Instruction No. 3.

The Court instructs the jury that the defendant had the right to employ and keep in its services, King, for page 281 } the performance only of mechanical work usually done in a dental laboratory or by persons employed by a dental laboratory. (Granted.)

The following instruction was given to the jury by the court:

The Court instructs the jury that in considering the advertisements introduced in evidence the jury are to determine from all the testimony before them whether or not such advertisements are wilfully false. (Granted.)

After the Jury were instructed as hereinbefore shown, and after argument of counsel on both sides, the Jury returned their verdict in the following words:

"We, the Jury, find for the plaintiff.

H. D. THOMPSON, Foreman."

Thereupon, the defendant moved the court to set aside the verdict of the jury and enter final judgment for the defendant and/or grant a new trial on the grounds that the same was contrary to law and evidence, and further on the ground that the court erred in overruling the defendant's motion to dismiss the case at the close of the evidence therein on the grounds hereinabove stated, and that the court further erred in excluding all evidence as to advertisements on the grounds hereinabove stated and also because the court
page 282 } had refused to grant the defendant's instructions as set out in Certificate No. 2 hereof.

These motions the court took time to consider, which motions have been fully heard and maturely considered by the court are overruled and final judgment entered on the verdict in favor of the plaintiff against the defendant on the 20th day of May, 1933, to which action of the court in overruling the said motions and in entering said judgment the defendant at the time duly excepted on the grounds above set forth.

I, Allan R. Hanckel, Judge of the Circuit Court of the City of Norfolk, do hereby certify that the foregoing is a true and correct copy of all the evidence and certain other incidents of the trial of this cause, with certain exceptions and objections of the respective parties as therein set forth, and I further certify that I have authenticated the original exhibits referred to in the above testimony for the purpose of identification by my signature, so that the same may be transmitted by the Clerk of this court to the Clerk of the Supreme Court of Appeals, if requested by either party.

And I do further certify that the attorneys for the plaintiff had reasonable notice in writing of the time and place of tendering this certificate by the defendant to me.

Given under my hand this 17th day of July, 1933, within sixty days from the time judgment was entered herein.

ALLAN R. HANCKEL,
Judge of the Circuit Court of the
City of Norfolk.

page 283 }

CERTIFICATE NO. 2.

This is to Certify that on the trial of this case, after all the evidence had been introduced, as set forth in Certificate No. 1, now referred to, the defendant by its attorneys requested the court to grant it the following instructions:

INSTRUCTIONS.

Defendant's Instruction A.

The Court instructs the jury that the burden is on the Commonwealth to satisfy the jury by evidence that the statements made in the advertisements introduced in evidence were designedly and purposely false; such statements are not presumed to be false and the Commonwealth is required to produce evidence that they are false and also designedly false. And in this connection the jury are further told that if the Commonwealth has shown that the statements in one or more of the advertisements are false, this alone does not constitute a wilful and habitual violation of an essential corporate function on the part of the defendant and is not sufficient to convict.

Defendant's Instruction B.

The Court instructs the jury that they have no right to presume or assume that any of the advertisements introduced in evidence are untrue, but the Commonwealth must prove by a preponderance of the evidence that the advertisements or any of them are untrue; and that they were wil-

page 284 } fully and habitually published for the purpose of
deceiving and defrauding the public. (Refused.)

Defendant's Instruction C.

The Court instructs the jury that the burden is on the Commonwealth to satisfy the jury by evidence that the statements made in the advertisements introduced in evidence were purposely false; such statements are not presumed to be false and the Commonwealth must show that they are false. (Refused.)

But the court refused to grant said instructions, or any of them, to which action of the court in refusing to grant each of said instructions, the defendant by its attorneys excepted, said exceptions being to the refusal to give each instruction as offered.

Given under my hand this 17th day of July, 1933.

ALLAN R. HANCKEL,
Judge of the Circuit Court of the
City of Norfolk.

page 285 }

CERTIFICATE NO. 3.

This is to Certify that on the trial of this case, the court on its own motion gave the following instruction.

COURT'S INSTRUCTION.

The Court instructs the jury that in considering the advertisements introduced in evidence the jury are to determine from all the testimony before them whether or not such advertisements are wilfully false. (Granted.)

To the giving of which instruction the defendant at the time objected and excepted on the ground that said instruction did not place the burden of proof upon the plaintiff in this case as to the falsity of said advertisements, as the defendant requested it should do.

Given under my hand this 17th day of July, 1933.

ALLAN R. HANCKEL,
Judge of the Circuit Court of the
City of Norfolk.

page 286} The following are the notices for the transcript
of the record, and of the appeal filed herein:

NOTICE OF APPEAL.

