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Record No. 5353

In the
Supreme Court of Appeals of Virginia
at Richmond

THATCH T. EWELL

v.

RUTH H. ELLIOTT

FROM THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5353

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 25th day of April, 1961.

THATCH T. EWELL,

Plaintiff in Error,

against

RUTH H. ELLIOTT,

Defendant in Error.

From the Court of Hustings for the City of Portsmouth

Upon the petition of Thatch T. Ewell a writ of error and *supersedeas* is awarded her to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 10th day of November, 1960, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Ruth H. Elliott was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 30 } Virginia:

At the Court of Hustings for the City of Portsmouth held on the 10th day of November, 1960.

* * * * *

This day came again the parties, by their counsel, the defendant having heretofore moved the Court on August 19, 1960 to set aside the verdict of the jury and enter judgment for the defendant or grant a new trial, and the said motion having been fully argued by counsel, the Court doth sustain the motion of the defendant to set aside the said verdict and doth hereupon enter judgment for the defendant; whereupon, it is considered by the Court that the plaintiff take nothing by her bill but for her false clamor to be in Mercy, &c., and that the defendant go thereof without day and recover against the plaintiff her costs by her about her defense in this behalf expended, to which action of the Court the plaintiff excepted.

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NOTICE OF APPEAL.

The plaintiff, Thatch T. Ewell, hereby gives notice of her intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to a judgment heretofore entered by the Court in favor of the plaintiff.

ASSIGNMENTS OF ERROR.

1. That the Court erred in setting aside the verdict of the jury for the plaintiff and in entering judgment for the defendant.
2. That the Court erred in finding that the plaintiff, Thatch T. Ewell, was guilty of contributory negligence as a matter of law.

THATCH T. EWELL
By **JOHN A. MacKENZIE**
Of Counsel.

Thatch T. Ewell.

* * * *

Filed Jan. 5, 1961 1:42 P. M., The Court of Hustings.

JOHN R. PORTER, JR., Clerk.

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THATCH T. EWELL,
the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. MacKenzie:

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Q. Mrs. Ewell, for the purpose of helping the jury, I hand you what purports to be a photograph of Manly Street looking west, at the intersection of Manly and Dale, and ask you if that correctly depicts as of now that intersection?

A. Yes, sir.

Q. Mrs. Ewell, I believe that this picture discloses much in the way of foliage, and was probably taken very recently. The situation with leaves was not the same when this accident occurred, was it?

A. No, sir.

Mr. MacKenzie: We would like to offer this in
page 6 } evidence as "Plaintiff's Exhibit No. 1."

By Mr. MacKenzie:

Q. Mrs. Ewell, I hand you herewith another photograph of the intersection looking south on Dale Street, which also is the intersection where the accident occurred, and ask you if that correctly depicts the intersection looking south on Dale Street?

Thatch T. Ewell.

A. Yes, that is right.

Mr. MacKenzie: We offer that in evidence and ask that it be marked "Plaintiff's Exhibit No. 2."

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Q. Mrs. Ewell, as you came up to this intersection at what point did you stop and look, if you did?

A. I slowed down practically to a stop over here. There were cars parked over here on Dale Street. I had to stop behind those cars because they were parked there and the street wasn't wide enough for three-lane traffic. I pulled out from behind them and came up to here. They are short blocks in there, anyway. When I pulled up to here I saw this car approaching from this way.

Q. Where was it with reference to any landmark shown on the photograph, Mrs. Ewell?

A. Right along here by these trees.

page 8 } Q. There are three trees there. Which tree was this car near?

