

66-374
1009

Record No. 1684

In the
Supreme Court of Appeals of Virginia
at Richmond

RICHARD F. McLAUGHLIN

v.

ALEX SIEGEL

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK.

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

166 Va 374

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 1684

RICHARD F. McLAUGHLIN, Plaintiff in Error,

versus

ALEX SIEGEL, Defendant in Error.

PETITION FOR WRIT OF ERROR.

Your petitioner, Richard F. McLaughlin, respectfully represents that he is aggrieved by a judgment entered against him by the Circuit Court of the City of Norfolk on the 22nd day of December, in the year 1934, in a certain motion or action at law then pending therein, in which he was defendant and Alex Siegel was plaintiff. The judgment against the plaintiff in error in favor of defendant in error was the marking satisfied by order of the said Circuit Court of a judgment which the said Richard F. McLaughlin, the plaintiff in error, had theretofore obtained against the said Alex Siegel in the sum of Two Thousand (\$2,000.00) Dollars, with interest thereon from February 26th, 1934, and \$72.25 cost, all of which will more fully appear on page one of the record of said case, which record is attached hereto and asked to be read as a part hereof. The entry of said judgment is assigned as error.

THE FACTS.

The record shows, on pages 4 and 5, that plaintiff in error, Richard F. McLaughlin, instituted an action by notice of motion in May, 1933, against the defendant in error, Alex

Siegel, and another defendant by the name of S. Jurin, to recover \$25,000.00 damages, which sum the plaintiff in error, Richard F. McLaughlin, in his notice of motion, said was "due individually and jointly to" him "from you by reason" of damages suffered by the plaintiff in error on the 12th day of April, 1931, "whilst being returned to the City of Norfolk from Edenton, North Carolina, in an automobile owned by defendant S. Jurin and operated by Alex Siegel, in which automobile he "was a passenger * * * and Alex Siegel was then and there acting for the said S. Jurin as his agent and servant, and as such they owed" the plaintiff in error, Richard F. McLaughlin, "the duty of exercising care and due care, but totally disregarding said duty they did negligently, carelessly and without due regard for the safety of" the plaintiff in error "and in wanton disregard and with negligence and with gross negligence so improperly operated said automobile in which he , the said Richard F. McLaughlin, was the business guest that" he "was greatly injured and damaged by the careless, reckless and negligent manner said automobile was operated and by its overturning and wrecking."

The Record, page 5, further shows that the wrecking, overturning and negligent operation of said automobile in which Richard F. McLaughlin was injured and damaged took place on the highway between Corepeake, North Carolina, and Suffolk, Virginia.

In brief, the record discloses that plaintiff in error, Richard F. McLaughlin, was travelling in an automobile driven by Alex Siegel, but owned by one S. Jurin, and was more or less permanently injured (Record, page 6).

The record further discloses, on page 6, that on the first trial of the case the jury returned a verdict for the plaintiff in error in the sum of \$9,000.00, and the record further discloses, at the bottom of page 6 and top of page 7, that the Court subsequently overruled the verdict of the jury, and on November 15, 1933, granted the motion of the defendants for a new trial; and it further appears that on the subsequent trial of the case on February 26, 1934, the jury returned a verdict in favor of plaintiff in error against the defendants, in the sum of Two Thousand (\$2,000.00) Dollars; and it further appears from the record in the case, on page 7, that the following memorandum was entered by the Attorney for the plaintiff in error on the folio of the judgment docket wherein the judgment of Richard F. McLaughlin (plaintiff in error) against the defendants, Alex Siegel and S. Jurin, was entered: "For value this judgment is hereby released as to judgment debtor S. Jurin but not as to judgment debtor Alex Siegel."

It further appears from the record in the case (page 1) that on the 22nd day of December, 1934, the defendant in error, Alex Siegel, moved to have the judgment entered as aforesaid by this Court against him (along with S. Jurin) for the sum of Two Thousand (\$2,000.00) Dollars and cost in favor of Richard F. McLaughlin (plaintiff in error), which judgment was docketed in judgment lien and execution docket number 28 at page 31, marked satisfied as to him, the said Alex Siegel, by virtue of the memorandum appended to the margin of the folio of said judgment docket, by the Attorney for the plaintiff in error, which recites: "October 15, 1934. For value this judgment is hereby released as to judgment debtor, S. Jurin, but not as to judgment debtor, Alex Siegel" (Record, pages 4 and 7).

