

2465  
187-240

# Record No. 3263

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**JENNIE SOLOMON**

v.

**ATLANTIC COAST LINE RAILROAD CO.**

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FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

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**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.

187 VA 240

## 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.

CLERK  
SUPREME COURT OF APPEALS

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RICHMOND, VIRGINIA

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

AT RICHMOND.

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**Record No. 3263**

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JENNIE SOLOMON, Plaintiff in Error,

*versus*

ATLANTIC COAST LINE RAILROAD COMPANY,  
Defendant in Error.

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PETITION FOR WRIT OF ERROR.

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

Petitioner, Jennie Solomon, respectfully represents that she is aggrieved by a final order and judgment of the Circuit Court of the City of Portsmouth, entered on the 27th day of January, 1947, sustaining a plea in abatement to a notice of motion for judgment for personal injury brought by Jennie Solomon against Atlantic Coast Line Railroad Company, a transcript of the record in which case is herewith filed.

Plaintiff moved to strike out the plea in abatement, as bad on its face, and not showing want of jurisdiction or venue in the Circuit Court of the City of Portsmouth (R., p. 8), but the Court held the plea in abatement valid and dismissed the case, and plaintiff duly excepted.

The notice of motion (R., p. 1) asked \$10,000 damages, alleging plaintiff was a passenger on defendant's train to be safely carried thereon from North Carolina "into the City of Portsmouth, Virginia", and was injured by negligence of de-

defendant, the notice not stating whether the actual personal injury took place in North Carolina, or in Portsmouth, or at what particular point on the journey, but it was stipulated on argument of the plea "that she was injured on \*this train when in North Carolina, en route to Portsmouth, Virginia". (R., p. 8.)

The plea in abatement (R., p. 37) claimed that there was no jurisdiction or venue in the Circuit Court of the City of Portsmouth, this plea reading:

"The said defendant comes and says that this Court ought not to have or take any further cognizance of the action aforesaid of the said plaintiff, because the said defendant says that the supposed cause of action did not or any part thereof arise in the City of Portsmouth, but that supposed cause of action and every part thereof did arise in the State of North Carolina, and that at the time of the serving of the notice of motion in this cause the defendant did not have its principal office in the City of Portsmouth, but had its principal office then and ever since in the City of Richmond, Virginia.

"Wherefore it prays judgment whether this court can or will take any further cognizance of the action aforesaid.

"TOM E. GILMAN, p. d."

This plea (with the stipulation that the actual injury occurred in North Carolina on the trip to Portsmouth) the court held on its face showed want of jurisdiction or venue in Portsmouth, and dismissed the case.

THE ERROR ASSIGNED is that the Circuit Court erred in holding the plea good, in refusing to strike it out, and in dismissing the case.

THE ARGUMENT will be brief and direct, the record being delightfully short, and the point being presentable in few words.

We submit that the plea was plainly bad and should have been struck out for two reasons, namely:

3\* \*1. The plea merely averred that the cause of action did not arise in Portsmouth, but in North Carolina, and that defendant's principal office was not in Portsmouth, but was in Richmond; but the plea did not aver that defendant's chief officer did not reside in the City of Portsmouth.

Regardless of where the cause of action arose, or where the

principal office was, the action could be brought where defendant's chief officer resided, pursuant to Section 6049 of the Code of Virginia, which reads in part:

"Any action at law or suit in equity, except where it is otherwise especially provided, may be brought in any county or corporation: \* \* \*

"Second. If a corporation be a defendant, wherein its principal office is, or *wherein its mayor, recorder, president, or other chief officer resides.*" (Italics added.)

2. Also, the plaintiff being hurt on defendant's train on a journey from North Carolina to Portsmouth, Portsmouth was a proper venue, the journey for this purpose being such a unit that action could be brought in Portsmouth, even though the actual injury was to plaintiff on the train before it got out of North Carolina.

The principal governing such a situation is expressly held in favor of such venue by *Norfolk & Western Ry. Co. v. Crull*, 112 Va. 151.