A. It was nearer to these two than it was to this one.

Q. How far back are those two trees from this intersection?

A. According to my steps I would say about 60.

Q. About 60?

A. Yes.

* * * * *

Q. What, if anything, was Mrs. Elliott's car doing at the time you noticed it some 60 feet down Manly Street?

A. It apparently had slowed up to almost a stop. It wasn't driving fast.

Q. How fast were you going?

A. I was practically at a standstill.

Q. After observing the car driven by Mrs. Elliott what, if anything, did you do?

A. I was up even with the intersection here. I proceeded to cross, because I figured I had plenty of time and she wasn't driving so fast. She had practically slowed up, too. But,

Thatch T. Ewell.

when I got right here, I did not see her any more after I
 started across the intersection, because I was watch-
 page 9 } ing for traffic here. As I said, the blocks are short
 in there. When I got right here she hit my back
 door.

Q. Where was the front of your car at the time the back
 door was struck?

A. My foot door was across this ditch.

* * * * *

Q. Mrs. Ewell, I show you herewith another photograph
 taken apparently at the corner of Dale and Manly Streets,
 showing Dale Street looking south and Manly
 page 10 } Street looking west, and ask you if that depicts
 correctly the intersection as it existed at the time
 of this accident?

A. This is looking west?

Q. This is Dale Street coming across here and Manly Street
 going on up.

A. Yes, that is right.

Mr. MacKenzie: I ask that that be introduced as "Plain-
 tiff's Exhibit No. 3."

By Mr. MacKenzie:

Q. Mrs. Ewell, looking at the photograph marked "Plain-
 tiff's Exhibit No. 3," there are shown some trees on the south
 side of Manly Street, the trunks of which are apparently
 whitewashed?

A. That is right.

Q. You see those?

A. Yes, sir.

Q. Are these the trees that you spoke of in telling the jury
 a few moments ago the distance and the position of Mrs.
 Elliott's automobile?

A. Yes, sir.

Q. To the extreme right of the photograph are two small
 trees. Are they the same trees that you pointed out on the
 photograph recently shown to the jury?

A. Yes, sir.

page 11 } Q. What was the distance from this intersection
 to those two trees?

Thatch T. Ewell.

A. According to steps—I did not use a tape line—it was 60 steps back there.

Q. At the time you saw Mrs. Elliott's automobile and you were stopped at this intersection, where was it located with reference to this photograph? Point it out to the jury.

A. You mean Mrs. Elliott's car?

Q. Yes.

A. Right along here (pointing).

Q. And that is how far from that intersection?

A. From which direction?

Q. The intersection of Dale and Manly Streets?

A. About 60 feet, according to the way we stepped it off.

A Juror: May I ask a question?

The Court: Yes.

The Juror: She says "steps" one time and "feet" another time. Which does she mean: steps or feet?

A. I just walked it off. I did not use a tape line. It was just like you walk an ordinary measuring step.

page 112 } By The Juror:

Q. You counted 60 steps then?

A. Yes, sir.

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THATCH T. EWELL,

being recalled for cross-examination, further testified as follows:

Examined by Mr. Eley:

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Thatch T. Ewell.

Q. So it would be sixty steps rather than sixty feet. Is that correct?

A. About that.

Q. How far would you say that your stride was when you did the measuring? Could you approximate whether it would be one foot or two feet or three feet?

A. I would think it would be, maybe—well, I will tell you the truth, I don't even know. I never measured it. If you want me to show you about how I walk—

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Q. As you approached this intersection with Manly Street I believe you stated there were some automobiles parked on your right?

A. That is right.

Q. Do you recall the number of automobiles that were parked on your right?

A. No. I did not count them.

Q. Do you know whether there was one or two, or more?

A. Well, when I first turned across Gosport Road I was meeting another car. That was why I had to pull page 30 } up behind these cars, for that one to pass me.

Q. How far were you then from the intersection where the collision took place?

A. I had passed the first house, but there was a driveway there. That was why I had to come in behind them, so he could pass, because it is only a two-lane drive there. I could not pass him in a third lane, because the street wasn't wide enough for that. That was why I had to stop in behind these other cars.

Q. Do you know how many carlengths you were from the intersection when you pulled in behind these other cars?

A. No, I could not tell you that. That was behind me. Gosport Road was behind me at that time. I did not pay any attention to that.

