

103 110-172 2620 190-172

Record No. 3537

In the
Supreme Court of Appeals of Virginia
at Richmond

VIRGIE LEE PINE OVERTON

v.

CHARLES SLAUGHTER

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

RULE 14.

¶5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

M. B. WATTS, Clerk.

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

190VA172

RULE 14—BRIEFS

1. **Form and contents of appellant's brief.** The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

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

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

(c) A clear and concise statement of the facts, with references to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

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

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

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. **Form and contents of appellee's brief.** The brief for the appellee shall contain:

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

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

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

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

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

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

4. **Time of filing.** (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

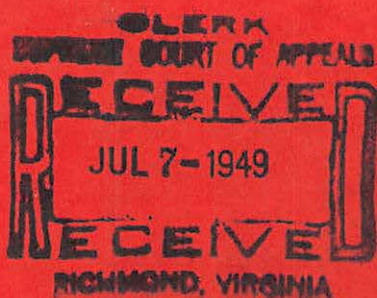
(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

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

5. **Number of copies to be filed and delivered to opposing counsel.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

7. **Non-compliance, effect of.** The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.



The complaint as to pains where the same for
after we see. Now that has been made
for the same (appears direction) after the
Court to rest.

October 1949

Gregory #3
Oct 12
All present

20

VIRGIE LEE PINE OVERTON

-v-

MEMORANDUM BY JUSTICE JOHN W. EGGLESTON
February 16, 1949

CHARLES SLAUGHTER

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
Kellam, Judge

On January 18, 1947, about six p. m., Virgie Lee Pine Overton, a colored woman thirty-seven years of age, was walking across High street from the south to the north side at the intersection of Pembroke avenue, in the city of Portsmouth. She was struck and severely injured by an automobile driven westwardly along High street by Charles Slaughter. The injured woman sued Slaughter and the trial below resulted in a verdict and judgment for the defendant. The plaintiff seeks a writ of error, claiming (1) verdict and judgment are plainly against the preponderance of the evidence, and (2) court erred in granting defendant's Instruction "B" (R.119).

High street is 60 feet wide from curb to curb and is designed to carry four lanes of traffic. The center of the street is marked by a white line.

Shortly before the accident it had been raining and the street was wet and slippery.

The plaintiff says that before leaving the curb she looked to her left (west) and saw that the street was clear. When she had gotten a short distance from the southern curb, variously estimated by her and her witnesses at from 4 to 12 feet therefrom, a westbound car came across the center line of the street and struck her while she was in the eastbound traffic lane. She says the car was about 50 feet from her when she first saw it on her right.

Her testimony that the Slaughter car, at the time of the impact, was driving on the wrong side of the street is corroborated by several witnesses. Witnesses for the plaintiff also testified that the Slaughter car was proceeding at from 40 to 45 miles per hour.

The defendant, however, testified that he was always on the right or northern side of the street; that he was overtaking and passing another car and that when he first saw the plaintiff she had crossed the center line and was immediately in front of his car; that he put on his brakes, cut his car to the left, but that he was unable to avoid the collision; that the right front fender struck the plaintiff, the car skidded around in the street, and came to rest on or near the southern curb, headed eastwardly or in the opposite direction to which it had been proceeding. Slaughter says that at the time he was traveling about 25²⁵ miles per hour.

The undisputed evidence is that the plaintiff was knocked or dragged some 30 to 40 feet by the impact and was found lying against the southern curb, just to the rear of the car.

ASSIGNMENT NUMBER ONE

While undoubtedly the greater number of witnesses, as well as the physical circumstances substantiate the plaintiff's claim, it seems to me that the jury were justified in accepting the defendant's story. In other words, the liability was a jury question.

ASSIGNMENT NUMBER TWO

Defendant Instruction "B" (R. ⁷³119; pet., p. ⁴6) is attacked. It is said that this instruction requires a pedestrian to look at every moment, makes him an absolute guarantor of his own safety, does not require him to exercise ordinary care for his own safety. Moreover, it told the jury that if they believed that the plaintiff was guilty of contributory negligence she could not recover, without saying that such contributory negligence proximately caused or contributed to the accident. The opposition brief contends that the defects now pointed out in the instruction were not raised in the court below and hence the plaintiff is barred by Rule 22.

For plaintiff's objection see ^{Reur R. 73} ~~opposition brief~~, page 4.

I rather think that the last phrase of the ^{objection} ~~instruction~~ complied with Rule 22. If so, the writ should be granted because in my opinion the instruction is defective.

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 3537

VIRGIE LEE PINE OVERTON, Plaintiff in Error,

versus

CHARLES SLAUGHTER, Defendant in Error.

PETITION FOR WRIT OF ERROR.

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

Petitioner, Virgie Lee Pine Overton, respectfully represents that she is aggrieved by a final judgment of the Circuit Court of the City of Portsmouth entered on the 22nd day of November, 1948, in favor of defendant pursuant to the verdict of a jury in an action by notice of motion brought by plaintiff for personal injury, transcript of the record being filed herewith to which reference is made.

THE ERRORS ASSIGNED ARE: That the Circuit Court erred:

1. In not setting aside the verdict as contrary to the law and the evidence and plainly wrong.
2. In granting instruction B granted for defendant (R., pp. 119, 120).

THE FACTS, which have some conflicts of evidence, stripped of useless details are:

Plaintiff, a colored woman thirty-seven years old, on Saturday, January 18, 1947, had cleaned the church at the corner of Pembroke Avenue and High Street in the City of Portsmouth, and was walking across High Street northerly at the intersection where pedestrians should walk, when she was struck by a westbound automobile being driven by defendant on High Street. High Street runs substantially East and

West and Pembroke Avenue substantially North and 2* South. Pembroke Avenue comes from the South and stops at High Street, making this an intersection. (*Mapp v. Holland*, 138 Va. 5-19; R., p. 58.) Photographs and drawing are exhibited in the case. Plaintiff had walked from the church across Pembroke Avenue before she turned North to cross High Street. Plaintiff testified that when she had progressed about ten or twelve feet out into High Street the automobile came over to the left (South) side of High Street and struck plaintiff, injuring her very seriously (R., pp. 22, 23): Plaintiff said she was crossing straight right at the intersection (R., p. 24). She said the accident happened between five and six on the afternoon when it was not quite dark (R., p. 28). She said when she first saw the automobile it was 50 or 60 feet away running very fast and came on its wrong side of the street (R., pp. 29, 30). The automobile was first on its right side of High Street but curved over to the left side and struck her (R., p. 30).

Lem Newell, testified for plaintiff that he was standing on the North side of High Street by the market and saw the accident which happened when it was not dark (R., pp. 35, 36). He said plaintiff was walking from the South side North across High Street, when the automobile bound West on High Street at 40 or 45 miles per hour struck plaintiff when she was about 8 or 9 feet from the Southern curb (R., p. 37) and knocked 30 or 40 feet so that her body landed next to the Southern curb of High Street. Her body was knocked a hard blow and went through the air (R., p. 39). The driver smelled like whiskey (R., p. 42). This witness saw the whole affair, and was looking right at it (R., p. 54). No other cars were near the accident (R., p. 55), and there was no apparent reason why defendant drove on his left side of the street and struck plaintiff (R., p. 56).

3* *Jim Davis testified for plaintiff that he saw the accident, and the driver came over on the South side of High Street and struck plaintiff and knocked her about 30 feet (R., p. 62). This witness was standing on the North side of High Street opposite the middle of Pembroke Avenue which does not extend further North than High Street (R., p. 64).

Albert Barnes testified for plaintiff that he was standing in the front door of the market on North side of High Street and the car was on the left side of the street and struck plaintiff, that the car was trying to pass another (R., p. 72).

Leonard E. Cross, Jr. testified for defendant, saying he was about 18 or 20 feet from the accident, driving a car West on High Street (R., p. 83). He testified that High Street (which is very wide) besides having parking space on each side next to the curb, has four lanes for moving traffic, two in each direction (R., p. 83). A white line is down the center of High Street (R., p. 84). He said plaintiff had crossed to the North side of this middle white line and was struck by defendant's car which car was passing to the left of witness's car (R., p. 85), and she was struck in the intersection of the two streets (R., p. 86). Defendant's car knocked plaintiff over to the South side of High Street (R., p. 87). Defendant's car was going around thirty miles per hour (R., p. 87). He did not think defendant drove on the left side of the middle white line before striking plaintiff (R., p. 90). This witness could not see the center white line (R., p. 98). The accident happened about dusk, he said (R., p. 98).

Charles Slaughter, Jr. the defendant, testified that he was driving West about 6:00 P. M., at about 25 miles per hour, in the outside Westbound lane which is next to the white center line of High Street (R., p. 100).

4* *He then described the accident thus (R., p. 101),

"It had been raining that day. It was more or less misty. It was not exactly foggy, but a bad night to see. Lights were on at Parker's Market, and further up the street, I don't know exactly how far. You can't judge distance very good at night. There were cars coming and were glaring, and I didn't see the woman. Just at the time I saw her I hit her, and I cut the wheels the best I could to keep from hitting her, and went on and slapped on the brakes and cut the steering wheel to the left, and the car slid to the left-hand side of High Street and headed in the opposite direction East towards the ferry."

He said his headlights were on, low beam (R., p. 102). He said his right front fender struck plaintiff (R., p. 103). Defendant said he had speeded up to about 28 miles an hour to pass the Cross car (R., p. 110). The visibility was poor, a misty night (R., p. 110).

W. J. Griggs testified for defendant that he knew nothing of the accident, but that he lent the car to defendant about two-thirty and saw him in jail after the accident, and that defendant showed no signs of drinking (R., pp. 113, 114).

5*

*ARGUMENT.

1. On the evidence we submit that the verdict was plainly wrong, and should be set aside for that reason.

All the evidence showed that defendant was driving across a pedestrian crossing at 28 or more miles an hour, and struck plaintiff without seeing her until just as he struck her while she was crossing where she had the right of way, and no contributory negligence was proved. The burden was upon defendant to prove contributory negligence.

To drive at such speed at dusk on a misty Saturday night across a street intersection in a great city by a market was rank negligence, made more gross by driving in the middle or left of the street when approaching car lights were glaring towards defendant, and striking the plaintiff without seeing her until the instant of the blow, and at a regular pedestrian crossing where the plaintiff had the right of way; and where she had the right to suppose she would be given the right of way.

No verdict except one for the plaintiff would be proper; and we submit that this Court should adjudge defendant liable and remand the case to have amount of damages assessed.

6* *2. The Court erred in granting instruction B asked by defendant, which probably caused the verdict for defendant, and which reads (R., pp. 119, 120):

Take it as given, from the facts, that the Court is right in its ruling.

"The Court instructs the jury that the law requires a pedestrian, before starting to cross a street, to look to the left for traffic approaching on that side, and upon reaching the center of the street, to look to the right for traffic approaching on that side; and while the statute accords a pedestrian the right of way at intersections, such pedestrian is guilty of contributory negligence which bars any recovery for injuries suffered, if the pedestrian attempts to assert the right of way in the face of approaching traffic dangerously near."

"If you believe from the evidence in this case that the plaintiff failed to observe the legal duties required of her in any respect, or that she attempted to continue to cross when the defendant's automobile was so close that she could not safely do so, then she is guilty of contributory negligence and cannot recover in this action."

Driving fast. A car driving away from the scene. Plaintiff left and "Reasonable care" left and

This instruction would make the pedestrian look at every moment, make him an absolute guarantor of his own safety; not be satisfied for the pedestrian to use reasonable care; make him have no right of way, and put him at the complete mercy of automobiles.

This instruction is in the teeth of the law as very clearly laid down by this Court in the recent case of *Bethea v. Virginia Electric and Power Company*, 183 Va. 873, 879. Wherein an opinion by Justice Eggleston the Court held:

“If the collision occurred at a ‘regular pedestrian crossing’ included in the prolongation of the lateral boundary lines 7* of the adjacent ‘sidewalk’, as the plaintiff contends it did, it was the duty of the bus driver to have yielded the right of way to him (Michie’s Code of 1942, sec. 2154(123), (C); Motor Vehicle Code, section 76, (C); Acts 1932, ch. 342, p. 613, at page 655), or to have changed his course, slowed down, or come to a complete stop ‘if necessary’, in order that the plaintiff might ‘safely and expeditiously negotiate the crossing.’ (Michie’s Code of 1942, sec. 2154 (126), (C); Motor Vehicle Code, sec. 79, (C); Acts 1932, ch. 342, p. 613, at page 655.) *Miller v. Jones* 174 Va. 336, 339, 340, 6 S. E. (2d) 607, 609.

“The jury had the right to infer from the plaintiff’s evidence that the bus driver did not comply with these provisions.

“Nor do we think it necessarily appears from the plaintiff’s testimony and that of his witness, Kelly, that the plaintiff was guilty of contributory negligence.

“If they were crossing the street at the proper place, they had the right of way during the entire crossing, that is, from one side of the street to the other. As we said in *Lucas v. Craft*, 161 Va. 228, 235, 170 S. E. 836, ‘At intersecting streets where there are neither traffic lights nor traffic officers, the pedestrian has a superior right—that is, the right to cross from one side of the street to the other in preference or priority over vehicles—and drivers of vehicles must respect this right and yield the right of way to the pedestrian. The pedestrian’s right of way extends from one side of the street to the other. It does not begin at any particular point in the intersection nor does it end at any particular point. It begins on one side of the street and extends until the pedestrian has negotiated the crossing.’

“According to the evidence for the plaintiff, when he and his companion started across the street the bus was some 8* ‘two bus lengths’ to *the east of Wide Street, or approximately seventy feet from the pedestrian crossing which

they were using, and was approaching, as the plaintiff said, at a 'moderate speed.' It was for the jury to say whether an ordinarily prudent person would have undertaken to have crossed in front of the vehicle under the circumstances stated.

"Neither was it necessary for the plaintiff to have looked continuously at the approaching bus as he crossed. *Sawyer v. Blankenship*, 160 Va. 651, 657, 169 S. E. 551, 553; *Virginia Elec., etc., Co. v. Steinman*, 177 Va. 468, 474, 475, 14 S. E. (2d) 313, 315, and authorities there cited. If he was crossing at a proper place, the plaintiff had the legal right to assume that the driver would give him the right of way, a right which the drivers of motor vehicles too often overlook. Whether the plaintiff was exercising a reasonable lookout for his safety as he crossed the street was a question for the jury."

Also the last paragraph of said instruction B, would absolutely bar plaintiff if she failed in a duty in "any respect" (a general blanket instruction), regardless of whether failure on her part were proximately related to the accident or not.

Furthermore this instruction is an *absolute* instruction, making absolute requirements, not calling merely for *reasonable care*.