In that case, horses were shipped on a journey from St. Louis, Missouri, to Norfolk, Virginia, and on the journey suffered injury, and the court held that Norfolk was a proper venue even if the actual injury did not occur to the horses in Norfolk. The court said in that case, which was trespass on the case for tort:

4\* \* "The contention by both defendants that the cause of action did not arise in the city of Norfolk because it was shown that no part of the injury complained of was suffered after the carload of horses reached that city, is without merit. The two defendants engaged and acted in concert to accomplish one object. That purpose was to carry the carload of horses and deliver the same in good condition at Norfolk, the point of destination. The negligent care of the horses throughout the journey was a continuous breach of duty which resulted in the breach, in the city of Norfolk, of the principal duty, which was to deliver the horses there in good condition. The default in failing to deliver the horses in good condition took place where the delivery was to be made, and the place of default was the place where the cause of action arose."

In the case at bar, the notice of motion expressly avers (R., p. 2) "that on said date the undersigned plaintiff boarded one of your trains to be safely carried from North Carolina into the City of Portsmouth, Virginia".

If any other rule existed, it would often be impossible for a plaintiff to tell in what county or place the actual injury was caused, particularly if the train was moving and continued on its journey, and particularly if the injury occurred at night.

5\* \*This petition is adopted as the opening brief, a copy hereof was mailed to opposing counsel on the 21 day of March, 1947, and this petition with transcript of the record will be presented to Justice John W. Eggleston in the City of Norfolk, and counsel for petitioner desires to state orally the reasons for granting the writ.

Petitioner prays that a writ of error may be granted, the decision of the Circuit Court and its order, complained of, reversed, the error complained of corrected, and such other relief granted as may be adapted to the nature of the case.

JENNIE SOLOMON,  
By A. A. BANGEL (by J. G. M.),  
Portsmouth, Virginia,  
JAS. G. MARTIN,  
Western Union Bldg., Norfolk, 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, order and judgment complained of in the foregoing petition ought to be reviewed.

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

Received March 21, 1947.

J. W. E.

April 15, 1947. 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 27th day of January, 1947.

Jennie Goodman, Plaintiff,

v.

Atlantic Coast Line Railroad Company, Defendant.

**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 5th day of December, 1946, came the plaintiff, by counsel, and filed her notice of motion, which is in the words and figures following, to-wit:

To: Atlantic Coast Line Railroad Co.  
Portsmouth, Va.

You are hereby notified that I shall on the 23rd day of December, 1946, at 10:30 A. M., move the Circuit Court for the City of Portsmouth, Virginia, at the Courthouse thereof, for a judgment and award of execution against you for page 2 } the sum of \$10,000.00, which sum is due the undersigned plaintiff from you, for this, to-wit: That heretofore, to-wit: on the 31st day of August, 1946, you were a common carrier of passengers for hire and reward; that on said date the undersigned plaintiff boarded one of your trains to be safely carried from North Carolina into the City of Portsmouth, Virginia; that by reason of your negligence, the undersigned plaintiff was seriously and permanently injured in and about her head, body, leg, nervous system and other parts of her body, and caused the undersigned plaintiff to suffer, and she will in the future be caused to suffer pain, caused her to expend, and she will in the future be caused to expend a large sum of money in an endeavor to be healed and cured of said injuries, caused her to be unable and she will in the future be unable to perform her necessary and lawful affairs.

JENNIE SOLOMON,  
By A. A. BANGEL, Counsel.

A. A. BANGEL, p. q.

The Sergeant's return on the foregoing notice of motion is in the words and figures following, to-wit: Executed page 3 } in the City of Portsmouth, Va., the 4th day of Dec., 1946, by delivering a copy of the within notice of motion to C. J. Umphlett, in Person, who is the Agent of the within named defendant corporation, Atlantic Coast Line Railroad Co., a Corp., in which City an office of the said corporation is located.

R. E. GLOVER,  
City Sergt.  
By M. A. OWENS,  
Deputy Serg't.

And at another day, to-wit: At the Circuit Court of the City of Portsmouth, held on the 23rd day of December, 1946.

At this day came the parties by their Attorneys and thereupon, the defendant appeared Specially and filed a plea in Abatement.

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

#### PLEA IN ABATEMENT.

The said defendant comes and says that this Court ought not to have or take any further cognizance of the action aforesaid of the said plaintiff, because the said defendant page 4 } ant says that the supposed cause of action did not or any part thereof arise in the City of Portsmouth, but that supposed cause of action and every part thereof did arise in the State of North Carolina, and that at the time of the serving of the notice of motion in this cause the defendant did not have its principal office in the City of Portsmouth, but had its principal office then and ever since in the City of Richmond, Virginia.