Q. Do you know how far along in the block that led up to the intersection you were—

A. I would imagine about halfway.

Thatch T. Ewell.

Q. About halfway of the block when you came to a stop?

A. Yes.

Q. Then you pulled out into the center of the road to proceed on south?

A. Yes, that is right.

Q. As you proceeded south what would be your speed that you were making as you approached the intersection page 31 } section?

A. I had come practically to a stop, because there were no traffic lights there. I usually slow up at these intersections to see if there is any traffic coming.

Q. How fast had you gotten from the time you stopped behind the cars until you started slowing down again?

A. I could not have gotten very fast, because the distance isn't any longer than from here to the sidewalk.

Q. Could you approximate for me the speed?

A. You mean when I saw her car?

Q. The fastest you had gone.

A. I had not driven at all over 15 miles an hour, if I had driven that fast, because I could not have picked up speed that fast.

Q. You then went up to approximately 15 miles an hour, and you slowed down again as you came to the intersection?

A. That is right.

Q. These automobiles that were on your right of course would obscure your vision to your right down to the intersection, would they not?

A. Up until I got practically to where the sidewalk was.

Q. You never did actually come to a complete page 32 } stop, did you?

A. I don't think I completely stopped, but I was just moving, because it is a push-button control car and you can throttle it down to about five miles an hour. I had taken my foot off the accelerator and the car was just rolling. It wasn't going fast at all.

Q. So as you approached the intersection you looked to your right and you saw the automobile driven by the defendant?

A. Yes, sir.

Q. That was back by these trees, back here (indicating on photograph)? You saw the automobile back in this area here?

A. Yes, sir.

Q. She was right here?

Thatch T. Ewell.

A. Right along in there, yes, as near as I could judge.

Q. Where was the front of your car?

A. When I first saw her I was right along here (indicating on photograph).

Q. You would be right along in here, roughly, where that shadow is?

A. Yes. She was slowing up. She wasn't driving fast. I could see that I had space, I thought, enough to page 33 } cross the street, and I just went on.

Q. All right, ma'am. When you saw her what was her speed, to the best of your estimation?

A. She was just rolling, traveling not very fast, so I could not tell you exactly how fast she was going. I could not do that.

Q. What did you do then: assume that she was going to come to a stop and allow you to go through; is that correct?

A. That is right.

Q. There were no cars coming to your left?

A. No, sir.

Q. Were there any cars ahead of you?

A. No, sir.

Q. So actually at this intersection, to your knowledge, you and the automobile driven by the defendant were the only two moving vehicles that you saw?

A. Yes, sir.

Q. When you came about to this shadow that we talked about and you looked to your right and you saw her back by this tree and she was then going, you did not know how fast—was she going as fast as you were?

A. I would be afraid to tell you how fast I thought she was going, because I don't know. She was slowing up to the extent that I thought I had plenty of time to pass, to page 34 } cross?

Q. You had no idea what her speed was?

A. No; because, as I said, I could not see her speedometer, and I might not be a good judge on how fast another car is traveling, because I have looked at cars since then and just wondered how fast those cars were going. I could not tell you to save my life. I know she wasn't speeding. I don't mean that she was coming down there like a whirlwind. She had slowed up, because I thought she was going to stop completely.

Q. That was what you had in your mind, was it not, that

Sergeant R. J. Festa.

you thought she was going to stop and, if she did, then you would go on by?

A. Certainly.

Q. After you saw her when you were back at this position, I believe you said you then directed your attention straight ahead and did not see her again until the collision?

A. No, I did not.

Q. Were there any cars parked on Manly Street at this time, to your knowledge?

A. No. Hers and my car were the only two there that were moving. There wasn't any parked.

Q. There were some parked on Dale Street?

A. On Dale Street, but there wasn't any on Manly.

Q. There was none parked on Manly?

page 35 } A. No, sir.

Q. Were your brakes in good operating condition at this time?

A. Yes, sir.

Q. Were they in such shape, and was your speed such, that if you had decided to stop you could have stopped before getting into the intersection?