9* *The parties interested in this petition are distinctly named in the caption hereof: Virgie Lee Pine Overton and Charles Slaughter.

This petition is adopted as the opening brief, a copy hereof was mailed to opposing counsel on the 1 day of February, 1949; counsel for petitioner desire to state orally the reasons for granting the writ; and this petition with a transcript of the record and the exhibits will be presented to Justice John W. Eggleston in the City of Norfolk.

Petitioner prays that a writ of error may be awarded, said judgment reviewed and reversed, said verdict set aside and a new trial granted or final judgment rendered for petitioner and a new trial as to amount of damages granted; and such other relief granted as may be proper.

VIRGIE LEE PINE OVERTON,
By ROBT F. McMURRAN (by J. G. M.),
Portsmouth, Virginia,
JAS. G. MARTIN,
500 Western Union Building, Nor-
folk, Va.,
Counsel.

The undersigned, an attorney duly qualified to practice in the Supreme Court of Appeals of Virginia, certifies that in his opinion the decision and judgment complained of in the foregoing petition ought to be reviewed.

JAS. G. MARTIN,
Western Union Building, Norfolk, Va.

Received Feb. 1, 1949.

J. W. E.

Mar. 2, 1949. Writ of error awarded by the court. Bond \$300.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Circuit Court of the City of Portsmouth, on the 22nd day of November, 1948.

Virgie Lee Pine Overton, Plaintiff,

v.

Charles Slaughter and Manly's Cleaners, Incorporated, Defendants.

UPON A MOTION TO RECOVER MONEY.

Be it remembered, that heretofore, to-wit: in the Clerk's Office of the Circuit Court of the City of Portsmouth, on the 17th day of February, 1947, came the plaintiff, by counsel, and filed her notice of motion, which is in the words and figures following, to-wit:

To: Charles Slaughter,
1814 South Street,
Portsmouth, Virginia.

Manly's Cleaners, Inc.,
1210 Court Street,
Portsmouth, Virginia.

YOU ARE NOTIFIED that I shall move the Circuit Court of the City of Portsmouth, on the 3rd day of March, page 2 } 1947, at 10:30 a. m. for a judgment and award of execution against you in the sum of ten thousand dollars (\$10,000.00) which said sum is due from you to me for this, to-wit: That heretofore, to-wit: on the 18th day of January, 1947, between the hours of five and seven o'clock p. m. on said day, I was walking on, along and across High Street at or near its intersection with Pembroke Avenue, in the City of Portsmouth, Virginia, and you were operating a certain automobile on and along High Street at or near the said intersection in a careless, reckless and negligent manner and by reason of negligence you ran into, struck and assaulted me and by reason of your negligence I was injured in and about my feet, legs, body, arms, head and other parts of my torso, and sustained a fracture of my leg and multiple other injuries and have undergone great pain and suffering and will in the future undergo great pain and suffering by reason of the injuries, both permanent and otherwise, sustained by reason of your said negligence and have lost considerable time from my usual vocation, with consequent loss of wages and have been otherwise prevented from performing my usual duties and will in the future be prevented from performing the same, and have been caused to expend page 3 } and in the future will be caused to expend large sums of money in and about attempting to be cured of my injuries aforesaid and by reason of your negligence and the premises aforesaid, I shall ask for a judgment in the sum of ten thousand dollars (\$10,000.00).

Respectfully,

VIRGIE LEE PINE OVERTON,
By ROBT. F. McMURRAN, Counsel.

The returns of the Sergeant of the City of Portsmouth on the foregoing notice of motion, are in the words and figures following, to-wit:

Executed this 15th day of Feb., 1947, in the City of Portsmouth, Va., delivering copy of the within notice to Charlie Slaughter, in person.

R. E. GLOVER, City Serg't.,
by J. M. JOYNER, Deputy Serg't.

Executed in the City of Portsmouth, Va., this 15th day of Feb. 1947, by delivering a copy of the within notice of motion to W. N. Manly, in Person, who is the President of page 4 } the within-named defendant corporation Manly's Cleaners, Inc., in which City an office of the said corporation is located.

R. E. GLOVER, City Serg't.,
by J. M. JOYNER, Deputy Serg't.,

And at another day, to-wit: At the Circuit Court of the City of Portsmouth, held on the 3rd day of March, 1947.

At this day came the parties, by their Attorneys, and there-upon, the defendant, Charles Slaughter, by counsel, tendered a plea of "General Issue", to which plea, the plaintiff replied generally and issue is joined thereon.

The plea of General Issue referred to in the foregoing order is in the words and figures, following, to-wit:

The defendant, Charles Slaughter, now comes and says that he is not guilty of the charges alleged against him in the notice of motion in manner and form as the plaintiff hath complained. And of this, he puts himself upon the Country.

CHARLES SLAUGHTER,
By A. A. BANGEL, Counsel.

A. A. BANGEL, Counsel.

page 5 } And at another day, to-wit: At the Circuit Court of the City of Portsmouth, held on the 24th day of November, 1947.

At this day came the defendant, Manly's Cleaners, Incorporated, by counsel, and tendered a plea of "General Issue", to which plea, the plaintiff replied generally and issue is joined thereon, and on motion of the said defendant, leave is given it to file Special Pleas within Ten (10) days and on motion of the defendants, the plaintiff is required to file a statement of the particulars of her claim within Five (5) days and on motion of the plaintiff, the defendants are required to file a statement of their Grounds of Defense within ten (10) days and the defendant, Manly's Cleaners, Incorporated, filed an affidavit denying operation and control.

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

And the said plaintiff for bill of particulars comes and says
page 6 } that in addition to the matters and things that may
defendant's car was being driven in a reckless and
careless manner on and along High Street at or near the inter-
section of High Street with Pembroke Avenue on the 18th day
of January, 1947; that the said car was being driven at an
excessive rate of speed, negligently and improperly equipped
with brakes and other mechanism of the car was in improper
condition; the driver of the car was not keeping a proper
lookout and did not have the car under proper control; was
driving to the left of the center of the street and committed
other acts of negligence as will appear from the evidence.

Respectfully,

VIRGIE LEE PINE OVERTON,
By ROBT. F. McMURRAN,
Counsel.

page 7 } The Grounds of Defense referred to in the fore-
going order are in the words and figures following,
to-wit:

GROUND OF DEFENSE OF CHARLES SLAUGHTER.

Charles Slaughter, one of the above named defendants, for his grounds of defense, says:

1. That he was not guilty of any negligence, carelessness or recklessness, in the operation of the automobile on the 18th day of January, 1947.

2. That the plaintiff, Virgie Lee Pine Overton, was guilty of negligence, which proximately caused and contributed to the accident.

3. That the accident was caused by the sole negligence of plaintiff, Virgie Lee Pine Overton.

4. The accident was unavoidable.

5. That the accident was caused by the plaintiff's negligence in failing to keep a proper lookout, in failing to remain in a place of safety, in failing to observe the State Law and City Ordinances, and by her other acts of negligence and or of contributory negligence as will be disclosed at and during the trial of the case.

6. That the plaintiff was not injured or damaged in the manner and to extent claimed.

7. And this defendant will rely upon all the defenses provable under the general issue.

CHARLES SLAUGHTER,
By A. A. BANGEL, counsel.

A. A. BANGEL, counsel.

page 8 } GROUND OF DEFENSE.

For their grounds of defense, the defendants jointly and severally allege as follows:

1. They deny that they, or either of them, were guilty of negligence in the manner charged in plaintiff's notice of motion, bill of particulars, or in any manner whatsoever.

2. The defendant, Manly's Cleaners, Incorporated, further denies that the automobile involved was at the time of the accident being operated, managed or controlled by it or by its agents, employee or servant.

3. The defendants will rely upon each and every other matter provable under their plea of general issue.

4. The defendants allege that the accident of which the plaintiff complains was due in whole or in part to the plaintiff's negligence, in that,

(2) The plaintiff attempted to cross High Street between intersections, and while traffic was moving on said street.

(b) The plaintiff attempted to cross said street without looking for approaching vehicles.

(c) The plaintiff walked into moving traffic from
page 9 } between parked automobiles which obstructed the
view of approaching drivers.

(d) The plaintiff failed to use ordinary care for her own safety in attempting to cross High Street.

H. M. WOODWARD,
MAJOR M. HILLARD,
Counsel for Defendants.

The affidavit referred to in the foregoing order is in the words and figures following, to-wit:

AFFIDAVIT.

The undersigned, W. N. Manly, being first duly sworn, makes oath and says that he is President of and agent for

Manly's Cleaners, Incorporated, a corporation, and one of the defendants in a certain motion for judgment filed against said corporation and one Charles Slaughter, in the Circuit Court of the City of Portsmouth, Virginia, by Virgie Lee Pine Overton; that at the time of the several matters complained of in said action, the automobile mentioned therein and alleged to have then been operated by Manly's Cleaners, Incorporated, and alleged to have struck the plaintiff, while then owned by said corporation, was not then being
 page 10 { used, managed, operated or controlled by said corporation, or its agent, servant, or employee, or in and about its business.

W. N. MANLY,
 President and Agent for Manly's
 Cleaners, Incorporated.

State of Virginia,
 City of Portsmouth, to-wit:

The foregoing statement was subscribed and sworn to before the undersigned Notary Public for the City of Portsmouth, in the State of Virginia, this 25 day of Feb., 1947. My commission expires on the 19th day of June, 1949.

E. D. STOREY,
 Notary Public.

And at another day, to-wit: At the Circuit Court of the City of Portsmouth, held on the 26th day of May, 1947.

At this day came again the parties, by their Attorneys and thereupon, on motion of the plaintiff, by counsel, leave is granted her to increase the amount of damages sued for from Ten Thousand Dollars to Twenty Five Thousand Dollars.

page 11 { And at another day, to-wit: At the Circuit Court of the City of Portsmouth, held on the 7th day of November, 1947.

At this day came again the parties by their Attorneys and thereupon, by consent, came a jury, of six, to-wit: O. L. Rustard, Sam Solomon, J. E. Everett, Walter Johnson, J. W. Bernard, and Hugh D. George, who being duly sworn the truth to speak, upon the issue joined; and having fully

heard the plaintiff's evidence; whereupon, the defendant, Manly's Cleaners, Incorporated, by counsel moved the Court to strike out the evidence as to it, whereupon, the plaintiff, by counsel, took a non-suit as to the said defendant, Manly's Cleaners, Incorporated; and having fully heard all the evidence and argument of counsel, the jury retired to their room to consult of their verdict and after some time returned into Court, having found the following verdict: "We the jury find for the Defendant. J. E. Everett, Foreman"; whereupon, the plaintiff, by counsel, moved the Court to set aside the verdict and grant her a new trial on the grounds that the said verdict is contrary to the law and evidence, which motion is continued.

page 12 } And now at this day, to-wit: At the Circuit Court
of the City of Portsmouth, held on the 22nd day
of November, 1948.

At this day came again the parties by their Attorneys and the Court having fully heard the motion of the plaintiff heretofore entered herein to set aside the verdict of the jury heretofore rendered herein, and grant her a new trial on the grounds that the said verdict is contrary to the law and evidence, doth overrule the same, to which action of the court, the plaintiff, by counsel, excepted; it is therefore considered by the Court that the plaintiff take nothing by her bill but for her false clamor be in Mercy, &c., and that the defendant go thereof without day and recover of the plaintiff his cost by him about his defense in this behalf expended.

page 13 } Virginia:

In the Circuit Court of the City of Portsmouth.

Virgie Lee Pine Overton (Col.),

v.

Charles Slaughter, Jr., and Manly's Cleaners, Incorporated.

NOTICE OF APPEAL.

To Mr. H. M. Woodward,
Attorney for the defendants.

PLEASE TAKE NOTICE that on the 21 day of December, 1948, the undersigned will present to the Honorable Floyd E.

Kellam, Judge of the Circuit Court of the City of Portsmouth, Virginia, at this office, Portsmouth, Virginia, at 10:30 o'clock A. M., a stenographic report of the testimony and other proceedings in the trial of the above entitled case, for certification by said Judge, and will, on the same date, make application to the Clerk of said Court for a transcript of the record in said case, for the purpose of presenting the same to the Supreme Court of Appeals of Virginia with a petition for a writ of error and *supersedeas* to the final judgment of the trial court in said case.

ROBT. F. McMURRAN,
Counsel.

Legal service of the above notice is hereby accepted this 21 day of December, 1948.

H. M. WOODWARD,
Attorneys for the defendants.

page 14 } Virginia:

In the Circuit Court of the City of Portsmouth.

Virgie Lee Pine Overton (Col.),

v.

Charles Slaughter, Jr., and Manly's Cleaners, Incorporated.

RECORD.

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled case in said Court on November 7, 1947, before the Honorable Floyd E. Kellam, Judge of said Court, and jury.

President: Mr. Robert F. McMurrin, Attorney for the plaintiff.

Messrs. H. M. Woodward and M. M. Hilliard, Attorneys for the defendants.

page 15 } (Witnesses were excluded on motion of counsel
for the defendant.)

DR. ALEX T. MAYO,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

By Mr. McMurran:

Q. Your name is Dr. Alex T. Mayo?

A. That is right.

Q. You are a practicing physician in the City of Portsmouth?

A. Yes.

Q. And have been for how long?

A. Seventeen years.

Q. Dr. Mayo, did you have occasion to treat Virgie Lee Pine Overton?

A. I did.

Q. When were you first called into the case?

A. January—the night of January 18th, I think January 18th. That is right.

Q. 1947?

A. That is right.

Q. Where did you first see her then?

A. In Kings Daughters Hospital emergency room.

Q. What did you treat her for?

A. It was a compound comminuted fracture of
page 16 } the right lower leg.

Q. Have you got the time you arrived at the hospital?

A. I don't have it. I didn't see her at first. I saw her after she was put up. Dr. Howard put her in a cast, and then she was seen by me during that time. It was my patient and he did that because I wasn't available at the time, and I saw her shortly after she was admitted to the hospital.

Q. After the cast was made?

A. Yes.

Q. What did you do for her, if anything?

A. She was in right much shock. She had stimulants to bring her out of the amount of shock as a result of the injuries, and she had bacillis antitoxin and tetanus antitoxin at the time.