To: Commonwealth of Virginia, and Venable, Miller, Pilcher
& Parsons, its attorneys.

Take Notice that the undersigned will, at 10 A. M. on Monday, the 17th day of July, 1933, tender to the Honorable Allan R. Hanckel, Judge of the Circuit Court of the City of Norfolk, at the Courthouse thereof, its certain bills of exceptions, numbered One, Two and Three, in the case lately pending in said court under style of Commonwealth of Virginia vs. United Dentists, Incorporated, in which the said Commonwealth of Virginia was the plaintiff and the undersigned was the defendant.

Witness the signature of the undersigned this 13th day of July, 1933.

UNITED DENTISTS, INCORPORATED,
By DANIEL COLEMAN and
NATH. T. GREEN, Its Attorneys.

Service of the above notice accepted this 13th day of July, 1933.

COMMONWEALTH OF VIRGINIA,
By JOHN R. SAUNDERS, Attorney General.
VENABLE, MILLER, PILCHER & PARSONS,
Its Attorneys.

page 287 } NOTICE FOR TRANSCRIPT OF RECORD.

To: Commonwealth of Virginia, and Venable, Miller, Pilcher and Parsons, its attorneys.

Take Notice, that the defendant, United Dentists, Incorporated, in the above styled action recently depending in the Circuit Court of the City of Norfolk, Virginia, will apply forthwith to the Clerk of said Court for a transcript of the record in said cause, or the purpose of applying to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment of said trial Court.

UNITED DENTISTS, INCORPORATED,
By NATH. T. GREEN, and
DANIEL COLEMAN, Its Attorneys.

Service of the foregoing notice is hereby accepted, this the 25th day of July, 1933.

COMMONWEALTH OF VIRGINIA,
By JOHN R. SAUNDERS, Atty. General, and
VENABLE, MILLER, PILCHER & PARSONS,
Its Attorneys.

page 288 } Virginia:

In the Clerk's Office of the Circuit Court of the City of Norfolk on the 27th day of July, in the year 1933.

I, Cecil M. Robertson, Clerk of the Circuit Court of the City of Norfolk, hereby certify that the foregoing transcript includes the papers filed, and the proceedings had thereon in the suit of Commonwealth of Virginia, plaintiff against United Dentists, Incorporated, Defendant, lately pending in our said Court.

I further certify that the same was not made up and completed and delivered, until the plaintiff had received due notice thereof and of the intention of said United Dentists, Incorporated, to appeal to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment therein.

Teste:

CECIL M. ROBERTSON, Clerk.
By MARGUERITE R. GRONER, D. C.

Fee for Transcript \$60.40.

A Copy—Teste:

M. B. WATTS, C. C.

INDEX

	<i>Page</i>
Petition for Writ of Error.....	1
Record.....	13
Notice of Motion for Judgment.....	13
Amended Notice of Motion.....	15
Demurrer and Notice to Quash Amended Notice.....	18
Bill of Particulars.....	19
Demurrer to Notice of Motion and Amended Notice of Motion.....	23
Plea of Not Guilty.....	24
Verdict and Judgment.....	25, 172, 173
Certificate of Exceptions No. 1—Evidence.....	26
Mrs. Elizabeth Dudley Payne.....	28, 158
Dr. J. Franklin Payne.....	28
Dr. B. M. Williams.....	36, 68
O. G. Barnett.....	45
Mrs. Nellie Shaw.....	60
C. P. Pace.....	62
D. C. Litchfield.....	64
P. H. Vaden.....	67
Dr. N. R. Mitchell.....	73
Dr. F. A. Wood.....	88
W. B. Stant.....	93
W. C. Clark.....	98
Mrs. Ella M. Lunde.....	100
Mrs. Irma V. Hellmich.....	102
M. W. Talbot.....	104
Mrs. Ridia Cass.....	108
Marshall White.....	109
W. L. Carter.....	112
C. F. Lee.....	113
W. W. Doyle.....	117
D. C. Carr.....	119
R. L. Alexander.....	119
Dr. J. L. Mears.....	122
J. F. King.....	126

	<i>Page</i>
S. W. Joyner.....	132
Leland E. Holmes.....	133
Hunter M. White.....	143
A. B. Fischborn.....	146
Mrs. Margaret Ezell.....	149
E. T. Payne.....	152, 166
Instructions for Plaintiff.....	168
Instructions for Defendant.....	171
Court's Instruction.....	172
Certificate of Exceptions No. 2—Defendant's Instructions Refused.....	173
Certificate of Exceptions No. 3—Court's Instruction.....	174
Notice of Appeal.....	175
Notice for Transcript of Record.....	176
Clerk's Certificate.....	176