The Court, having considered the evidence submitted by the parties and the argument of Counsel (without the intervention of a jury) ordered that said judgment be marked satisfied as to said Alex Siegel (Record, page 1). And the Court further ordered that a certificate of its order be made to the Clerk of the Corporation Court of the City of Norfolk, Virginia, who shall enter the same in the proper column of the judgment aforesaid opposite the place where the judgment is docketed. The order entered by the Circuit Court of the City of Norfolk, Virginia, marking said judgment satisfied, if valid, effectively released the judgment without satisfaction and released the judgment as to the party guilty of primary and direct negligence and effectively released the defendant in error, who was directly responsible for the action for the damages, and the record discloses that the other party held liable was only held liable by virtue of the relationship of principal and agent. The entry of the order marking the judgment satisfied as to defendant, Alex Siegel, is assigned as error.

THE LAW.

To state the law which Counsel for plaintiff in error respectfully submits as governing this case, it is necessary not only to give the factual background of the immediate proceedings, in which the judgment of Alex Siegel was ordered marked satisfied because of the memorandum appended to the judgment docket by the Attorney for the plaintiff in error releasing the judgment debtor and the principal, S. Jurin, for a *pro tanto* payment of the joint, several and liquidated judgment indebtedness, but it is well also to state and it is disclosed by the record attached to this petition, that the judgment which plaintiff in error recovered against the two

defendants by virtue of his notice of motion which states (Record, page 4, last two lines) that the damages "being due individually and jointly to me (Richard F. McLaughlin) 'by reason' of damages 'whilst being returned to Norfolk * * * in an automobile owned by defendant, S. Jurin, and operated by Alex Siegel' " (Record, page 5), was a joint and several, as well as liquidated judgment indebtedness rendered against the agent Alex Siegel, who actually caused the damage, as well as against his principal, S. Jurin, who whilst not a personal nor an active participant in the tort was liable in money therefor, by virtue of the well known principal of agency, that a principal is liable for the torts of his agent whilst in the performance of his duties.

The record shows that the plaintiff's in error injury was the result of the primary negligence of the defendant in error, Siegel, therefore, Siegel, the defendant in error, was liable initially and primarily for the damage inflicted on plaintiff in error. Jurin was only liable to McLaughlin by virtue of the doctrine of agency; in brief, there was but one active doer of the tort and this was defendant in error, Siegel, therefore, Siegel as a doer of the wrong would be directly answerable, *in toto*, for the injuries he had inflicted on plaintiff in error, McLaughlin.

In the case of *Delaney v. Rochereau* (Louisiana 44 American Reports 56), the Court states, "No man increases or diminishes his obligations to strangers by becoming an agent and * * * everyone, whether he is principal or agent, is responsible directly to persons injured by his own negligence". And the Court quotes Wharton on Negligence by saying: "Whoever directly injures another's person or property by neglect of * * * care * * * is bound to make good the injury caused by his negligence." Further citations could be quoted to uphold this rule of law, but the rule is so well known that we submit that one citation is ample in referring thereto.

Siegel is responsible for his own acts of negligence under the above quoted rule of law, and he cannot, or at least he should not, be allowed to hide behind a memorandum made by plaintiff in error's Attorney purporting to release a party who was hundreds of miles away from the scene of the accident and on whom liability was fastened only by virtue of the rule of *qui facit per alium facit per se*.

The Court will take judicial notice of the fact that the primary reason for attempting to hold the principal liable as well as the agent is not in order to exonerate the agent or to compel the principal only, to contribute a portion towards the payment of the judgment, but is owing to the fact

that as a usual thing agents who cause the damage by their own acts are generally persons who are either judgment proof or from the nature of their employment have very little of this world's goods with which they can respond in damages.

The law is well settled that if a principal is compelled to pay a judgment because of the acts of negligence of his agent, the agent in turn is answerable, *in toto*, to his principal for the damages caused him by the agent's tort due to the agent's failure to exercise due care. This rule of law is well stated in the work of the American Law Institute in its restatement of the Law of Agency, wherein it is stated " * * * the agent who subjects his principal to liability because of a negligent or other wrongful act is himself subject to liability to the principal for the loss which results therefrom. This includes the payment of damages by the principal to the third person * * * " (Section 401 (c), page 914).