Q. Tell us about her case.

A. She was seen by me on the night of January 18th and the cast was already applied. The diagnosis was a compound comminuted fracture of the right lower leg. A compound fracture is one where the bones have penetrated the skin. A comminuted fracture is where the bones have broken

Dr. Alex T. Mayo.

into pieces instead of just a straight break. The first X-ray was taken January 19, 1947, and that X-ray showed that the bones in her lower leg, the small bones on page 17 } the outer side, the fibula, were fractured, one approximately here, one approximately here (indicating), and in here, in her lower leg, there were three breaks, one about here, one about here and one about there (indicating.) These fractures were in position, I think, as well as anybody could get them. They were all jumbled up like this. I don't think anybody could have put the fractures back in position exactly as they broke; consequently, we left the cast in place. She was in a cast from that time and unable to walk except on crutches until July 5, 1947, and then I put on a walking iron cast, a cast in which you put an iron inside of the cast which allows the patient to get up and walk. We did that because she was not getting sufficient callous, which is the same as bone, which is a calcium deposit that holds the bone fragments together. She was not getting sufficient bone callous. If you can get them up they will develop callous in there and that is exactly what she did. She began to improve and on September 13th we removed the cast. The X-ray at that time showed, as reported, that there was enough callous there to hold the bone, but not enough to maintain complete weight bearing. It was not until about two weeks ago that I allowed her to put all of her weight over on her leg. The actual measurement of the leg shows one inch shortening. She is going to have to wear a built up shoe, and there is no surgery or anything else that will correct page 18 } the shortening.

Q. Doctor, has she suffered considerable pain during the whole period?

A. Yes, for two or three weeks, and since then there hasn't been too much pain.

Q. I understood you to say that from the time the cast was put on on January 18th until July 5th—

A. That is right.

Q. That she was confined to bed?

A. No. She was not confined to bed. I don't imagine, for over two weeks time completely. She was in the hospital, however, because she ran considerable temperature. She developed considerable infection in the side of the leg, and instead of opening the cast up and draining it off, if you leave them tight they will go ahead and clear themselves up without bother. She was in the hospital—I have got it some-

Dr. Alex T. Mayo.

where. She was in the hospital until April 22, 1947. That was from the time of the accident. No, I beg your pardon; I am wrong. The patient was in the hospital until February 25, 1947.

Q. Doctor, did I understand you to say she was unable to stand on that foot at all until after you put the brace on?

A. Until I put the walking iron on; that is correct.

Q. That was April 5th?

page 19 } A. Yes.

Q. And since that time, up until two weeks ago, she was not allowed to put her full weight on her leg?

A. That is right.

Q. You say this patient has a permanent inch shortening?

A. That is approximate.

Q. And you don't think surgery or anything else can cure it?

A. That is correct.

Q. What is the amount of your bill to date?

A. \$400.00 to date.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Doctor, did I understand you to say that after she left the hospital she could put her weight on the leg and walk on the leg?

A. Yes.

Q. And after July she used this iron?

A. The walking iron, but she still had to support herself on crutches. She is still on crutches now. She has to support herself to a certain extent.

Q. The bones have completely united?

page 20 } A. Yes.

Q. But there is a one inch shortening?

A. That is correct.

Q. That is corrected by raising the heel of the shoe?

A. She hasn't corrected it yet.

Q. She has now made normal recovery with the exception of the shortening?

A. That is correct.

Q. As soon as she adjusts herself to the use of a high heel she will be able to walk without a crutch?

A. That is right.

VIRGIE LEE PINE OVERTON (Col.),
the plaintiff, having been first duly sworn, testified as follows:

By Mr. McMurran:

Q. Your name is Virgie Lee Pine Overton?

A. That is right.

Q. Where do you live, Virgie?

A. I live at 2659 Glasgow Street.

Q. 2659?

page 21 } A. Yes.

Q. How old are you, Virgie?

A. Thirty-seven.

Q. Thirty-seven?

A. Yes, sir.

Q. Talk a little louder.

A. Thirty-seven.

Q. Virgie, before you were hurt were you working?

A. Yes, sir.

Q. Where were you working?

A. In Norfolk.

Q. With whom?

A. Secretary of the Southern Missionary Society.

Q. What were your earnings there?

A. \$15.00 a week.

Q. Did you perform any duties at church on the corner of
Pembroke Avenue and High Street?

A. Yes, sir. I cleaned up there Saturdays.

Q. This accident happened on what day of the week?

A. Saturday, January 18th.

Q. Saturday, January 18th?

A. Yes, sir.

Q. Did you go to church to work that afternoon?

A. Yes, sir, I went there to clean.

Q. Did you finish cleaning?

page 22 } A. Yes.

Q. After you finished cleaning what did you do,

Virgie?

A. Came out of the church and closed the door and crossed
Pembroke and went across to the southwest corner and looked
to cross over to the north side to go home, and just as I got out
about ten or twelve feet this car was coming. It was run-
ning at a full rate of speed, and just as I got out there about
ten or twelve feet he came from the ferry way, east, and
came across on the side I was on and struck me on the right.
That is all I remember after he hit me.

Virgie Lee Pine Overton (Col.).

Q. Virgie, I show you a photograph of the corner of Pembroke Avenue and High Street taken from the north side of High Street looking south. Do you recognize that as the church on the corner?

A. Yes, sir.

Q. The church you were working in?

A. Yes.

Q. When you left that church how did you go from there? This is Pembroke Avenue and this is High Street.

A. I came out of the church and came across to this corner to the bus stop.

Q. You came across the street to the bus stop?

A. Yes, sir, and walked out into the—

Q. Into the street?

A. Yes, sir, about ten or twelve feet and started page 23 } across to the north side.

Q. I understand you to say the car was traveling west?

A. Yes, sir.

Q. Coming from the ferry way?

A. Yes, sir.

Q. Towards Westhaven, and came over on your side of the street?

A. Where I was standing.

Q. Was there any traffic coming down High Street?

A. From the west?

Q. From the west coming east?

A. No, sir.

Q. Before you entered?

A. No, sir.

Q. Was the street clear when you started across there?

A. It was clear when I started across there.

Q. After you got out did you see the car?

A. No, I didn't see it until I got out there and looked this way. I knew he was not supposed to be on that side. That is when he hit me.

Q. Now, Virgie, you called attention to a bus stop. Is there a bus stop sign there at the southwest corner?

A. Yes, sir.

Q. With reference to that bus stop sign and the sidewalk of Pembroke Avenue, how did you cross High Street? Did you cross straight at an angle or how? page 24 }

A. Right straight from the bus stop.

Q. Right at the intersection, were you?

Virgie Lee Pine Overton (Col.).

A. Yes, sir.

Q. At that time?

A. Yes.

Q. I show you a picture of the intersection taken from across the street.

A. Yes, sir.

Mr. McMurran: The first picture I offer in evidence to be marked "Exhibit No. 1," and the second picture, which the witness is now being examined about, is offered as "Exhibit No. 2."

By Mr. McMurran:

Q. I hand you the next picture, marked "Exhibit 3," which was taken facing west on High Street east of Pembroke Avenue.

A. Yes, sir.

Q. I wish you would look at that picture and tell us if that is a picture of High Street looking west?

Q. Do you see the curb line of Pembroke Avenue?

A. Yes.

Q. I want you to take a pencil and mark about page 25 } how far from the sidewalk of High Street you had gotten into the street at the time of the accident?

A. (Witness indicates with pencil.)

Mr. McMurran: For the purpose of the record, the witness has placed an X mark in High Street north of Pembroke Avenue at the approximate point she says she was struck by the car.

By Mr. McMurran:

Q. Now, Virgie, after you were struck what is the next thing you knew?

A. When I woke up I was in the hospital.

The Court: Talk loud.

The Witness: When I woke up I was in the hospital.

By Mr. McMurran:

Q. Do you know when you woke up, how long after the accident?

A. No, I don't remember.

Q. How long did you stay in the hospital?

Virgie Lee Pine Overton (Col.).

A. I left there the 25th or 26th of February.

Q. February?

A. Yes, sir.

Q. How did they have you fixed up? Did you have to wear anything?

A. Nothing but a cast; that's all.

page 26 } Q. Were you in bed at the time you were in the hospital?

A. Yes, sir.

Q. After they carried you home where did you stay?

A. I stayed downstairs in the front room.

Q. On a bed, couch, or what?

A. In bed.

Q. In bed?

A. Yes.

Q. Were you able to walk about at all?

A. I could walk about with the use of my crutches but could not put any weight on my leg.

Q. You could not put any weight on your leg?

A. No, sir.

Q. How long were you wearing the first cast?

A. The first cast they took off on the 5th of July.

Q. The 5th of July?

A. Yes, sir.

Q. Since the 5th of July, after that, did they put another cast on you?

A. Yes, sir.

Q. How long did you keep that cast on?

A. I think they took that off in September, I think. September it was. I forget the date.

Q. Have you since that time had to use a crutch?

A. Yes, sir.

page 27 } Q. You heard the doctor testify that one leg was one inch shorter than the other one. Do you notice it when you are walking?

A. Yes, sir.

Q. Virgie, did you suffer considerable pain during all of this time?

A. I certainly did.

Q. Have you been able to return to work yet?

A. Not yet. I can't walk yet.

Q. I hand you a bill of Kings Daughters Hospital and ask you if this is the bill they presented to you in the hospital?

A. Yes, sir, \$226.15.

Virgie Lee Pine Overton (Col.).

Q. It is \$245.15?

A. Yes, sir.

Mr. McMurran: I offer that as an exhibit.

(The paper was marked "Exhibit 4.")

CROSS EXAMINATION.

By Mr. Woodward:

Q. Virgie, this accident happened about the middle of January?

A. The 18th, yes, sir.

page 28 } Q. The 18th?

A. Yes, sir.

Q. It happened after dark, in the evening?

A. No, it was not quite dark. It was between five and six. It was just about dusk. It was not dark.

Q. It wasn't dark?

A. I don't think so.

Q. You say you walked west across Pembroke Avenue?

A. Yes, from the church.

Q. So that you were beyond Pembroke when you started across High Street?

A. Yes. I was on the curb there.

Q. What?

A. I was on the curb there.

Q. You were beyond Pembroke?

A. Yes, sir, I was crossing over Pembroke.

Q. The car was not turning into Pembroke that hit you?

A. No. It was going up High Street.

Q. Were there any other cars coming along there at that time?

A. I didn't see any.

Q. You didn't see any going either way?

A. I was looking west before I started across the street. The course was clear and I walked over ten or twelve feet and this fellow was coming from the east and he

page 29 } came over on the side I was and struck me.

Q. How close was he to you when you first saw him?

A. He was running at such full speed I could not get out of the way.

Q. How close, as far as from where I am sitting to you?

Virgie Lee Pine Overton (Col.).

A. He was further than that.

Q. How much farther?

A. About as far as from here—down, I would say, about the mill.

Q. To where, what mill?

A. The Portsmouth lumber mill.

Q. Can you give us the distance? Was it the length of this room from you when you first saw him?

A. When I first saw him he was coming so fast and when I went—before I could turn he struck me.

Q. I am trying to get at the distance, as nearly as we can, the distance he was from you when you first saw the car?

A. When I first saw it I guess he was about as far as from me to the end of this hall down here.

Q. To the end of the hall in this building?

A. Just about that.

Mr. Woodward: Can we agree what the approximate distance is?

page 30 } Mr. McMurran: Would it be about 75 feet?

Mr. Hilliard: About 50 feet, I would say.

Mr. McMurran: About 50 or 60 feet, we agree the distance is about 60 feet.

By Mr. Woodward:

Q. On what side of the street was he?

A. What?

Q. At that time which side of the street was he on?

A. I was still on the west side.

Q. Which side of the street was the car on when you first saw it?

A. Coming east, coming down High Street, coming from the east.

Q. You say the car came over on the wrong side of the street?

A. It did.

Q. Was it on the wrong side of the street when you first saw it?

A. No. He was coming down High Street and it looked like when he got where I was he curved in and struck me.

Q. He came down practically beside where you were and swung over?

A. Yes.

Virgie Lee Pine Overton (Col.).

page 31 { Q. He made a sharp turn?

A. He came over where I was.

Q. Did he come over gradually to your side of the street or come up to near you and turn across to the left?

A. He came up High Street and just came over there where I was. It was done so quick.

Q. He came up High Street on his side of the street until he got at or near where you were and then swung to the left over where you were standing; is that right?

A. He came over where I was and hit me.

Q. You were then west of the entrance into Pembroke? You at the time of the accident were west of the entrance of Pembroke?

Mr. McMurran: Of the curb line; do you mean west of the curb line?

Mr. Woodward: I mean west of where the car turned into Pembroke or would turn into it.

A. I was out there getting ready to cross High Street.

By Mr. Woodward:

Q. I don't know whether you have seen this before. The church is here, here is Pembroke Street and this is High Street here.

A. This is the bus stop here.

page 32 { Q. You say you came from the church and crossed to here?

A. Yes.

Mr. McMurran: Let's mark it bus stop.

By Mr. McMurran:

Q. About where is the bus stop in the corner, Virgie?

A. About right here.

Q. About how many feet from the corner?

A. I don't know how many feet.

Mr. McMurran: Let's put it on there, mark it "Bus stop sign".

By Mr. Woodward:

Q. I gather from your testimony that you came over to this bus stop?

Virgie Lee Pine Overton (Col.).

A. That is right.

Q. Then you started directly across the street?

A. That is right.

Q. And when you had gotten out somewhere in the street here this car came up this way and suddenly came up here right by you and turned right across the street towards you?

A. He came down High Street from east and came across there and struck me.

Q. He could not have been turning into Pembroke Avenue?

A. No. He was supposed to have been going up High Street?

page 33 } Q. He was beyond Pembroke Avenue there; he was not turning into Pembroke Avenue when he hit you? You were up here?

A. Yes, right along here somewhere (indicating).

Mr. Woodward: I am going to put an A indicating where she placed her finger saying where she was.

Mr. McMurran: Let's mark the plat "Exhibit 5".

By Mr. Woodward:

Q. Virgie, did you see any other cars in front or behind this car that struck you?

A. No, sir.

Q. I believe you say you didn't know anything about what happened after you were hit?

A. No, sir.

Q. Aren't you mistaken about the point in the street where you were hit?

A. No, sir.

Q. Weren't you over practically on the right-hand side of High Street, the north side of High Street, and weren't you carried across by the car after it hit you?

A. No, sir.

Q. What kind of clothes did you have on?

A. I had on a green coat and light skirt, summer
page 34 } skirt, and blouse.

Q. No coat?

A. Yes, a winter coat.

Q. A long coat?

A. Yes, winter coat.

Lem Newell (Col.).

Q. It was dark green?

A. No, green.

Q. What?

A. It was not dark green; just a green coat.

Q. A green coat?

A. Yes, sir.

Q. Where did you say you lived?

A. 2659 Glasgow Street.

Q. Glasgow?

A. Yes, sir.

Mr. Woodward: That is all.