Wherefore it prays judgment whether this court can or will take any further cognizance of the action aforesaid.

TOM E. GILMAN, p. d.

State of Virginia,  
County of Norfolk, to-wit:

This day A. R. Brinkley personally appeared before me, Eleanor Phillips Cross, a notary public for the County and State aforesaid, in my county aforesaid, and made oath that he is the superintendent and agent of the Atlantic Coast Line Railroad Company, and that the matters and things stated in the foregoing plea are true, and he is authorized to make this affidavit.

Given under my hand this the 16th day of Decem-  
page 5 } ber, 1946.

ELEANOR PHILLIPS CROSS,  
Notary Public.

My commission expires January 28, 1950.

And now at this day, to-wit: At the Circuit Court of the City of Portsmouth, on the 27th day of January, 1947.

At this day came the parties by their Attorneys, and there-upon, the Court having fully heard the plea in abatement heretofore filed herein, doth sustain the same, to which action of the Court, the plaintiff, by counsel, excepted, and this case is dismissed.

Virginia:

In the Clerk's Office of the Circuit Court of the City of Portsmouth, on the 12th day of March, 1947, came the plaintiff, by counsel, and filed her notice that she would present her bill of exception, which is in the words and figures, following, to-wit:

page 6 } To Tom E. Gilman, Attorney for Atlantic Coast  
Line Railroad Co., Portsmouth, Va.

Please take notice that on the 13th day of March, 1947, the undersigned will present to the Honorable Floyd E. Kellam, Judge of the Circuit Court of the City of Portsmouth, Virginia, at the courthouse thereof, a bill of exception, in the above entitled cause for certification by said Judge, and will, on the same day, make application to the Clerk of said Court for a transcript of the record of 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.

JENNIE SOLOMON,  
By A. A. BANGEL, Counsel.

Legal service of the above notice is hereby accepted this 12th day of March, 1947.

TOM E. GILMAN,  
Attorney for Atlantic Coast Line  
Railroad Company.

page 7 } The bill of exception referred to in the foregoing  
notice, is in the words and figures following, to-  
wit:

Virginia:

In the Circuit Court of the City of Portsmouth.

Jennie Solomon

*v.*

Atlantic Coast Line Railroad Company.

Be it remembered, that in this case, on the return day of the notice of motion, December 23, 1946, defendant filed its plea in abatement only, under oath, and which is in the following language and made part of this bill of exceptions:

Virginia:

In the Circuit Court of the City of Portsmouth.

Jennie Solomon, Plaintiff,

*v.*

Atlantic Coast Line Railroad Company, Defendant.

#### PLEA IN ABATEMENT.

The said defendant comes and says that this court ought not to have or take any further cognizance of the  
page 8 } action aforesaid, of the said plaintiff, because the  
said defendant says that the supposed cause of action did not or any part thereof arise in the City of Portsmouth, but that supposed cause of action and every part

thereof did arise in the State of North Carolina, and that at the time of the serving of the notice of motion in this cause the defendant did not have its principal office in the City of Portsmouth, but had its principal office then and ever since in the City of Richmond, Virginia.

Wherefore, it prays judgment whether this Court can or will take any further cognizance of the action aforesaid.

TOM E. GILMAN, p. d.

And the plaintiff moved the Court to strike out said plea as bad on its face, and not showing any want of jurisdiction or want of venue in this Court, which motion was argued and overruled, and said plea held valid and the case dismissed by the court on January 27, 1947, to which ruling and action of the court, the plaintiff duly excepted. No evidence was taken in the case. That she was injured on this train when in North Carolina, en route to Portsmouth, page 9 } Virginia.

And the plaintiff presented this bill of exceptions in due time, which is signed and made part of the record this 13th day of March, 1947, after it duly appeared in writing that defendant had been given proper notice of the time and place of presenting the same.

F. E. KELLAM,  
Judge of said Court.

page 10 } 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 19th day of March, 1947.

KENNETH A. BAIN, JR., Clerk.  
By: DORIS V. MAJOR, D. C.

A Copy—Teste:

M. B. WATTS, C. C.

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