The Doctrine of Contribution and Exoneration cannot be invoked by an agent against his principal for damages which he, the agent, caused to be inflicted on a third person, because to allow the agent to become exonerated for his own wrong would be in controvention of elemental justice. Whilst plaintiff in error admits that there cannot be but one satisfaction of his judgment, and further admits that the amount which he received from S. Jurin would be used *pro tanto* in reduction thereof, there has to be payment or satisfaction of same. In the words of the Court in *Fitzgerald v. Campbell*, 131 Virginia 486, " * * * the bar should not fall until there has been a satisfaction of the wrong done".

" * * * actual satisfaction of that particular judgment will preclude the plaintiff from proceeding against either of the (other) defendants except for costs of the respective cases." *Idem*. Also 11 American State Reports 906.

The law of Contribution and Exoneration on which Counsel for defendant in error Siegel relied as well as the law of the release of one of several joint tort feasons before trial and prior to the liquidation of the damages, we submit, should not apply because the agent Siegel is responsible to the principal (Jurin) for any sum he, the principal (Jurin), is required to pay on account of the damage inflicted on him (Jurin) by his agent (Siegel), and, therefore, the agent Siegel could not call on his principal Jurin to contribute to damages which he Siegel caused by his own act. The rule of Contribution and Exoneration is an extension of the equitable Doctrine of Suretyship by the General Assembly into the law of damages amongst joint tort feasons, and he who invokes an equitable doctrine must do so with "clean hands", and certainly one who has been the sole cause of damages in-

flicted upon another cannot invoke the law of contribution and exoneration to relieve himself from the consequences of his own wrong, but on the contrary in the law of contribution and exoneration we necessarily have to consider the relationship between Jurin and the defendant in error Siegel. In inflicting the damages on McLaughlin the defendant in error Siegel became the principal and the defendant Jurin became the surety to answer for the damages so inflicted on the plaintiff in error.

Following the law of suretyship further, from which law the Doctrine of Contribution and Exoneration has been extended, we know that the release of a surety by payment on account never releases the principal, therefore, the *pro tanto* payment by the surety Jurin, in the absence of full payment or actual satisfaction, could not release the principal, who in this case was the defendant in error Siegel.

Aside from the Doctrine of Agency, which Counsel for plaintiff in error respectfully submits effects this case or irrespective of the Doctrines of Suretyship which also effect this case, the tendency of the modern cases is to uphold the reservation and the right of action against several persons even if they are considered tort feasons and to give effect to the intention of the parties. See Articles 10 Virginia Law Review 70, 17 Virginia Law Review 297 and 50 A. L. R. 1057.

Memorandum appended by Counsel for Richard F. McLaughlin to the judgment against S. Jurin and Alex Siegel, shown in the Record on page 4, clearly shows the intent and is as follows:

“October 15, 1934. For value this judgment is hereby released as to judgment debtor S. Jurin but not as to judgment debtor Alex Siegel.”

AVERMENT OF DELIVERY OF COPY OF PETITION TO OPPOSING COUNSEL.

Petitioner avers that before this petition was presented, he delivered, on the 15th day of June, 1935, to Nathaniel T. Green, Esquire, Counsel for the defendant in error, a copy of this petition.

REQUEST FOR ORAL ARGUMENT.

Counsel for plaintiff in error requests oral hearing as to this petition.

PRAYER FOR APPEAL.

Petitioner prays for the errors hereinabove stated and other errors appearing on the face of the Record that a writ of

error be granted from the judgment complained of and that the judgment be reversed.

And your petitioner will ever pray.

RICHARD F. McLAUGHLIN,
By JOHN JOSEPH BAECHER,
Counsel.

I, Geo. Pilcher, Counsel practicing in the Supreme Court of Appeals of Virginia, certify that in my opinion the judgment in the case complained of is erroneous and should be reversed.

GEO. PILCHER.

June 15th, 1935.

Received June 17, 1935.

M. B. WATTS, Clerk.

Writ of Error Granted. Bond, \$300.

J. W. EGGLESTON.

July 12, 1935.