LEM NEWELL (Col.),

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

page 35 } By Mr. McMurran:

Q. Your name is Lem Newell?

A. Yes, sir.

Q. Where do you live, Newell?

A. 1521 Florida Avenue.

Q. Is that in what is known as Mount Hermon section of the City of Portsmouth?

A. Yes, sir.

Q. Now, Lem, were you on High Street near Pembroke Avenue at the time Virgie Overton was struck by an automobile?

A. Yes, sir.

Q. When was that, Lem?

A. I forget just what date it was. I didn't take notice of the date.

Q. You remember the time she was hit?

A. I remember the time. I was across the street by the market.

Q. By the market?

A. Yes, sir.

Q. Is that what is known as Parker's Open Air Market?

A. Yes, sir.

Q. Which side of the street is that on?

A. On the right-hand side of High Street going up.

Q. That would be the north side?

page 36 } A. Yes, sir.

Q. On the north side?

Lem Newell (Col.).

A. Yes, sir.

Q. You were at that point in front of the market?

A. Yes, sir.

Q. About what time of the afternoon or night was it that this accident happened?

A. Exactly what time I don't know, but it was not dark.

Q. It was not quite dark?

A. No, it was not dark.

Q. Do you remember what day of the week it was?

A. No, I don't know what day of the week it was, but I think it was on Saturday, I think.

Q. On Saturday?

A. I think it was. I couldn't tell you exactly.

Q. Lem, I want you to look at this diagram and orient yourself with it. This is High Street looking west.

A. Yes, sir.

Q. This is High Street looking west and this is Pembroke Avenue?

A. Yes, sir.

Q. There is a church here. I want you to indicate on the plat where the market is and where you were standing. Put a little mark where you were standing.

page 37 } A. Over here (indicating).

Q. That is the market?

A. Yes, sir.

Q. Let's put something over here to indicate the market.

A. Yes, sir.

Q. You were over here?

A. Yes, sir. I was about here and Virgie was over on this corner right here, and she had come out here, about eight or nine feet out here from the curb on this side where you catch a bus out here, heading west to cross.

Q. North, you mean?

A. North, coming from the south side, and this car come in right across here in this way (indicating).

Q. Is that the car that struck her?

A. Yes, sir. He went up there then and turned around.

Q. You say he ran up there and turned around?

A. Yes, sir.

Q. Could you tell us how fast that car was going?

A. He was running somewhere around forty miles an hour or forty-five.

Q. Did you see the car when it struck Virgie?

A. Yes, sir.

Lem Newell (Col.).

Q. When it hit her, what happened to her?
page 38 { A. Just like you see a piece of paper. It knocked
her as far as, I reckon, thirty or forty feet or so
right up in the air.

Q. Threw her down High Street?

A. Yes, sir.

Q. Where did her body finally land?

A. Her body finally landed over next to the curbstone on
the south side.

Q. Next to the curbstone on the south side?

A. Yes, sir.

Q. Could you estimate how far from the corner her body
was when it was finally thrown to a stop?

A. From the curbstone?

Q. Yes.

A. From the curbstone, as nigh as I can get at it, about
that far, her head (indicating).

Q. Her head was on the south side of High Street?

A. Yes.

Q. Her head was about two feet north of the south curb
line?

A. Yes, sir.

Q. In this direction (indicating)?

A. Yes.

Q. How far was her body from the corner of Pembroke
Avenue, the corner where the church is?

page 39 { A. It knocked her right up here somewhere
around about forty feet.

Q. Was she hit a pretty good solid blow?

A. Didn't miss it. It had to to knock her body like that.

Q. Did you see her body in the air?

A. Yes, sir.

Q. You say the car came up and turned around and came
back?

A. Yes, sir.

Q. Did you see the man driving the car?

A. Yes, sir.

Q. Do you recognize him here today?

A. (Witness points.)

Q. This gentleman here?

A. Yes, sir.

Mr. Woodward: Let's see which one he says it is.

Lem Newell (Col.).

By Mr. McMurren:

Q. Do you know which one of these two men it was?

A. When he come around there it was the man yonder (indicating).

Q. Which one?

A. He favors the man. I think he is the one.

Q. This one on the end?

page 40 } A. Yes, sir.

Mr. Woodward: I object to that.

The Court: Don't lead him.

By Mr. McMurren:

Q. Tell us which one you mean?

A. This one on this corner (indicating).

By Mr. Hillard:

Q. This one here (indicating)?

A. Yes, sir.

Q. Is that the one you are talking about?

A. No, he ain't the one.

Q. He is the one you pointed to?

A. What?

By the Court:

Q. Can you see them both?

A. Yes, sir. That is the man right there.

Q. Which one?

A. That one next to that middle man.

By Mr. Hillard:

Q. The first one who stood up?

A. Yes, sir.

Q. You said at first that was not the one?

A. I said it favored him.

By Mr. McMurren:

Q. Had you ever seen the man before?

A. No, sir.

page 41 } Q. The only time you had seen him?

A. Yes.

Q. When he turned around did he get out of his car?

A. Yes, sir.

Q. Did you get close to him?

Lem Newell (Col.).

A. Yes, sir.

Q. Did you see him walking when he got out?

A. Yes.

Q. How was he walking?

A. Just like that (illustrating).

Q. He walked with an unsteady gait?

A. Yes, sir.

Q. Did you get very close to him?

A. Yes, sir.

Q. Did you smell his breath, or not?

A. Yes, sir.

By Mr. Hillard:

Q. What did you say?

A. Yes, sir.

By Mr. McMurran:

Q. Did you smell the odor of alcohol?

Mr. Woodward: I object to that as leading.

The Court: I sustain the objection.

page 42 } By Mr. Woodward:

Q. What did you smell on him, if anything?

A. What it was, it smelled like whiskey.

Q. It smelled like whiskey?

A. Some kind of alcohol, but what kind of alcohol it was I could not say that.

Q. Who picked Virgie up and carried her away?

A. I don't know who picked her up and carried her away but the ambulance come up there and got her.

Q. The ambulance got her?

A. Yes, sir, the ambulance come up there and got her and I hope to put her in there.

CROSS EXAMINATION.

By Mr. Hillard:

Q. Lem, you say you live on Florida Avenue?

A. Yes, sir.

Q. 1521?

A. 1521.

Q. Where does Virgie live?

A. Where does Virgie live?

Lem Newell (Col.).

Q. Yes.

A. She lives on Glasgow Street.

Q. How far from you?

page 43 } A. I don't know. It is three or four blocks, I reckon.

Q. Do you go to the same church she does?

A. Sometimes.

Q. How long have you known her?

A. How long have I been knowing her?

Q. Yes.

A. I don't know.

Q. About how long, ten years or fifteen years?

A. I reckon something like that.

Q. Ten or fifteen years?

A. Yes.

Q. You and she are very friendly, are you?

A. What?

Q. You are good friends?

A. Good friends?

Q. Yes.

A. Just like anybody else would be, you see.

Q. You were standing out on High Street in front of Parker's Market when the accident took place?

A. Yes, sir.

Q. What were you doing out there?

A. I went out there to get me some snuff.

Q. What had you been doing that afternoon?

A. What I was doing that afternoon?

page 44 } Q. Yes. Had you worked that afternoon?

A. Did I work where?

Q. Had you worked that afternoon?

A. Yes, I was, I worked.

Q. What time did you knock off?

Q. What time did I knock off?

Q. Yes.

A. Five o'clock—four-thirty.

Q. Four-thirty?

A. That is right.

Q. Where were you working?

A. Working out at Mr. Smith's.

Q. What Smith is that, Smith-Douglass?

A. It is the contractor Smith up here.

Q. You were working for him?

A. Yes.

Lem Newell (Col.).

Q. Where had you been working that afternoon?

A. Where was I working at?

Q. Yes.

A. That afternoon?

Q. Yes.

A. Up at the school up there.

Q. The high school?

A. Yes.

Q. Did you go home after you got off?

page 45 } A. Yes.

Q. After you went home, how long did you stay around home before you went out to Parker's?

A. I don't know exactly how long I stayed there.

Q. About how long?

A. I went there and changed clothes and eat and come out.

Q. You knocked off at four-thirty, went home and changed clothes and ate and came out?

A. Yes.

Q. You went home and changed your clothes and ate?

A. Had something to eat, yes.

Q. Then you came out to the store?

A. Yes.

Q. You say it was what time?

A. Four o'clock when I knocked off.

Q. What time was the accident?

A. What?

Q. What time was the accident?

A. I could not say exactly.

Q. About what time?

A. It was not dark, but exactly the minute or what hour it was I could not tell you.

Q. Was it as much as six o'clock?

A. Something like that. It won't dark.

page 46 } Q. About six o'clock?

A. It wasn't dark.

Q. When was the first time you saw Virgie? Where was she when you first saw her?

A. When I first saw her?

Q. Yes.

A. She was on the corner there getting ready to step off.

Q. Why were you particularly noticing her?

A. I won't particularly noticing her. I saw somebody standing there, standing over there and I didn't know who they were until they were struck, which caused me to turn around,

Lem Newell (Col.).

and I heard the man's brakes squealing and he was sliding.

Q. That is the first thing you knew about it, when you heard the brakes squealing?

A. She was standing on the corner?

Q. When the brakes were squealing?

A. I say she was standing on the corner, and she just had stepped across the curb.

Q. You say you heard brakes squealing and turned around and saw somebody on the corner?

A. I didn't tell you that.

Q. What did you say?

A. I said she was coming over there on the corner
page 47 } and I looked and saw her and then when I looked
and saw her, then I turned my head back and then
he was coming and the brakes squealing, and I was looking
right at him when he run into her.

Q. Did you see the automobile before it struck her?

A. Sure, I saw the automobile before it struck her.

Q. How long before it struck her was it you saw it?

A. How long?

Q. Yes.

A. I don't know.

Q. You said when you heard the brakes squealing you turned around and saw Virgie in the street?

A. That is right.

Q. Is that the first time you saw the automobile?

A. I say the first time he was coming in at about forty-five like this (indicating) when he got near her. You see this is the corner here.

Q. Yes.

A. Where she stepped off, and I was standing at this market here, and he come right on across there (indicating).

Q. What I asked you was did you see the automobile before you heard it apply its brakes?

A. Did I see it?

Q. Yes, did you see it before you heard it applying its brakes?

A. No, won't paying no attention to it to see it
page 48 } then.

Q. The first time you saw it is when you heard the brakes, and then you turned and saw the automobile; is that right?

A. Say what?

Lem Newell (Col.).

Q. The first time you saw the automobile was when you looked up and it had applied its brakes; is that right?

A. Applied its brakes?

Q. Yes, put on brakes.

A. Sure. I told you in the beginning I saw him before then. He was running between forty-five and forty miles an hour.

Q. Did you see the automobile before it applied its brakes?

A. Yes.

Q. Why didn't you say so?

A. I told you I did.

Q. At that time you say she was about nine feet in the street?

A. Eight or nine feet from the curb.

Q. Then the next thing you saw of her, you say you saw her going up in the air?

A. That is right.

Q. Going up in the air?

A. Yes.

page 49 } Q. She didn't fall on the bumper of the automobile?

A. Didn't fall where?

Q. She didn't fall on the bumper of the automobile?

A. I don't know whether she fell on the bumper of the automobile, or not.

Q. When she flew up in the air ahead of it didn't she whirl and fall on the bumper?

A. I don't know. The time the automobile hit her he knocked her forty or thirty feet.

Q. Which way was the automobile when it came to rest?

A. Which way was it traveling?

Q. Yes, when it stopped. Was it north, south, east or west?

A. West.

Q. The same way it had been going?

A. The same way it was going?

Q. The same way it was going?

A. Yes, heading up High Street west.

Q. When it stopped it was still heading that way?

A. No, he didn't because he turned around.

Q. I understood you to say it was heading up there when it came to rest. Which way was it?

A. Wait a minute.

Q. Which way was the automobile heading when it stopped and came to rest? You can answer that.

Lem Newell (Col.).

page 50 } A. To rest?

Q. Yes, when it stopped.

A. When he stopped it was heading the same way.

Q. The same way it had been going?

A. Yes, but he turned around and come back.

Q. You mean he turned completely around?

A. Yes, turned around and come back.

Q. It appears to me you ought to be able to understand this. The automobile struck Virgie, didn't it?

A. Yes.

Q. And it stopped after it struck her?

A. Yes.

Q. When it stopped which way was it heading?

A. He was heading west then.

Q. Afterwards he came back, turned the automobile around?

A. Yes.

Q. And when it came to rest it was heading west?

A. Yes.

Q. You are sure of that?

A. Yes.

Mr. McMurran: You mean, Mr. Hillard, when he turned around he was still headed west? That could not be.

The Witness: What I mean by that is when page 51 } the—you asked me this, that when the man struck

Virgie which way was the car heading and I said west. After he hit her he turned around and come back, and when he turned around and come back he was heading east.

By Mr. Hillard:

Q. Did he turn around before the car stopped?

A. Did he turn around before the car stopped?

Q. Yes.

A. He was bound to stop to turn around.

Q. That is what I am trying to get you to say. When he stopped the car which way was it heading? You say he stopped before the turned around. Which way was it heading? When he stopped after hitting the woman, which way was the car headed?

A. After he hit the woman?

Q. Yes.

A. When he struck her here on this corner here, understand me, you see then he struck her up here and knocked her

Lem Newell (Col.).

up here, and then run up here (indicating). Do you understand what I mean?

Q. I am listening.

A. After he got up here, then that is the time he stopped.

Q. Do you mean when he stopped—

A. And he turned around and come back.

page 52 } Q. When he stopped there was the car headed in that direction, west?

A. When he come up and parked?

Q. Yes.

A. No. He was heading east.

Q. I want you to take this and put a mark on here. Here is Pembroke. Put a mark where the car was the first time it stopped. Take this pencil and put a mark about where it was after it stopped.

A. Here is where he done and hit her (indicating).

By Mr. Woodward:

Q. Will you put a mark there where you say he hit her?

A. About right from this corner here, about eight feet from the corner here.

Mr. Woodward: Put an N there indicating where he says it stopped.

By Mr. Hillard:

Q. Where did you say the woman was after he struck her?

A. After he struck her?

Q. Yes.

A. She was laying right up here about, as near as I can get at it, forty feet.

Mr. Hillard: Put a mark there to indicate it.

page 53 } Mr. Woodward: Put an N by that.

Mr. McMurran: Mark it N-1.

Mr. Hillard: I am going to put "Body came to rest."

The Witness: Wait, now. After he hit her here, this is where she was laying. Then he run up here (indicating).

By Mr. Hillard:

Q. Did he stop?

A. He stopped after he got up here.

Q. Put a mark there where you say he stopped.

A. How far he was up there, I don't know.

Q. That is where he stopped?

Lem Newell (Col.).