A. Yes, sir.

Q. After you saw her?

A. Yes, sir.

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SERGEANT R. J. FESTA,
called as a witness on behalf of the plaintiff, having been
first duly sworn, testified as follows:

Examined by Mr. MacKenzie:

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Q. In conjunction with your investigation of the accident

Sergeant R. J. Festa.

did you have occasion to talk to Mrs. Elliot at the scene of the accident shortly afterwards?

A. Yes, sir, we did.

Q. Did she make any statement to you with reference to whether or not she drove, and if so what was her statement that was made in your presence?

Mr. Eley: Your Honor, for the reasons previously stated we object to that, and note our exception to Your Honor's ruling.

The Court: I overrule the objection.

By Mr. Mackenzie:

Q. What, if anything, was said in your presence?

A. She stated that she did not drive regularly, and that she was taking the car to the garage for her husband.

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Q. I don't know whether or not your report, Sergeant, shows any distances. Would your report show any distances that could be related to that photograph at all, sir?

A. No, sir. We do not have any street measurements.

Q. I will ask you if the street there is not approximately—the hard surface—about 15 feet wide?

A. Approximately.

Q. And if the surface on both Manly and Dale are approximately the same?

* * * * *

Mr. MacKenzie: I asked him where the position of Mrs. Ewell's car was when he got there—and he is looking at the photograph.

A. At the southwest intersection, right over here.

Mr. MacKenzie: The witness was pointing
page 39 } over at the southwest intersection of Dale.

Sergeant R. J. Festa.

By Mr. MacKenzie:

Q. In what direction was her car heading? Do your notes indicate, Sergeant?

A. In a westerly direction.

Q. I will ask you, Sergeant, if Manly Street does not run east and west?

A. Yes, sir.

Q. And west would be pointing back up in the direction from which Mrs. Elliott apparently came?

A. Yes.

Q. The Elliott automobile was heading in what direction, Sergeant?

A. Heading east on Manly.

Q. Was it beyond the intersection?

A. It was still heading in an easterly direction.

Q. Still heading in an easterly direction down Manly, and was just past the intersection. Is that right?

A. Just past the intersection.

Q. Answer Mr. Eley.

* * * * *

page 40 } CROSS EXAMINATION.

By Mr. Eley:

* * * * *

Q. Were any statements made to you by the plaintiff, Mrs. Ewell?

A. She stated that she was going east—correction on that; I am mixed up here. She stated that she was going south on Dale Street and was at the intersection, and looked to the right and saw Vehicle No. 2 slowing down and thought Vehicle No. 2 was stopping, and continued across. Vehicle 2 struck Vehicle 1 in the right side.

Q. She said that she thought the vehicle was going to stop and she went on through. Is that right?

A. Yes, sir.

Q. Thank you very much.

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OFFICER O. L. BATSON,
called as a witness on behalf of the plaintiff, having been first
duly sworn, testified as follows:

Examined by Mr. MacKenzie.

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Q. Mr. Batson, I don't believe that you and Sergeant Festa
saw the accident, did you, sir?

A. No, sir.

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A. During the routine investigation it became necessary
to ask her certain questions, and one of them was her experi-
ence in driving. She answered that she did not drive.

Q. She answered that she did not drive?

A. Yes.

Q. Do you recall whether she made that statement more
than once, sir, or do you recall?

A. Yes, sir. She made it at least twice, to my knowledge.

Q. Answer Mr. Eley.

page 43 }

CROSS EXAMINATION.

By Mr. Eley:

Q. Did she say she did not drive or that she did not drive
regularly?

A. As I understood it, she said she did not drive.

Q. Were there any statements made by the plaintiff, Mrs.
Ewell?

A. She told us the type of work that she was doing, et
cetera, where she was going, and she made the statement to
us in what direction she was traveling, and at what speed.

Q. Did she make any mention of the fact that she thought
the defendant was going to stop and that she then continued
on through?