Received July 13, 1935.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Circuit Court of the City of Norfolk, at the Courthouse thereof, on the 16th day of February, in the year of our Lord, nineteen hundred and thirty-five.

BE IT REMEMBERED, That heretofore, to-wit: In the Circuit Court aforesaid, on the 22nd day of December, in the year, 1935, pursuant to notice, came the plaintiff, Alex Siegel and the defendant Richard F. McLaughlin. And thereupon the whole matter of law and fact having been submitted to the Court, the following order was entered:

This day came Alex Siegel and moved the Court to have a judgment entered by this Court on April 9th, 1934 against S. Jurin and said Alex Siegel for \$2,000 and costs in favor of Richard F. McLaughlin, which said judgment is docketed in the Clerk's Office of the Corporation Court of the City of Norfolk in Judgment Lien Docket No. 28 at p. 31, marked satisfied as to him said Alex Siegel; of which said motion ten days' notice was given said Richard F. McLaughlin who duly appeared and resisted said motion. And thereupon the court having considered the evidence submitted by the parties and the arguments of counsel, it is ordered that said judgment be marked satisfied as to the said Alex Siegel on the margin of the page in the book wherein the said judgment page 2 } is entered; and it is further ordered that a certificate of this order be made to the Clerk of the Corporation Court of the City of Norfolk, Virginia who shall enter the same in the proper column of the judgment docket aforesaid opposite the place where said judgment is docketed; all costs of this motion and order to be paid by said Alex Siegel. And thereupon said plaintiff, by his attorney, J. J. Baecher, duly excepted to the foregoing ruling of the Court.

And now at this day, to-wit: In the Circuit Court aforesaid on the 16th day of February, in the year, 1935, the day and year first hereinabove written:

This day came again the parties, by counsel, and the plaintiff tendered his Certificate of Exceptions to certain rulings of the Court, and it appearing to the Court that the defendant, Alex Siegel, has had reasonable notice in writing of the time and place application would be made for the signing of same, it is duly signed, sealed and made a part of the record of this case within sixty (60) days from the date on which final judgment herein was entered, to-wit: on the 22nd day of December, in the year 1934.

The following is the Certificate of Exceptions filed herein by leave of the foregoing Order on the 16th day of February, in the year, 1935:

page 3 } CERTIFICATE OF EXCEPTION NUMBER
ONE.

I, Allan R. Hanckel, Judge of the Circuit Court of the City of Norfolk, hereby certify that at the hearing of the motion made by Alex Siegel to have the judgment theretofore rendered by this Court in favor of Richard F. McLaugh-

lin v. S. Jurin and Alex Siegel marked satisfied, the following was shown in evidence and constitutes all of the facts introduced in evidence at the hearing of said motion:

FIRST: That the following notice was given the said Richard F. McLaughlin:

“Take notice that the undersigned, at 10:00 A. M. or as soon thereafter as he can be heard, on the 1st day of December, 1934, will apply to the Circuit Court of the City of Norfolk, at the Court House thereof, to have marked satisfied as to the undersigned, a judgment for Two Thousand Dollars (\$2,000) with interest from February 26, 1934, and Seventy-two Dollars and twenty-five cents (\$72.25) costs, entered by said Circuit Court on the 9th day of April, 1934, in your favor as Plaintiff against S. Jurin and the undersigned as Defendants, which said judgment is docketed in Clerk’s Office of the Corporation Court for the City of Norfolk in judgment Docket #28, page 31.”

And subsequent to the service of said motion on Richard F. McLaughlin, and on the first day of December, 1934, the said Alex Siegel, by Counsel, did move the Court in conformity with the said notice, that the judgment for page 4 } \$2,000, with interest from February 26th, 1934, and \$72.25 cost, entered by the said Circuit Court on the 9th day of April, 1934, in favor of Richard F. McLaughlin as plaintiff, against S. Jurin and Alex Siegel as defendants, be marked satisfied as to Alex Siegel.

SECOND: Upon the hearing of said motion, judgment docket of the Corporation Court of the City of Norfolk No. 28 at page 31 was introduced showing the following judgment: Richard F. McLaughlin v. S. Jurin and Alex Siegel, judgment rendered April 9th, 1934, judgment docketed April 9th, 1934 for \$2,000, with interest from February 26, 1934 and \$72.25 costs, after which judgment appeared the following marginal notation:

“October 15, 1934 For value this judgment is hereby released as to judgment debtor S. Jrin but not as to judgment debtor Alex Siegel.”