A. Wait a minute.

Q. Go ahead.

A. After he got here he turned around and then he come back here and parked his car (indicating).

Q. How did he turn around?

A. He turned around on this side here.

Q. To his right?

A. Yes, because he was going up to the south side to make his turn.

Q. He turned around to his right?

A. Yes.

Q. And this point is the place you say he stopped?

A. Yes.

page 54 } Q. And when he came to that stop, which way was his car headed?

A. Which way was his car headed?

Q. Yes.

A. Still would be headed west, the same way.

Q. The same way?

A. Yes, until he turned it around.

Q. All right. You saw all of that. You were looking right at it?

A. Yes, sir.

Q. And you saw it all?

A. Yes.

Q. The car didn't skid around in the street, turn to the left and stop?

A. What?

Q. The car didn't skid around in the street and turn and head back down High Street, did it?

A. No, but he slid his brakes.

Mr. McMurrin: Do you contend he skidded around there?

Mr. Hillard: I am asking him.

By Mr. Hillard:

Q. About how far were you from Virgie when she was struck?

page 55 } A. I don't know, sir. I was over there on the corner there opposite the market.

Q. Is Parker's market where you said you were standing in front of directly in front of Pembroke Avenue?

A. Yes, sir, pretty much.

Q. You were the width of High Street at least from Virgie?

A. Yes.

Lem Newell (Col.).

Q. You say it was around six o'clock at night?

A. As nigh as I could get at it.

Q. This accident happened in January, January 18th?

A. Yes.

Q. Did you see any other cars out there on High Street at that time?

A. No, sir.

Q. Did you see any other car going in the same direction this car was going?

A. No, there was not nary one going in a west direction.

Q. You are sure there were no other cars there?

A. No.

Q. This is the only car there?

A. Yes, sir.

Q. I understood you to say that when he came up High Street he cut over to the left and struck her nine
page 56 } feet from the curb on the left side?

A. Yes.

Q. And there were no other cars over here?

A. No.

Q. Was there anything there that you saw to cause him to go over on the left-hand side and strike this woman?

A. I didn't see anything.

Q. Just out of a clear sky he turned over to the left and struck her on the left-hand side without any cause whatever?

A. There was nothing there.

Q. You said you saw someone standing across the street, but at first you didn't know it was Virgie?

A. No, I didn't pay any attention to her. When I first walked up there I won't paying no attention to her.

Q. Something must have called your attention to it. What was it to cause you to notice there was someone over there?

A. I could look, could I.

Q. You looked?

A. Yes.

Q. And saw her?

A. Yes.

Q. But you didn't know at that time it was Virgie?

A. No, I didn't pay any attention to who it was.

Q. You didn't know it was Virgie until after she
page 57 } was struck?

A. That is right.

Q. At that distance you could not tell at that time of night who it was?

A. I won't paying no attention to see who it was.

JIM DAVIS (Col.),

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

By Mr. McMurran:

Q. What is your name?

A. Jim Davis.

Q. Where do you live?

A. 119 Pembroke Avenue.

Q. Were you living there in January of this year?

A. Yes, sir.

Q. 119 Pembroke Avenue is how far from High Street?

A. About a half block long.

Q. About a half block?

page 58 } A. Four houses.

Q. Pembroke is the street that comes into High Street and stops at High?

A. Yes.

Q. And it is located on the south side of High Street and does not cross all the way over High Street?

A. No.

Q. How long have you been living on Pembroke Avenue?

A. About twelve years.

Q. Do you know Virgie Overton?

A. Yes, sir.

Q. Did you see the accident that occurred at Pembroke and High Street in January of this year?

A. Yes, sir.

Q. In which Virgie was?

A. Yes, sir.

Q. About what time of day was it?

A. I could not exactly say what time, but I reckon somewhere between seven and eight o'clock.

Q. Was it light or dark?

A. Electric lights was burning.

Q. Was it completely light or dusk, or what?

A. I would not say what time, but between seven and eight o'clock, I reckon.

Q. Where were you when the accident happened?

A. Standing in front of Parker's Market door
page 59 } talking to a fellow that works there.

Q. Who is that man?

A. Albert. He is out there.

Q. Albert Barnes?

A. Yes, sir.

Q. You say he works at Parker's Market?

Jim Davis (Col.).

A. Yes, sir.

Q. I want you to tell the Court and jury what you saw when this accident occurred and everything about it?

A. I was standing in the door and Albert said, "Look there," and at that time he had hit her and gone. He hit her and turned clean around and come back and could not move. That is all I know.

Q. Did you see the impact when it happened?

A. Looking right at the car when it hit her.

Q. What?

A. Looking right at the car when it hit her.

Q. Did you see whereabouts in the street or about where he hit her?

A. She was from the curb about the distance to them chairs there (indicating).

Q. Was she on Pembroke or on High Street?

A. On High Street.

Q. Which side?

page 60 { A. The left-hand side going down.

Q. The south side of High Street?

A. Yes, sir.

Q. Did you see her before she was struck?

A. Yes, sir.

Q. Did you see her on the sidewalk before she was struck?

A. Seen her come out of the church door and come to the corner and stop and start across.

Q. Did she get on the west side of Pembroke Avenue before she started to cross High Street?

A. She was on the left-hand side. She come from the church like this (indicating).

Q. You have never seen this diagram before, have you? This is High Street looking east?

A. Yes, sir.

Q. And this is High Street going towards Westhaven?

A. Yes.

Q. Here is the market here you say you were standing by?

A. Yes!

Q. This door?

A. Yes, sir.

Q. I want you to show these gentlemen what you saw with reference to the woman who was struck.

page 61 { A. She had come out of the church this way.

Q. The church is over here and here is the market?

A. She come out of the church this way, and here is the

Jim Davis (Col.).

market and here is High Street right here. She was over here and started across this way between that bus—

Q. I don't understand what you are getting at. The Norfolk Ferry is down this way?

A. Yes.

Q. What is it this way?

A. I call it west.

Q. Where is the church, on what corner?

A. The church is on the south side.

Q. The south side. Is it the southeast or southwest?

A. On the south side.

Q. When she was struck was she on the same side of Pembroke the church was on?

A. Yes, sir.

Q. On the same side?

A. Yes, sir.

Q. Go ahead and tell us.

A. That is all I know about it.

Q. Where was she hit in the street?

A. She was about the distance from where I am standing to them chairs. He come over on the south side and hit her.

page 62 } The Court: Do you want to put the distance in the record?

By Mr. McMurran:

Q. You say she was about from here to that chair?

A. Yes, sir, back there.

Q. Would you estimate that to be about five feet?

A. Five or six feet.

Q. From the curb?

A. Yes, sir.

Q. And she was on the south side of High Street?

A. On the south side of High Street.

Q. And then the driver came over on the south side of High Street, on his left-hand side, and struck her?

A. Yes.

Q. What happened after he struck her?

A. He turned around and come back. We tried to get her up.

Q. Where was she thrown?

A. A distance, after she was hit, about thirty feet.

Q. When her body came to rest, where was it?

A. Laying on the south side of High Street.

Q. How close to the gutter?

Jim Davis (Col.).

A. Her head up to the curb?

Q. Her head up to the curb?

A. Her head about up to the curb.

page 63 } CROSS EXAMINATION.

By Mr. Woodward:

Q. Jim, you say you were standing right in front of Parker's Market?

A. Yes, sir.

Q. I believe that is a right long store, isn't it?

A. Right good size.

Q. It has got three doors entering on High Street?

A. Two.

Q. Two?

A. I think two.

Q. Which one of the two were you in?

A. (The first one going this way. There is flowers there (indicating).

Q. The first door is a flower market?

A. Yes, sir.

Q. And two doors in Parker's Market?

A. Yes, sir.

Q. Is that right across the street from the church or somewhat farther up?

A. Right across.

Q. Right directly across?

A. No, not even directly, but you can drive out of Pembroke into that door.

page 64 } Q. It is directly across the street from about the center of Pembroke Avenue?

A. Yes, sir.

Q. You say you were standing on the north side of High Street just about opposite of the middle of Pembroke Avenue?

A. Yes, sir.

Q. And you say it was around seven or eight o'clock at night?

A. I don't know exactly what time.

Q. How long have you known Virgie?

A. About twenty-five years.

Q. You knew her pretty well?

A. Been seeing her off and on for the past twenty-five years.

Jim Davis (Col.).

Q. How far does she live from you?

A. She lives on Glasgow Street and I live on Pembroke.

Q. You and she go to the same church?

A. Yes, sir.

Q. You saw her when she left the church?

A. Yes, sir.

Q. She came right out from the church and started right across towards Parker's Market?

A. No, sir, she didn't start—she crossed Pembroke and then went towards Parker's Market.

page 65 } Q. Crossed Pembroke?

A. Yes.

Q. That put her up beyond you?

A. Right on the corner.

Q. Did you know who she was when she came out of there?

A. Yes, sir. She dresses up the church at night.

Q. You knew she was dressing the church?

A. Yes, sir.

Q. And you knew who she was?

A. Yes, sir.

Q. Where was the automobile when you first saw it?

A. Near the middle of Pembroke Avenue.

Q. The automobile was right alongside of you when you first saw it?

A. No, sir.

Q. Where was it?

A. I was standing at Parker's door and he was on the left-hand side right by the corner of Pembroke.

Q. Did you see him until he got to the corner of Pembroke?

A. Yes.

Q. Where was he, down the street?

A. No. He was right at the corner of Pembroke.

Q. When you saw him which direction was his car headed?

A. West.

page 66 } Q. West?

A. Yes, sir, straight down.

Q. Straight west?

A. North, I mean.

Q. We will call it west. It was headed straight west?

A. Could not have been direct straight but on the left-hand side.

Q. Was he headed across the street?

A. Across the street.

Q. So he was not going up straight but across the street?

Jim Davis (Col.).

A. Kind of cutting this way (indicating).

Q. About how much of a turn would you say his car was in? Let's take this as the automobile and this as the street, this table. You put it there the way you say the car was headed when you first saw it. This is the side of the street, this is the other side and this would be west? Turn the automobile the way you say it would be turning.

A. Turning at an angle like that (indicating).

Q. According to you the automobile was heading west at about a twenty degree angle?

A. From the street.

Q. Up the street?

A. Yes, sir.

page 67 } Q. Where was Virgie at the time we were just speaking of, when you first saw the automobile in that position?

A. Standing on the curb and stepped down.

Q. She was standing on the curb?

A. Yes, she was standing on the curb and going across.

Q. When the automobile was turned the way you have put it?

A. In an angle that way.

Q. In an angle. So you could not tell whether it was going to turn in Pembroke Avenue, or not?

A. I don't know.

Q. You haven't got to Pembroke?

A. Pembroke runs like this.

Q. It doesn't come across High Street?

A. No.

Q. Virgie was on Pembroke?

A. Yes.

Q. And the automobile you say was headed diagonally across the street there when Virgie was on the curb. How far was she from the automobile at that time?

A. I guess about a distance from here to that chair.

Q. About five or six feet from the automobile?

A. Yes.

Q. And it was headed in towards the curb she was standing on, and then she stepped off the curb and the
page 68 } automobile hit her?

A. Yes, sir.

Q. You could see the automobile, could you, going around that way? You could see it all right?

A. Yes, I could see the automobile.

Jim Davis (Col.).

Q. And she was standing on the curb five or six feet from it, and yet you say she stepped out and got hit?

A. Yes, sir.

Mr. Woodward: That is all.

RE-DIRECT EXAMINATION.

By Mr. McMurran:

Q. Jim, here is a photograph of the car looking down Pembroke Avenue, marked Exhibit No. 1. Is this the church you speak of here?

A. Yes, sir.

Q. You live on this side of Pembroke Avenue, the same side the church is on; is that right?

A. Yes, sir.

Q. And Virgie was on the opposite side of the street at the time of the accident; is that right?

A. Yes, sir.

Q. There is a bus stop over here, a sign?

A. Yes, sir.

Q. Was she between the bus sign and the corner?
page 69 } A. She was between the bus sign and the tree there.

Q. She was coming out into the street?

A. Yes, sir.

Q. And when you saw the car the car was right here (indicating)?

A. Yes.

Q. And she was already in the street?

A. Yes, sir.

Mr. Woodward: I object to that. It is leading.

The Court: Objection sustained.

By Mr. McMurran:

Q. Was she in the street at the time you looked up and saw the car?

A. Yes, sir.

Q. Was she standing on the sidewalk when you first saw the car or was she in the street?

A. She stepped down just as I seen the car.

Q. The car, I believe, was east of her?

A. Yes, sir.

Albert Barnes (Col.).

A. After she had taken about six steps the car hit her?

Mr. Woodward: I object to that.

The Court: You are leading him.

Mr. McMurran: I don't think he understands
page 70 } it. I think he has testified to that though.

Mr. Woodward: Let's find out what the witness
knows.

By Mr. McMurran:

Q. Was she, or not, in the street at the time she was struck?

A. She was struck in the street about as far as from here
to that chair.

ALBERT BARNES (Col.),

called as a witness on behalf of the plaintiff, having been first
duly sworn, testified as follows:

By Mr. McMurran:

Q. Your name is Albert Barnes. Where do you live?

A. 3020 Portland Street.

Q. Where were you working in January of this year?

A. At Parker's Open Air Market.

Q. Where is that?

A. High Street, 3020.

page 71 } Q. Is that opposite Pembroke Avenue?

A. Yes, sir.

Q. Were you there on Saturday afternoon when Virgie
Overton was in an accident?

A. Yes, sir.

Q. Did you see the accident?

A. I was standing in the front door, me and Jim Davis,
standing talking.

Q. I want you to tell us what you saw at that time there,
Albert.

A. Jim and I was standing talking and cars was coming
up from the railroad, coming up High Street.

Q. You mean going west?

A. Going west, coming from east going west, but I didn't
know about the lady was crossing the street, and I told Jim
—cars was coming so fast I said, "Lookout," and when I
said that this car hit. I run across the street, Jim and I,
because I thought it was my daughter. She was coming down
to see her mother. She worked over there to the fish market,

Albert Barnes (Col.).

and I run across the street. I didn't know who the lady was until Jim told me who she was.

Q. When you first saw the automobile, where was it?

A. I didn't know one from the other, but when I first seen him, the car, it was up there about the railroad track.

Q. What other cars besides the one that struck page 72 } Virgie did you see?

A. Two or three of them come up there.

Q. Coming down going west?

A. Yes.

Q. Were they all just about abreast, or how were they?

A. They were about the length of from here to the door.

Q. Apart?

A. Yes, sir, and one car was over on the left-hand side of the road, over the white line.

Q. Over the center of the road?

A. Yes, sir. That is when I told Jim, "Look out," and when I said that the car went "Bam" and I heard the brakes, and when he struck her he whirled around headed back towards E. High Street.