A. Yes, sir, she did.

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page 46 } RUTH H. ELLIOTT,
the defendant, having been first duly sworn, testi-
fied as follows:

Examined by Mr. Eley:

* * * * *

Q. You stated that your residence was on Manly Street. How far from the intersection where this accident took place do you live?

A. I will say it is about eight houses from the corner.

Q. At the time in question you were driving your car I believe east on Manly Street?

A. That is correct.

Q. Where had you gotten into your automobile?

A. I got in in my driveway at my home.

Q. What was your purpose in driving the car at this time?

A. Well, I was taking it to the garage to get it washed.

Q. Where was the garage located?

page 47 } A. It is on the corner of Deep Creek Boulevard
and Gosport Road.

Q. How far from your house would that be?

A. I estimate it to be about two and a half blocks.

Q. It would be another block and a half past the intersection where this accident took place?

A. That is right.

Q. After you backed your car out of the driveway and started down Manly Street how fast were you driving as you approached the intersection?

A. I could not have been going any more than 15 miles an hour. I am sure of that. I could not have been going any more than 15 miles an hour.

Q. What is the speed limit in that area?

A. It is a residential area. It is 25 miles an hour.

Q. What is the physical setup of the intersection in question? Are there houses on the corners there?

A. Yes. There is a building on the east corner. That particular morning the gentleman that owned a car on the left of Manly Street, he was parked on Manly Street.

Q. He was parked on Manly Street?

A. Yes.

Q. How close to the intersection was he parked?

page 48 } A. He usually parks near the corner.

Q. Would that be on your left or right as you approached the intersection?

Ruth H. Elliott.

A. That was to my left.

* * * * *

Q. Are there any trees or foliage in the vicinity of this intersection?

A. Yes. There are trees and foliage on all corners at the intersection.

Q. As you look to your left would there be any trees and foliage?

A. Yes.

Q. Where would that be located?

A. There are one or two trees on Manly Street, and the others are on Dale Street.

Q. Are they close to the street, or how far from the street are they?

A. They are close to the street.

Q. Are they in the ground area between the street and the sidewalk?

A. That is right.

Q. As you approached this intersection what did page 49 } you do in regard to observing other traffic, and
so forth?

A. As I approached Dale Street I slowed down. I looked to my left and did not see any traffic. I turned to my right and did not see any. When I turned back, straight in front of me like that (illustrating) this other car was directly in front of me.

Q. How far was your automobile from the intersection when you looked to your left?

A. I will say it was about a car-length.

Q. How far to your left down Dale Street could you see at that time?

A. I could see possibly two car-lengths down Dale Street.

Q. What was your speed at that time?

A. Well, I am sure it wasn't 10 miles an hour.

Q. You looked to your left and you could see two car-lengths down and you did not see any traffic?

A. No, I didn't.

Q. And you looked to your right. What did you see there.

A. I did not see any traffic.

Q. Was there any traffic in front of you?

A. No.

Q. After looking to your left did you stop or continue on?

Ruth H. Elliott.

A. After I looked to my left and did not see page 50 } any traffic, and looked to my right and did not see any traffic, when I turned back directly in front of me there was this car, and that was when the collision took place.

Q. Where was the front of your car at that time with regard to the intersection?

A. At that time my car was near the corner of Dale and Manly Streets.

Q. How far into the intersection was the front of your car?

Mr. MacKenzie: We object to that as being a leading question.

Mr. Eley: I will rephrase the question.

By Mr. Eley:

Q. Was the front of your car into the intersection, or not yet into the intersection?

A. It was into the intersection.

Q. How far into the intersection was it?

A. About midway—

Q. With regard to car-length?

A. About half a car-length, I would say.

Q. At that time I believe you stated you saw the automobile driven by the plaintiff?

A. Directly in front of me.

Q. When you saw the automobile driven by the page 51 } plaintiff what did you do?

A. I put on my foot brake.

Q. Do you know whether or not the brakes were able to catch before you hit?

A. Well, because her car was right directly on mine, I am sure my brakes hit, because there was nothing wrong with them or anything. Her car seemed to be pulling mine around. That was when I pulled up my emergency brake.