THIRD: There was also produced before the Court the record in the case of Richard F. McLaughlin v. S. Jrin and Alex Siegel, which showed that Richard F. McLaughlin, on the 8th day of May, 1933, instituted, by notice of motion, an action against S. Jurin and Alex Siegel in the following words:

“Take Notice, That on Monday, the eighth day of May, 1933, at 10 o'clock, A. M., or as soon thereafter as I may be heard, I shall move the Circuit Court of the City of Norfolk, Virginia, at the Court House thereof, for a judgment against you in the sum of Twenty-five Thousand (\$25,000.00) Dollars, the same being due individually and jointly to me from you by reason of the following facts:

page 5 } “That on or about the twelfth day of April, 1933, at or about 4:30 or 5:00 P. M., whilst I was a passenger in an automobile for the sole benefit of S. Jurin, and as such was a business guest, being returned to Norfolk, Virginia, from Edenton, North Carolina, said automobile being owned by S. Jurin; and that on or about the twelfth day of April, 1933, at or about 4:30 or 5:00 P. M. whilst being returned to the City of Norfolk from Edenton, North Carolina, in an automobile owned by defendant, S. Jurin, and operated by Alex Siegel, and in which automobile I was a passenger for the sole benefit of S. Jurin, and as such was a business guest, and Alex Siegel was then and there acting for the said S. Jurin and as his agent and servant, and as such they owed the plaintiff, Richard F. McLaughlin, the duty of exercising care and due care, but totally disregarding said duty did negligently, carelessly and without due regard for the safety of the undersigned, and in wanton disregard and with negligence and gross negligence so improperly operated said automobile in which he, the said plaintiff was the business guest, that I was greatly injured and damaged by the careless, reckless and negligent manner said automobile was operated and by its overturning and wrecking.

“Said wrecking, overturning, reckless and negligent operation of said automobile in which and by and from which I was injured and damaged, took place on the Highway between Corapeake, North Carolina, and Suffolk, Virginia, at a point on said Highway approximately eleven miles south of Suffolk, Virginia.

page 6 } “As a result of the careless, *negligent* and negligent manner in which the said automobile was operated, overturned by you and practically destroyed, I was gravely and seriously injured on and about my head, ear and nose, my right forearm immediately above and below the wrist was cut to the bone, my right hand was cut and injured, my right arm was further cut, bruised and damaged, my left arm about the elbow was injured. I was bruised about my upper body, about my spine and cut and bruised about my thigh and legs, so that I have suffered great pain

from thence hitherto and am permanently injured in and about my right arm and hand, left arm, head, legs and body and will necessarily have to expend large sums of money in and about an attempt to be cured

“To my damage of Twenty-five Thousand (\$25,000.00) Dollars.

“Given under my hand this 21st day of April, 1933.”

That subsequent to the filing of said notice the defendants pleaded and the cause was tried on the 16th day of October, 1933, and as a result of the trial a verdict was returned by the jury in the following words:

“We, the jury, find for the plaintiff in the sum of \$9,000.00.

FRANK M. MITCHELL,
Foreman.”

And that subsequent to the return of the verdict of the jury the defendants moved the Court that the verdict of the jury be overruled and a new trial granted, which motion was, on the 15th day of November, 1933, granted by the Circuit Court in due form.

And at a subsequent trial of the case, on the page 7 } 26th day of February, 1934 the Court and the jury, after having heard the evidence in the case which showed that Richard F. McLaughlin was a business passenger in an automobile owned by S. Jurin and driven by Alex Siegel, as is disclosed by the record of *McLaughlin v. Jurin and Siegel* produced before the Court, the jury returned a verdict on the 26th day of February 1934 in the following words:

“We the Jury find for the plaintiff and fix damage at sum of \$2,000.

JAS. V. BIDGOOD, Foreman”;

judgment on the verdict having been entered by the Court on the 9th day of April, 1934. And there further appears that subsequent to the entry of said judgment, namely, on October 15, 1934, there was marked on the margin of the judgment docket wherein the above judgment was entered, by the Attorney for Richard F. McLaughlin, the above memorandum, which reads:

“For value this judgment is hereby released as to judgment debtor S. Jurin but not as to judgment debtor Alex Siegel.”