Q. If I understand you, that car was over beyond the white line?

A. Yes, sir.

Q. And continued on and hit her?

A. Yes, sir.

Q. What was he doing at the time? Was he, or not, passing other cars?

A. He was trying to pass another car.

Q. And he got over the white line?

A. Yes, sir.

Q. How far from the curb had the girl gotten page 73 } at the time she was struck?

A. I don't know exactly how far, but she was between the bus sign and the oak tree.

Q. I am not talking about from the Pembroke Avenue curb but the south curb of High Street. How far in High Street was she at the time she was struck?

A. I reckon, about as near as I can judge, around about four or five feet, just had stepped down off the curb.

Q. Was she actually in the street at the time this car struck her?

A. No, sir, I could not say.

Q. She was in the street or on the sidewalk, was she?

A. No, she was not on the sidewalk.

Q. Obviously she had to be in the street then?

Albert Barnes (Col.).

A. Yes, sir.

Q. Did you see her when she started in the street?

A. I seen her on the curb and she started down and I seen the cars and said, "Look out, Jim," and at that time the car struck?

Q. Struck her?

A. Yes, sir.

Q. Did you see the car when it turned around and came back?

A. He didn't go far up the street. When he struck her he slapped on brakes something because he whirled
page 74 } right around, and I run across. Jim got over there before I did. I went across behind him.

Q. How far was her body thrown?

A. I don't know exactly, but I know the spot that she was laying. I know where she was struck at.

Q. A right considerable distance, was it, from where she was hit?

A. A right good little distance from where she was thrown up there.

Q. Was Virgie entirely on the south side of High Street at the time she was hit?

A. Yes, sir.

Mr. Hillard: We object to the question as leading.

The Court: Sustained.

By Mr. McMurran:

Q. Did you see the driver of the car afterwards?

A. Yes, sir.

Q. After it hit her?

A. Yes, sir.

Q. Where did you see him?

A. Standing at the back of the car.

Q. Did you notice anything about his condition, or would you know?

A. As far as I know, he had been drinking.
page 75 } Whether he was drunk, or not, I could not say.

Q. He had been drinking?

A. Yes, sir.

Q. Did you smell anything on him?

A. I didn't get close enough to him.

Q. Why do you say he was drinking?

A. From the way he was walking.

Albert Barnes (Col.).

Q. In what way was he walking?

A. Kind of wobbling.

CROSS EXAMINATION.

By Mr. Hillard:

Q. When you first saw him he was standing in back of the car?

A. He got out of the car and he was back of the car and walked to the front.

Q. He walked from the back part of the car to the front?

A. Yes, sir.

Q. And because of that you thought he had been drinking?

A. Yes, sir.

Q. You didn't smell any whiskey on him or anything else?

A. No.

page 76 } Q. You have known Virgie a long time, have you?

A. No, sir, I didn't know her. My wife knows her. I just know her when I see her.

Q. You saw her that night?

A. Yes.

Q. You say when the car struck Virgie it turned around in the street. Just let this table represent the street, High Street from one curb to the other, and this would be about the center (indicating).

A. Yes.

Q. Take this book and show us how the car turned. It is heading up High Street.

A. She was along there and the car come down here, and this car was over the center side (indicating). When he struck her, that is the way it was.

Q. That is the way it was?

A. Yes, sir.

Mr. Hillard: Let the record show the witness testified that when the car was past the center of the street, when it struck the woman it turned completely around, turned to its left, and it was headed west.

page 77 } Mr. McMurren: Headed east after he turned around.

Mr. Hillard: It was heading east and had turned completely around to its left.

Albert Barnes (Col.).

By Mr. Hillard:

Q. You say Virgie was four or five feet off the curb when he struck her?

A. Something like that. I didn't measure it.

Q. Did this car go up on the curb.

A. No, sir, didn't go up on the curb.

Q. She must have been out more than four or five feet?

A. I don't know. I didn't measure it.

Q. She must have been out more than four or five feet for him to have turned around like you say?

A. I didn't measure it to see how far she was out in the street.

Q. The fact is he struck her in the middle of the street and turned around to the left, didn't he?

A. No.

Q. You say you had seen Virgie standing on the corner and just as she stepped off the curb the car struck her?

A. She was standing on the corner when Jim and I was standing there talking.

Q. Did you see her when she came out of the church?

A. No.

page 78 } Q. You didn't see her when she came out of the church?

A. No.

Q. You were standing there talking to Jim Davis, were you not?

A. Yes.

Q. What was the first thing you noticed that attracted your attention at all to cars or the woman in the street?

A. I was putting my stuff on the stand looking towards the west. When cars come down I always look around that way. After I finished I had stopped work and was standing there talking to Jim leaning up against the stand at the door.

Q. What was the first thing that attracted your attention there regarding this woman that was struck by the car that did strike her?

A. Attracted my attention?

Q. Yes.

A. Nothing but cars.

Q. How about this particular car; what was the first thing that called your attention to that?

A. Nothing called my attention to that until after it hit.

Q. The first thing that called your attention to this—

A. The car passed and I turned around and looks.

Albert Barnes (Col.).

Q. You didn't pay any attention to this car—
page 79 } A. Any more than any other car.
Q. The first thing that called your attention to
this car was it struck the woman in the street?

A. Yes, sir.

Q. You didn't see it going diagonally across the street?

A. Diagonally across?

Q. Yes.

A. No. The car where struck this woman was passing another car.

Q. Did it turn as it was going up High Street, turn diagonally to its left and go over and hit the woman?

A. Turn to its left?

Q. Yes.

A. It had to turn to its left to pass another car.

Q. Did you see it turn to its left?

A. I just seen the car passing another car.

Q. Did you see four or five cars going up High Street, and there was a car on the right of the car that struck the woman?

A. Yes, sir.

Q. Next to the curb?

A. Yes.

Q. There were cars parked in front of Parker's Market?

A. Yes.

page 80 } Q. And then this is the car that struck the
woman?

A. Yes, sir.

Q. And it was going straight up High Street? Was it going straight up High Street at the time it struck her?

A. Went straight up High Street when it struck her.

Mr. Hillard: That is all.

RE-DIRECT EXAMINATION.

By Mr. McMurran:

Q. You mean it was going in a westerly direction?

A. Yes, sir.

Mr. Woodward: Don't lead him.

Mr. McMurran: You want to stop the witness before he actually explains anything.

The Court: Don't lead him. Go ahead.

Albert Barnes (Col.).

By Mr. McMurran:

Q. You mean to say the car was going west up High Street?

A. Yes, sir.

Mr. Hillard: I object to the form of the question.

By Mr. McMurran:

Q. In which direction was the car going up High Street?

page 81 } Mr. Woodward: We object to leading the witness and putting words in his mouth.

Mr. McMurran: I didn't intend to lead, but I don't want the witness to be mislead by questions from the other side. The Court You are still leading the witness.

By Mr. McMurran:

Q. In which direction was the car traveling?

A. West on High Street.

Q. You said in order to pass the other car it turned to its left?

Mr. Hillard: I object to the question because it is leading.

The Court: You are leading.

Mr. McMurran: I am asking him to repeat what he said.

The Court: I don't think you intended to do it. It is more or less of a habit.

By Mr. McMurran:

Q. While he was traveling west, in order to pass another car what did the car have to do?

A. To turn to the left.

Q. He turned at an angle across the street and
page 82 } continued in a westerly direction?

A. Yes.

Mr. McMurran: That is the plaintiff's case. I will take a non-suit as to Manly's.

The Court: Gentlemen of the jury, there were two defendants in this case, and Manly's, Incorporated, has been dismissed from the suit so we only have one defendant now.

LEONARD E. CROSS, JR.,
called as a witness on behalf of the defendant, having been
first duly sworn, testified as follows:

By Mr. Hillard:

page 83 } Q. State your name.

A. Leonard E. Cross, Jr.

Q. Where do you live, Mr. Cross?

A. 631 N. Elm Avenue, City of Portsmouth.

Q. You are employed where?

A. In the Norfolk Navy Yard.

Q. On the night of January 18th, when this accident took place, were you on High Street that night?

A. I sure was, yes, sir.

Q. Where?

A. At the time the accident was taking place I was about eighteen or twenty feet from the accident.

Q. Were you driving your car?

A. Yes, sir.

Q. In which direction?

A. I was going west on High Street, and the car that was in the accident was going in the same direction. I was going on the outside lane.

Q. On High Street how many lanes of traffic are there?

A. We have a lane, a parking lane. They have parking on each side of the street there and you have cars parked at the curb on each side of the street, then you have four lanes of traffic moving at all times.

Q. They are on the right-hand side going west?

A. They are on the right-hand side going west.

Q. Is there room between that and the center of
page 84 } the street for two cars?

A. Yes.

Q. You were traveling in which lane?

A. I was traveling on the inside lane.

Q. Did you see the car that struck this woman?

A. Yes, sir.

Q. And it was traveling where?

A. It was traveling west on High Street on the outside lane.

Q. By the outside lane—

A. High Street is divided by white lines, and this car was traveling with the white line.

Q. Was on the inside of the white line?

A. Yes, sir.

Q. On the inside lane going west?

Leonard E. Cross, Jr.

A. Yes, sir.

Q. Did you see this woman before she was struck?

A. I saw her on the fender.

Q. You saw her on the fender of the automobile?

A. Yes.

Q. Did you see her before the car struck her?

A. She was out a little over half-way the middle of the street like she was coming from the church to the opposite corner, over to Parker's Open Air Market.

page 85 } Q. In what position with regard to the center of the street was she when she was struck by this car?

A. She was bound to have been over half-way of the center due to the fact that he hit her with the right front fender.

Q. She was over the white line coming towards Parker's on the south side or the north side?

A. On the north side.

Q. This is Pembroke Avenue (indicating)?

A. Yes.

Q. And here is Parker's Market?

A. Yes.

Q. This is west and this is east?

A. Yes.

Q. I understand you were going west?

A. Yes, sir.

Q. And the car that struck her was going west?

A. The same direction I was going.

Q. Will you put a line there for the center of the street?

A. This whole thing is High Street.

Q. Yes.

A. I am taking that for the center of the street (indicating).

Q. This is Pembroke Avenue?

page 86 } A. Yes.

Q. I want you to mark a cross mark at the point the woman was when she was struck?

A. Here is Parker's Open Air Market, and she was struck about right along in there.

Q. That would be about in the middle of Pembroke Avenue if it was continued?

A. That is right.

Q. And on the north side--

A. Of High Street.

Q. Of the center line of High Street?

Leonard E. Cross, Jr.

A. That is right, sir.

Q. When she was struck by the automobile, tell us what the automobile did and where she came to rest?

A. He struck her and carried her up on the fender, and hood of the automobile, and he swerved the car around to try to avoid hitting her, and when the car stopped swerving he made a complete U turn in across and stopped about eight feet from the crossing, and she landed right there with her head in the curbing.

Q. What time of night was it?

A. It was between six and six-fifteen. I think it had rained some that day because I borrowed an overcoat from a colored fellow, a topcoat from another fellow, and put it under her head and covered her up.

page 87 } Q. Was the street wet?

A. No, but the curb had water in it because her head was lying in the water.

Q. You say when he struck her he carried her over to the curb?

A. Yes. His front wheels hit the curb and jammed on the opposite side of the street.

Q. How fast were you driving, Mr. Cross?

A. I could not have been driving over twenty-five miles an hour. I had just got the car out of the garage, a complete overhaul, and I could not have been driving over twenty-five.

Q. When the gentleman, the defendant in this case, passed you how fast would you say he was driving?

A. Anywhere from three to five miles faster than I was driving.

Q. Would you say he was driving between twenty-five and thirty?

A. I think he was driving close to around thirty.

Q. After the woman was struck did he get out of the car?

A. I was the first one to her.

Q. Did the defendant, Mr. Slaughter, get out?

A. Yes, he got out of the car.

Q. Mr. Slaughter got out?

page 88 } A. Yes, sir.

Q. Did he render any assistance he could?

A. Yes, he sure did. He could not go anywhere because his steering wheel was locked.

Q. Were you around with him after the accident?

A. I rendered all the first aid I could possibly to her until the ambulance came and got her and we put her in the am-

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Leonard E. Cross, Jr.

balance and sent her to the hospital, and I think the City of Portsmouth sent an officer out there to investigate the case. He said, "Cross, since—"

Mr. McMurran: I object to that.

The Witness: I was standing there and he told me would I drive this boy down to Police Headquarters.

By Mr. Hillard:

Q. Did you take him?

A. No, because the car was not in running condition.

Q. You didn't go to the police station?

A. No.

Q. Did you get close to Mr. Slaughter?

A. Yes, definitely did. I was underneath his steering wheel. He showed me how to work the ignition on the Chevrolet.

Q. You were underneath the steering wheel in the same car?

A. Yes.

page 89 } Q. Did you smell any whiskey or alcohol on his breath?

A. No, I didn't. He was in a nervous condition.

Q. Did you notice anything to indicate that he was drunk or had been drinking?

A. No, sir.

Q. Did you know Mr. Slaughter before this time?

A. I knew him in the Navy Yard, but as to knowing him by name, I didn't.

Q. You didn't know what his name was?

A. No.

Q. Have you got any interest in this case in any way, shape or form other than you have been summoned here?

A. I haven't been summoned.

Q. You haven't?

A. No.

Q. Were there any other cars besides Slaughter's car around there?

A. There were cars parked in front of the open air market.

Q. Any cars traveling in the opposite direction?

A. I didn't see any. If there had been any coming from the other way there would have been a tie-up.

Q. Mr. Cross, I want to ask you this, that before the accident, before the woman was struck, was Mr. Slaughter's car at any time on the left-hand side of that white line?

Leonard E. Cross, Jr.

A. I could not answer that, sir, but when he
page 90 } struck her—

Q. I mean between the time he started by you
and the time he struck the woman, was he on the left-hand
side of the white line?

A. No, I don't think so.

CROSS EXAMINATION.

By Mr. McMurran:

Q. Mr. Cross, did I understand you correctly to say there
were no cars traveling east on High Street at the time that
you say?

A. No, sir.

Q. I believe you say if there had been there would have
been a crash?

A. Yes.

Q. That would indicate Mr. Slaughter's car must have been
over on the other side of the street?

A. No. He made that complete U turn to try to avoid hit-
ting her.

Q. So the south side of High Street, south of the center
of High Street, was clear?

A. Yes.

Q. Of traffic?

page 91 } A. Yes.