Q. After you came into contact what was the movement of your car and what was the movement of the car driven by Mrs. Ewell?

A. The movement of my car, my car was being pulled in a right direction, to my right.

* * * * *

Ruth H. Elliott.

Q. Were there any traffic controls at this intersection; stop signs, lights or anything?

A. No, there were not any traffic controls or stop signs at that intersection.

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CROSS EXAMINATION.

By Mr. MacKenzie:

* * * * *

Q. I would not be far wrong, would I, Mrs. Elliott, if I said that the hard surface part is about 15 feet wide? That is about so, isn't it?

A. That is right.

Q. And Manly Street and Dale Street are about the same width, are they not?

A. Practically the same.

* * * * *

Q. And you say that you approached to within one car-length of this intersection before you then looked to your left and right to see whether or not anybody was coming. Is that right?

A. You have to get up fairly close before you can see around the corner.

Q. Then you had gotten up to within a position of approximately one car-length from this intersection and you looked?

A. I looked and did not see anything.

Q. And you looked to your left, which is looking north up Dale Street? You looked in that direction?

A. Yes.

Q. And you did not see anything?

A. No, I did not.

Q. If Mrs. Ewell's car had been there you would have certainly seen it, wouldn't you?

A. I certainly would have.

Q. Were there other cars parked along Dale Street on the west side?

A. No, not that morning.

Ruth H. Elliott.

Q. There were no cars parked along Dale Street on that morning?

A. Not in that vicinity.

Q. Not in that vicinity?

A. No. There was a car parked over here (referring to photograph).

Q. You say there were no cars parked along
page 54 } Dale Street, but there was a car parked on Manly
Street?

A. That is correct.

Q. Being familiar with this neighborhood, Mrs. Elliott, about how far up Manly Street are these little white trees that I am pointing to which are some distance from the corner? Would it be fair to say they are about 60 or 70 feet up that street?

A. I suppose so.

Q. These trees were there when this accident occurred, were they not?

A. Yes.

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* * * * *

Q. Did you put on brakes?

A. I certainly did.

Q. Did the brakes have time to catch before you hit the side of her car? Do you know?

A. My brakes caught when I put my foot on the brakes. I am sure of that.

Q. How often do you drive this automobile, Mrs. Elliott?

A. I drive it enough to be familiar with it.

Q. You drive it enough to be familiar with it?

A. I drive it every day. I know that I am familiar with it.

Q. You have heard the police officers state that you told them you did not drive. Did you make that statement to them.

Mr. Eley: If Your Honor please, one of the police officers said that she said she did not drive regularly.

Ruth H. Elliott.

By Mr. MacKenzie:

Q. One officer said that you said you did not drive regularly, and one officer said that you said you did not drive. Did you make either one of those statements?

page 56 } A. I did not say I did not drive, because I learned to drive, it has been twenty-four years ago. I could not have said I did not drive.

Q. You heard the police officers' statements regarding the statement that they said you made. Did you make the statement that they repeated here?

A. I don't remember making that statement.

Q. Now your speed coming down Manly Street, Mrs. Elliott, you estimated at 15 miles per hour. Is that true?

A. I am sure I wasn't going 15. I say 15, but I wasn't going 15 miles an hour.

Q. As you approached this intersection did you slow down?

A. I certainly did.

Q. How far were you from the intersection when you started slowing down?

A. I would say about two car-length.

Q. You had made no effort to slow down until you were then two car-lengths from the intersection, or had you slowed down before then?

A. I had slowed down I am quite sure more than two car-lengths, but I really came almost to a stop about two car-lengths I will say from the corner.

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Q. And it was when you were two car-lengths from the corner that you say you came almost to a stop. Is that the situation?