And the Court having before it the above facts, together with the record in the action of *McLaughlin v. Jurin & Siegel*, did sustain the motion of the defendant Alex Siegel and did, on December 22, 1934, enter an Order directing the Clerk of the Circuit Court to release the said judgment as to Alex Siegel in the following words:

“This day came Alex Siegel and moved the Court to have a judgment entered by this Court on April 9, 1934, page 8 } against S. Jurin and said Alex Siegel for \$2,000 and costs in favor of Richard F. McLaughlin, which said judgment is docketed in the Clerk’s Office of the Corporation Court of the City of Norfolk in Judgment Lien Docket No. 28 at p. 31, marked satisfied as to him said Alex Siegel, of which said motion ten days’ notice was given said Richard F. McLaughlin who duly appeared and resisted said motion, and thereupon the Court having considered the evidence submitted by the parties and the arguments of Counsel, it is ordered that said judgment be marked satisfied as to the said Alex Siegel on the margin of the page in the book wherein the said judgment is entered, and it is further ordered that a certificate of this Order be made to the Clerk of the Corporation Court of the City of Norfolk, Virginia, who shall enter same in the proper column of the judgment docket aforesaid opposite the place where said judgment is docketed, all costs of this motion and order to be paid by said Alex Siegel, and thereupon said plaintiff, by his said Attorney, J. J. Baecher, duly excepted to the foregoing ruling of the Court.”

Upon the entry of said motion ordering the said judgment as aforesaid marked satisfied by the said Court as to Alex Siegel, the said Richard F. McLaughlin duly excepted and indicated his intention to apply for a writ of error to the order marking the said judgment satisfied.

I further certify that this Certificate of Exception page 9 } was tendered by Richard F. McLaughlin within sixty days from the date of the Order entered in said cause, and after reasonable notice in writing by Richard F. McLaughlin to the said Alex Siegel of the time and place at which said Certificate was to be entered.

Teste: This 16th day of February, A. D. 1935.

ALLAN R. HANCKEL, Judge.

The following is the Notice of Appeal, filed herein on the 12th day of January, in the year, 1935:

To Alex Siegel:

PLEASE TAKE NOTICE, That on Saturday, the 12th day of January, 1935, at 9:30 A. M., or so soon thereafter as I may be heard, the undersigned will present to Honorable Allan R. Hanckel, Judge of the Circuit Court of the City of Norfolk, Virginia, who presided at the adjudication of the motion made by Alex Siegel to have the judgment heretofore awarded against him in favor of Richard F. McLaughlin in said Court marked satisfied, its Certificate of Exception Number One, copy of which is hereunto attached to be signed by said Judge and made a part of the record in this case.

Also the undersigned will, at noon of the same day, January 12th, 1935, request the Clerk of said Court to make up and deliver to Counsel a transcript of the record in the above entitled cause for the purpose of presenting page 10 } the same with a Petition for a writ of error to the Supreme Court of Appeals of Virginia.

This notice is given pursuant to Section 6339 of the Code of Virginia as amended.

RICHARD F. McLAUGHLIN,
By JOHN JOSEPH BAECHEER,
Counsel.

Norfolk, Virginia, January 9th, 1935.

Service of the above accepted this 9 day of January, 1935.

NATHANIEL T. GREEN,
R. E. SPANDORFER,
Counsel for Alex Siegel.

Virginia:

In the Clerk's Office of the Circuit Court of the City of Norfolk, on the 14th day of March, in the year, 1935.

I, Cecil M. Robertson, Clerk of the Circuit Court of the City of Norfolk, do certify that the foregoing is a true transcript of the record in a certain motion to have marked satisfied a certain Judgment obtained by Richard F. McLaughlin, lately pending in said court.

Supreme Court of Appeals of Virginia.

I further certify that the same was not made up and completed and delivered until the plaintiff had received due notice thereof, and of the intention of the defendant to page 11 } apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment therein.

Teste:

CECIL M. ROBERTSON, Clerk.
By MARGUERITE R. GRONER, D. C.

Fee for Transcript, \$11.25.

A. Copy—Teste:

M. B. WATTS, C. C.

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