Q. This woman was coming from the south side
to the north?

A. That is right.

Q. Crossing the street?

A. Yes.

Q. She was upon the street and walking on her side of the
street?

A. Yes.

Q. Do you know how wide High Street is from curb to
curb?

A. No, I could not answer that.

Q. Would you say approximately sixty feet?

A. Yes, wider than that, I think.

Q. Wider than that?

A. Yes.

Q. You say that at the time you were traveling west there
were cars parked up against the curb in front of the market?

A. Yes.

Leonard E. Cross, Jr.

Q. Had you, at the time this car passed you, reached the market, the east end of the market?

A. No, I hadn't reached the market.

Q. How far had you gotten beyond the Belt Line tracks when the car passed you?

page 92 } A. The car passed me at the Belt Line tracks.

Q. Passed you at the Belt Line tracks?

A. Yes.

Q. Then you continued in the second lane, the middle lane of traffic on the north side of High Street?

A. Yes.

Q. And he was going by you on the extreme left?

A. He had already passed me.

Q. On your left side?

A. Yes. He passed me at the Belt Line.

Q. There were no cars between you and the place where the accident occurred, no cars in the middle lane?

A. No.

Q. Was there anything in the world to prevent him from getting into the middle lane rather than over to the left-hand lane?

A. No, I don't think so. He could have—he tried to avoid hitting her. He swung over.

Q. To his left?

A. Yes.

Q. He didn't swing to his right?

A. He could not have. He would have hit me.

Q. I thought he had passed you at the Belt Line?

A. He had, but he was only a few feet ahead of me.

Q. Well, he didn't pass you right at the Belt Line?

A. Yes, he passed me at the Belt Line.

page 93 } Q. He passed you at the Belt Line?

A. Yes. We were running just like this (indicating).

Q. Just about the same speed?

A. I was running about twenty-five and he was running about twenty-eight to thirty.

Q. When he struck her you say he carried her body on his fender?

A. And the hood.

Q. What distance did he carry her body?

A. From the center lane he cut around and the car stopped about six feet from the corner at the intersection and she fell about eight feet away from the car, the whole length of the car.

Leonard E. Cross, Jr.

Q. About eight feet?

A. Yes.

Q. This was about six feet from the curb?

A. No. He hit the curb.

Q. He hit the curb?

A. Yes.

Q. Did he hit the curb before he hit her?

A. No. He hit her here (indicating).

Mr. Woodward: Point out where "Here" is.

Mr. McMurren: He has already indicated it by page 94 } an X.

By Mr. McMurren:

Q. Put a C there for Cross.

A. He hit her here and when he hit her here he swerved the car. He tried to avoid hitting her and when he did she hit the right front fender and this part of her body went up on the hood, was forced to the hood.

Q. The right or left side of her body?

A. Let me get that right. This part of her body hit—this part of her body went up on top of the hood, and she lay there until he made this turn and she fell off here and he stopped here (indicating).

Q. From this point to where he stopped his car?

A. Yes.

Q. And to the point where her body was here (indicating)?

A. Yes.

Q. And the back of his car was about what distance—

A. I would say that is approximately about four feet.

Q. What is the length of his car?

A. I could not answer that.

Q. About eight feet?

A. Yes.

Q. Eight or ten feet?

A. Yes, something like that.

page 95 } Q. How far was the front of his car from the intersection?

A. The front of his car was about four feet.

Q. About four feet?

A. Yes.

Q. How far, would you say, from the point where he struck her he carried her body until he dumped her in the gutter?

A. Here is the street, if the street continued on across here. It is like that, you see. If the street had continued on

Leonard E. Cross, Jr.

through there I would say he carried her body approximately about twelve feet.

Q. Pembroke Avenue is about forty feet wide, isn't it?

A. No.

Q. It is not?

A. No.

Q. Look at these pictures here. Can you tell anything by looking at the pictures as to how wide it is?

A. No.

Q. You can't?

A. No.

Q. How wide would you say Pembroke is?

A. About thirty feet.

Q. You think he hit her over here, and across the street would be thirty feet; is that right?

page 96 } A. Yes.

Q. And carried her the distance of the street?

A. Yes.

Q. Thirty feet?

A. Yes.

Q. Carried her down here and deposited her down here as you have indicated?

A. Yes. He carried her from this point to this point, about eighteen to twenty feet.

Q. He didn't deposit her at that point (indicating)?

A. No, but he was swerving all the time. He didn't deposit her at this point (indicating). He could not have.

By the Court:

Q. Why?

A. Because I would have run over her myself.

By Mr. McMurran:

Q. You were right behind him?

A. If she had not stuck to his fender and hood and he had not thrown her this way (indicating), I would have gotten her.

Q. You just now said if he had deposited her there (indicating) you would have struck her?

A. No, I didn't say that.

Q. I misunderstood you then.

A. You misunderstood me. If he had thrown her to my left or right I would have struck her, but she stuck to the fender and hood.

page 97 }

Charles Slaughter, Jr.

Q. Anyway he carried her on down and deposited her body around here (indicating)?

A. Yes.

Q. And he came up here some distance and the back of his car was four feet from her facing in an easterly direction?

A. Yes.

Q. You say the police arrived?

A. Yes.

Q. And they asked you to drive him downtown?

A. Yes.

Q. Why didn't they let him drive downtown?

A. Because they put him under arrest.

Q. You were going to drive his car?

A. Yes.

Q. And you found you could not drive his car?

A. Yes.

Q. Because it was broken?

A. Yes.

Q. After he hit her the wheels locked?

A. The wheels must have jammed when he hit the curb.

Q. You were driving a car?

A. Yes.

Q. So when the police found he could not drive
page 98 } his car they wanted you to take him downtown.

Why didn't you carry him in your car?

A. I was going to but the radio car came up at that time.

Q. The radio car carried him away?

A. Yes.

Q. If you were traveling right along abreast and he was just a little ways in front of you you could not see the center line from your driver's seat?

A. No.

By Mr. Hillard:

Q. I understood you to say it was about a quarter past six?

A. Between six and a quarter past.

Q. Was it about dark?

A. It was dusk.

CHARLES SLAUGHTER, JR.,
the defendant, having been first duly sworn, testified as follows:

By Mr. Woodward:

Q. You are Mr. Charles Slaughter, Jr.

Charles Slaughter, Jr.

page 99 } A. Yes, sir.

Q. You were the driver of the car involved in this accident we are talking about?

A. Yes, sir.

Q. Where do you live, Mr. Slaughter?

A. 702 Fourth Street.

Q. What do you do?

A. Apprentice in the Navy Yard.

Q. How long have you been in the Navy Yard?

A. Counting Army time, about six years. It all counts on Civil Service.

Q. When did you go back to the Navy Yard?

A. March 4, 1946.

Q. Where were you prior to that?

A. You mean before I went in the Army?

Q. No; before you went back to the Navy Yard in 1946?

A. In the Army.

Q. How long were you in the Army?

A. Three years.

Q. What time of day did this accident happen?

A. Around six o'clock.

Q. In January?

A. Yes.

Q. You were going in what direction?

page 100 } A. West on High Street.

Q. How fast were you traveling?

A. Around twenty-five miles an hour.

Q. Where did the accident happen?

A. Well, it was approximately at that florist shop near Parker's Open Air Market.

Q. Beyond the Belt Line Railroad?

A. Yes, sir.

Q. About how far beyond the Belt Line?

A. I guess it is maybe a half block from the Belt Line to that flower shop.

Q. What part of the street were you traveling in before the accident occurred?

A. Approximately the outside line—

Q. By the outside line, what do you mean?

A. Three lanes of traffic going west and I would have been in the third lane on the outside heading west.

Q. Is that the right or left-hand lane?

A. It would have been the left with reference to the curb on the right-hand side. It would have been in the left-hand line.

Charles Slaughter, Jr.

Q. There are three lanes?

A. Yes.

Q. Were any cars parked there?

A. Yes.

page 101 } Q. That occupied the first lane?

A. Yes.

Q. And there were two lanes in which the cars could move?

A. Yes.

Q. You were in the lane nearest the center?

A. Yes.

Q. Prior to seeing this girl, on which side of the white line were you?

A. I was on the right-hand side.

Q. Tell in your own words just what occurred?

A. It had been raining that day. It was more or less misty. It was not exactly foggy, but a bad night to see. Lights were on at Parker's Market, and further up the street, I don't know exactly how far. You can't judge distance very good at night. There was cars coming and were glaring, and I didn't see the woman. Just at the time I saw her I hit her, and I cut the wheels the best I could to keep from hitting her, and went on and slapped on the brakes and cut the steering wheel to the left, and the car slid to the left-hand side of High Street and headed in the opposite direction, east towards the ferry.

Q. When you came to a stop your car was heading back downtown?

A. Yes, sir.

page 102 } Q. Were you up against the curb?

A. Yes, sir.

Q. About where was the girl lying when you got out?

A. She was behind my car.

Q. How did she get from the right-hand side of the street over there?

A. I imagine she must have stuck to the fender. I was busy trying to control the car when it kept around and hit the curb, and when I got out she was lying behind the car.

Q. Behind the car?

A. Things happened so fast.

Q. Did you, or not, have your headlights on?

A. Yes.

Q. What beam did you have on?

A. Low beam.

Q. That is the beam that cuts them down on the road?

A. Yes.

Charles Slaughter, Jr.

Q. From the time you saw her until your car struck her, what did you do?

A. The minute I saw her I started cutting.

Q. Started cutting?

A. Yes.

Q. In which direction?

A. To the left. It was not enough distance to avoid hitting her.

page 103 } Q. What part of your car came in contact with her?

A. The right front fender.

Q. Did you get out of the car when it stopped?

A. Yes.

Q. Do you remember the gentleman who just testified, Mr. Cross?

A. Yes, I remember him.

Q. Did you know him before the accident?

A. No, sir. I had not seen him and didn't know him.

Q. Did you talk to him there?

A. He was trying to do something for the woman. We spoke a few words. I don't remember exactly what was said. He was going to try to drive the car downtown but it would not run.

Q. The car you had been driving?

A. Yes.

Q. Were you in the car with him?

A. Yes, sir. I was sitting on the right-hand side and he was under the wheel.

Q. Both on the front seat?

A. Yes.

Q. Trying to start the car but it would not run?

A. Yes, sir.

Q. Were you drunk?

A. No, sir.

page 104 } Q. Was there any charge placed against you for driving under the influence?

Mr. McMurren: I object to that.

The Court: Do you want to be heard on that?

Mr. Woodward: Yes, sir.

The Court: Gentlemen, step out until you are called, please.

(The jury retired).

Charles Slaughter, Jr.

The Court: What is your question?

Mr. Woodward: The evidence here by these colored people is that this man was wobbling, and one said he could smell liquor. The evidence is the police came there and he was placed under arrest, and I asked him whether there was any charge of being drunk placed against him.

Mr. McMurran: The objection to that is whether he was arrested, or not. I asked a witness if he drove the man downtown and the witness said no, he was under arrest. The other witness they put on volunteered that information. He wants to know whether any charge of drunkenness was placed against him. I say it is immaterial, you could not show the adjudication if you wanted to.

The Court: I think I will sustain it, to which page 105 } you except.

Mr. Woodward: Note an exception, and, if permitted to testify, the witness would answer no charge of driving drunk or being under the influence of liquor was placed against him by the police as a result of the accident.

(The jury returned to the courtroom.)

CROSS EXAMINATION.

By Mr. McMurran:

Q. Mr. Slaughter, whose car was this you were driving?

A. Belongs to Manly's Cleaners.

Q. Did you have permission to drive that day?

A. Yes.

Q. When did you get the car?

A. It was that afternoon. I don't remember exactly what time I got it.

Q. Was it early afternoon?

A. No, kind of late, I imagine maybe two o'clock.

Q. Two or three o'clock?

A. Yes.

Q. After you got the car, where did you go?

A. Went out on the Deep Creek Boulevard to a friend's of mine house, a boy I used to know in the Army.

Q. Just paid him a friendly visit?

A. Yes.

Q. How long did you stay there?

A. Approximately an hour and a half, maybe two hours.

Q. That was on the Deep Creek Boulevard?

Charles Slaughter, Jr.

A. Yes, sir.

Q. After you left his house in about an hour and three-quarters, where did you go?

A. To my home.

Q. You never got to your home?

A. Yes, I got to my home.

Q. You went to your home?

A. Yes.

Q. Then where did you go?

A. Started for Park Manor.

Q. Where?

A. Started to Park Manor.

Q. Where were you going?

A. To see a friend of mine.

Q. Another social visit?

A. Yes. I wanted to borrow some money from him.

Q. Park Manor is where?

A. Out towards City Park.

Q. What time was it you left to go to Park Manor?

A. Approximately a quarter to six, maybe ten
page 107 } minutes to six.

Q. What?

A. About a quarter or ten minutes to six.

Q. You came up High Street?

A. No. I go down County Street. I come into High at
Robertson's Cleaners.

Q. You came down County Street and turned into Western
Branch Road?

A. Yes.

Q. Then you turned into High Street in a westerly direc-
tion?

A. Yes.

Q. When was it you came abreast of the Cross car?

A. I guess approximately along there at the railroad tracks,
right at the Belt Line, I think it is the Belt Line tracks run-
ning across there.

Q. He was traveling west, too?

A. Yes.

Q. Did you see him when you entered High Street from
Western Branch Boulevard, the old Western Branch Boule-
vard?

A. Yes, I saw him coming up High Street, I believe.

Q. You saw him coming up High Street. Were you mov-
ing, too?

Charles Slaughter, Jr.

A. As well as I remember, I was caught by that page 108 } stop light at Ninth Avenue.

Q. You were coming up—

A. I will retract that statement. I believe I come in about Ninth Avenue. It is the street that goes down by the dry cleaners.

Q. Western Branch?

A. No, went down further.

Q. Sixth Avenue?

A. I don't remember exactly, but I believe the stop light caught me at Ninth Avenue, and after we left the stop light, that is when I passed Mr. Cross. Mr. Cross didn't stop for the stop light. He had gone through.

Q. You were waiting for it to change; is that right?

A. No, I didn't see it at the stop light; saw it when I started through.

Q. Mr. Cross had gotten across the street before it changed from green to red?

A. Did he say that?

Q. I am asking you the question.

Mr. Woodward: You are making the statement.

By Mr. McMurran:

Q. Did he go through the green light or red light?

A. Green.

Q. When the light is green on High Street that page 109 } he was traveling on it is red on Sixth Avenue?

A. I was out of Sixth Avenue.

Q. You had to come to a stop at Sixth Avenue while he crossed on the green though?

A. At Sixth Avenue?

Q. The light had to change from green to red on High?

A. That is right.

Q. You made a left turn into High Street?

A. Yes.

Q. Mr. Cross was already up the street some distance when you made the turn?

A. I don't know how much distance.

Q. You came out on High Street and headed in a westerly direction behind him?

A. Yes.

Q. You overtook him where?

A. If I am correct, a stop light caught me and I imagine

Charles Slaughter, Jr.

it was at the stop light at Ninth Avenue. It has been nine months ago.