A. That is the situation.

* * * * *

Q. I hand you this picture (Plaintiff's Exhibit No. 1), and point to you what I understand to be the northwest corner of Dale Street and Manly Street, and ask you if there is

Eleanor Bailey.

anything, even taking this time of year, that obstructs your view there? Is there anything showing there, Mrs. Elliott?

A. There are shrubs on that corner.

Q. You are not trying to tell the jury that there are such shrubs as would prevent you from seeing down Dale Street, are you?

page 59 } A. No. You can see about two car-lengths, as I first stated.

Q. This photograph, Plaintiff's Exhibit No. 3, Mrs. Elliott, depicts that corner all right, does it not?

A. Yes.

Q. Standing from a position on Dale Street or a position as far back as the little trees on Manly Street, there is nothing to block your view coming across here, is there?

A. If you are about this distance on Manly Street you can only see a little distance on Dale Street.

Q. Looking at this photograph, Plaintiff's Exhibit No. 2, this correctly depicts the intersection, does it not?

A. Yes.

Q. And from this situation there is not anything to obstruct your view of anybody on Dale Street?

A. It does not show all of those shrubs.

* * * * *

page 59 } ELEANOR BAILEY,
called as a witness on behalf of the defendant,
having been first duly sworn, testified as follows:

Examined by Mr. Eley:

* * * * *

A. I was at the corner, but I did not see the accident.

Q. Where were you standing at the time of the accident?

A. I was a little around the corner; I will say about four paces around the corner.

Q. On which corner would that be?

A. That was on the northeast side of Dale and Manly Streets.

Q. Just prior to the accident had you seen the automobiles of the plaintiff and the defendant?

A. Yes.

Thatch T. Ewell.

Q. Where were they when you saw them at that time before you turned down Dale Street?
 page 60 } A. When I saw Mrs. Elliott's car I would say she was about twelve feet from the corner; and this lady, it seems to me she was about half a block down Dale Street.

• • • • •

Q. Could you tell anything about the speeds of these automobiles?

A. No, I could not tell about the speeds.

Q. It did not appear that either one was violating the speed limit?

A. No.

Q. How long is that block that you are talking about down Dale Street? Is it a long block or a short block?

A. It is a short block.

Q. If you parked automobiles along there would you have any idea how many automobiles you could park in that block? Could you give us some idea as to how long it would be?

A. I would say you could park at least six or seven cars.

Q. And she was about halfway down there?

A. Yes.

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THATCH T. EWELL,
 being recalled in rebuttal, further testified as follows:

Examined by Mr. MacKenzie:

• • • • •

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Q. Mrs. Ewell, the distance from the intersection of the west line of Dale Street and the south line of Manly Street has become a matter of importance. Would you testify, please,

Thatch T. Euell.

specifically as to what distance it is, to the best of your knowledge, to the two white trees that appear on the page 65 } right in Plaintiff's Exhibit No. 3?

A. When I stepped it off it was 20 steps, and I imagine my strides are about three feet. That is what made me say 60 feet.

Q. Mr. Underwood asked you about this, and you said 60 steps?

A. That was an error on my part. I meant 60 feet.

By The Court:

Q. 20 steps?

A. Yes, sir.

.

page 66 } By Mr. Eley:

Q. You stated that if you pulled out to the intersection you could really see clearly down the road?

A. Sure.

Q. You would have to pull out to the intersection?

A. After I passed from behind those cars, yes. You see, the cars were on my right. When you are sitting inside a car, that would obstruct my view until I pulled out to the intersection.

Q. So you felt that you, yourself, had to pull out to the intersection so that you could get a clear view to your right. Is that correct?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. MacKenzie:

Q. How close were you to the north line of Manly Street when you stopped, Mrs. Euell?

A. What do you mean?

Q. Or when you came to this slow motion?

A. When I came out to the intersection I slowed up to see if there was any traffic coming either way.

Mr. MacKenzie: That is all.

A Copy—Teste:

H. G. TURNER, Clerk.

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