Q. You don't know whether you had stopped at a stop light on Ninth Avenue?

A. No.

Q. You were in the extreme left lane?

A. Yes, on the center.

Q. He was in the middle lane?

page 110 } A. Yes.

Q. You speeded up a little to pass Mr. Cross?

A. To about twenty-eight miles an hour, I imagine.

Q. You speeded up to pass him?

A. Yes.

Q. You say you didn't see this colored woman until you were right on her?

A. That is right.

Q. You made a complete left turn, the car swung around?

A. Yes.

Q. There were no cars approaching from the west towards the east or they would have run into you?

A. None approaching close enough to interfere with my turning.

Q. There was nothing to obstruct your view in front when you crossed the Belt Line tracks?

A. It was a misty night.

Q. Parker's Open Air Market was to your right?

A. Yes.

Q. Was there anything to prevent you, when you crossed the Belt Line tracks, from seeing anyone crossing from Pembroke Avenue, crossing High Street? Was there any obstruction in front of you?

A. Poor visibility.

Q. Poor visibility?

page 111 } A. That is correct.

Q. With that poor visibility did you slow the car down?

A. As soon as I saw her I applied the brakes and cut to the left.

Q. I am not talking about that. Before that did you drive slowly enough so that you could stop?

A. Twenty-five miles an hour is controlled speed.

Q. There was nothing to obstruct your view from seeing her?

A. Poor visibility.

Charles Slaughter, Jr.

Q. Your eyesight is good?

A. 20-20.

Q. Your headlights were all right?

A. I imagine so.

Q. You didn't see the woman until you were right on her?

A. Right on her.

Q. When you hit her did your brakes slide the car?

A. When I cut the car to the left I slapped on the brakes.

I cut the car as far as I could. It would not turn any more.

Q. Did you skid?

A. I imagine so.

Q. You skidded from the point where you hit her. Did you apply the brakes when you hit her?

A. I would say at the time my brakes were fully applied she was hit.

page 112 } Q. How far away was she when you saw her?

A. I could not say the distance.

Q. Can you point out any distance?

A. It may have been five feet or fifteen. I can't estimate good on a thing like that.

Q. You drive a car down the street, when you can't see but five feet ahead of you, at twenty-five miles an hour?

A. No.

Q. Is that what you state?

A. No.

Q. You don't know, when you saw her, how many feet she was away?

A. No. I would be afraid to estimate the distance.

Q. When you hit her you know the brakes were locked?

A. I know the car was turning and the brakes were screaming.

Q. How far did you go up the street before your car made a complete U turn?

A. I don't know how much distance a car has to go to make a full U turn.

Q. Do you know how far you went?

A. When something happens like that you don't pay attention.

Q. You saw the woman lying in the gutter?

A. After I got out of the car.

page 113 } Q. Where did you go then?

A. Went back to the woman and Mr. Cross came over to assist.

Q. Was anybody with you at the time?

W. J. Griggs.

A. No, by myself.

Q. By yourself?

A. Yes.

W. J. GRIGGS,

called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

By Mr. Woodward:

Q. You are connected with Manly's?

A. Yes, sir.

Q. You are the one who loaned Mr. Slaughter the car?

A. Yes.

Q. You saw him at the time you loaned him the car?

A. Yes.

Q. That was about what time in the afternoon?

A. I would say around two or two-thirty, some-
page 114 } thing like that.

Q. What was his condition at that time with respect to being intoxicated or drunk?

A. He wasn't drinking. If he was I didn't know it.

Q. Or you wouldn't have loaned him the car?

A. I certainly wouldn't.

Q. Did you see him any more that day?

A. Yes, around eight o'clock I went down to the jail. I had heard what had happened.

Q. You talked to him then?

A. Yes.

Q. Was he drunk then?

A. No, sir.

Q. You don't know anything about the accident yourself?

A. No. I was working down at the plant. I wasn't there.

By Mr. McMurran:

Q. He was locked up in jail when you saw him?

A. Yes.

Q. He had not been bailed out?

A. No, sir.

page 115 } Mr. Woodward: That is the defendant's case.

The Court: Gentlemen, how about forty-five minutes for lunch? Is that sufficient time to get your lunch? Suppose you return at two o'clock.

Thereupon, at one-ten P. M., an adjournment was taken to two P. M.

page 116 } AFTERNOON SESSION.

Met at close of recess.

Present: Same parties as heretofore noted.

INSTRUCTIONS.

Plaintiff's Instruction No. 1 (Granted):

"The Court instructs the jury that it is the duty of the drivers of automobiles upon streets and highways to drive to his right of the center of the street and if you believe from the evidence that the defendant drove his automobile to the left of the center of High Street prior to the time of the impact and ran into and upon the plaintiff and she was without fault and this was the proximate cause of her injuries, you must find the verdict for the plaintiff in this case."

Plaintiff's Instruction No. 2 (Granted): ^{Wrongful right of way}
^{Wagon}

"The Court instructs the jury that the driver of every motor vehicle upon the streets shall yield the right of way to a pedestrian crossing High Street at an intersection with another street, and the pedestrian shall have the right of way over such vehicles, and it is the duty of the driver of all cars to slow down, change their course, and come to a complete stop, if necessary, to permit the pedestrian to safely and expeditiously cross such intersection; and if the jury believe that the plaintiff in this case was crossing High Street at the intersection of Pembroke Avenue and High Street it was the duty of the defendant to give the right of way to the plaintiff." ^{under all conditions}
^{error}

Plaintiff's Instruction No. 3 (Granted):

"The Court instructs the jury that it is the duty of every driver upon the Streets and Highways of this State to keep a proper lookout so as not to run into and upon persons that are walking upon the said streets and highways and if you believe from the evidence in this case that the defendant, Slaughter, did not keep a proper lookout and as a proximate result thereof ran into the plaintiff you should find a verdict

for the plaintiff unless the plaintiff was guilty of contributory negligence."

Plaintiff's Instruction No. 4 (Granted):

"The Court instructs the jury that it is the duty of every driver upon the Streets and Highways of this State to have the same under proper control at all times so as
page 118 } to avoid running into and upon persons using the streets and highways and if you believe from the evidence in this case that the defendant did not have his car under proper control at the time of the accident and this was the proximate cause of the plaintiff's injuries you must find for the plaintiff."

Plaintiff's Instruction No. 5 (Granted):

"The Court instructs the jury, if you find for the plaintiff, you should allow her such sum as you believe from the evidence will compensate her reasonably for the injuries received; and in estimating her damages may take into consideration the mental and physical pain and suffering, if any, consequent upon the injuries; all medical and hospital expenses; the reasonable value of the time already lost, if any, consequent upon the injuries, and, if you believe from the evidence that said injuries are permanent and will partially disable her, in the future; and, in this connection, you may take into consideration the age and physical condition of the plaintiff and the probable duration of her life at the time of the injury, under all the proof in the case, not to exceed the amount sued for in this case."

Defendant's Instruction A (Granted):

"The Court instructs the jury that the basis of this action is the charge that the defendant, Slaughter, was negligent in the operation of the automobile being driven.
page 119 } by him in the manner set forth in the plaintiff's notice of motion and bill of particulars. Before the plaintiff can recover, she must establish by a preponderance of all of the evidence that her injuries were proximately caused by such negligence of the defendant, Slaughter. There is no presumption arising from the mere happening of the injury that Slaughter was negligent. On the other hand, the law presumes the defendant, Slaughter, to have been free from negligence, and this presumption remains as the bar to any recovery by the plaintiff until such time as the plaintiff

establishes that the defendant was negligent and that such negligence proximately caused her injury. The burden rests upon the plaintiff to prove such negligence, and not upon the defendant to disprove it. Suspicion or probability of such negligence, or even that it is just as likely that the defendant was negligent as that he was not negligent, is not sufficient to sustain a verdict for the plaintiff.

If, after considering all of the evidence, you find that the plaintiff has failed to establish the negligence of the defendant, and that such negligence was the proximate cause of her injury, by a preponderance of the evidence, then you must find for the defendant."

Defendant's Instruction B (Granted):

"The Court instructs the jury that the law requires a pedestrian, before starting to cross a street, to look to the left for traffic approaching on that side, and upon reaching the center of the street, to look to the right for traffic approaching on that side; and while the statute accords a pedestrian the right of way at intersections, such pedestrian is guilty of contributory negligence which bars any recovery for injuries suffered, if the pedestrian attempts to assert the right of way in the face of approaching traffic dangerously near.

If you believe from the evidence in this case that the plaintiff failed to observe the legal duties required of her in any respect, or that she attempted to continue to cross when the defendant's automobile was so close that she could not safely do so, then she is guilty of contributory negligence and cannot recover in this action."

Mr. McMurran: The plaintiff objects and excepts to the action of the Court in granting Defendant's Instruction B on the ground it is the duty of the driver of an automobile to yield the right of way to a pedestrian who has already entered the intersection in a proper manner, and this instruction concludes that plaintiff would be guilty of contributory negligence as a matter of law if she continues page 121 } crossing the street.

*Answers all questions which ask
what a prudent person would do*

Defendant's Instruction C (Granted):

"The Court instructs the jury that in determining whether defendant, Slaughter, was negligent in failing to see the plaintiff in time to avoid striking her, you should take into consideration the time of the accident, that is, that if it was dark; or other cars moving in the immediate vicinity; the color of the plaintiff's clothing, and other facts and circumstances existing at the time and place of the accident, or such of them as are shown by the evidence to have existed."

Defendant's Instruction D (Granted):

"The Court instructs the jury that the driver of an automobile is not an insurer of the safety of other persons using or crossing streets, but is only required to use ordinary care to avoid injuring them."

Defendant's Instruction E (Granted):

"The Court instructs the jury that while a pedestrian crossing at an intersection is accorded the right of way over motor vehicles, the pedestrian must exercise such care for her own safety as a person of ordinary prudence would exercise under like circumstances. She cannot blindly or negligently expose herself to danger. If you believe from the evidence in this case that the plaintiff failed to exercise the required care, or blindly or negligently exposed herself to danger, then she is guilty of contributory negligence and cannot recover in this action."

Defendant's Instruction F (Granted):

"The Court instructs the jury that the law recognizes and makes allowances for the fact that an automobile cannot be stopped instantly upon the discovery of danger, and that there is an appreciable interval of time between the discovery of danger and the necessity for stopping or turning aside and

the actual application of the brakes, or turning from its course."

Defendant's Instruction G (Refused):

"The Court instructs the jury that if you believe that the plaintiff's injuries resulted without negligence or fault on the part of the defendant, but as the result of an unavoidable accident, then you must find for the defendant."

Mr. Woodward: The defendant objects and excepts to the action of the Court in refusing Instruction G because this is a case under the circumstances existing at the time the accident occurred wherein the accident could easily have been unavoidable insofar as the defendant is concerned, page 123 } and the defendant is entitled to the instruction as requested.

Mr. Woodward: The defendant withdraws the request to recall the defendant for the purpose of asking him whether he was arrested for being drunk, the defendant having previously excepted to the Court's ruling on the question to the defendant, Slaughter, whether any charge of drunkenness was placed against him, and waives the exception to the Court's ruling in refusing to permit it.

page 124 } JUDGE'S CERTIFICATE.

I, Floyd E. Kellam, Judge of the Circuit Court of the City of Portsmouth, Virginia, who presided over the trial of the case of Virgie Lee Pine Overton v. Charles Slaughter, Jr., and Manly's Cleaners, Incorporated, in said Court on the 7th day of November, 1947, do certify that the foregoing is a true and correct transcript of the trial of said cause, including all of the evidence adduced, all of the exhibits offered in evidence, all of the instructions to the jury as granted and all of the instructions as refused, together with the objections to said instructions and the grounds thereof, as well as all of the objections to the evidence or any part thereof offered, admitted, rejected or stricken out, together with all motions and objections of the parties, all rulings of the Court thereon and

all exceptions of the parties thereto, together with all other incidents of the trial of the said cause.

As to the original exhibits introduced in the evidence, as shown by the foregoing report, to-wit: Plaintiff's Exhibits 1 to 5, both inclusive, which have been initialed by me for the purpose of identification, it is agreed between the Attorney for the plaintiff and the Attorneys for the defendant that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this case in lieu of certifying to the said Court copies of said exhibits.

page 125 } I further certify that this certificate has been tendered to and signed by me within the time prescribed by Section 6252 of the Code of Virginia for tendering and signing bills of exception and certificates of record, and that reasonable notice in writing has been given to the Attorneys for the defendant of the time and place at which said certificate has been tendered.

Given under my hand this 23 day of December; 1948.

FLOYD E. KELLAM,
Judge of the Circuit Court of the City of
Portsmouth, Virginia.

page 126 } CLERK'S CERTIFICATE.

I, Kenneth A. Bain, Clerk of the Circuit Court of the City of Portsmouth, Virginia, do hereby certify that the foregoing is a true and correct copy of all the testimony, exhibits, and other incidents of the trial of the case of Virgie Lee Pine Overton *v.* Charles Slaughter, Jr., and Manly's Cleaners, Incorporated, and that the original thereof and said copy, together with the original exhibits therein referred to, duly initialed and authenticated by the Judge who presided over the trial of the said cause, were lodged and filed with me as Clerk of the said Court on the 23 day of Dec., 1948.

KENNETH A. BAIN, JR.,
Clerk of the Circuit Court of the City of
Portsmouth, Virginia.

By
Deputy.

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CLERK'S CERTIFICATE.

Virginia:

In the Clerk's Office of the Circuit Court of the City of Portsmouth, Virginia, on the 23 day of Dec., in the year 1948.

I, Kenneth A. Bain, Clerk of the Circuit Court of the City of Portsmouth, State of Virginia, do certify that the foregoing is a true and correct transcript of the record in the case of Virgie Lee Pine Overton v. Charles Slaughter, Jr., and Manly's Cleaners, Incorporated, lately pending in said Court.

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

Teste:

KENNETH A. BAIN, JR.,
Clerk of the Circuit Court of the City of
Portsmouth, Virginia.

By
Deputy.

Fee for this transcript \$

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State of Virginia,
City of Portsmouth, to-wit:

I, Kenneth A. Bain, Jr., Clerk of the Circuit Court of the City of Portsmouth, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record in the foregoing cause; and I further certify that the notice required by Section 6339, Code of 1919, was duly given in accordance with said section.

Given under my hand this the 10th day of January, 1949.

KENNETH A. BAIN, JR., Clerk.
By: DORIS V. MAJOR, D. C.

A Copy—Teste:

M. B. WATTS, C. C.

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