

Read 2745
191-717

Record No. 3730

In the
Supreme Court of Appeals of Virginia
at Richmond

UNITED STATES CASUALTY COMPANY

v.

MARGUERITE T. BAIN

FROM THE CIRCUIT COURT OF NORFOLK COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three 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 the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

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

191 VA 717

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official 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 printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§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 references 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 opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

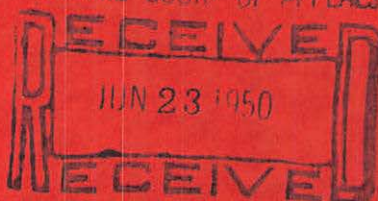
(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 3730

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Tuesday the 25th day of April, 1950.

UNITED STATES CASUALTY COMPANY,
Plaintiff in Error,

against

MARGUERITE T. BAIN, Defendant in Error.

From Circuit Court of Norfolk County.

Upon the petition of United States Casualty Company a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of Norfolk County on the 7th day of November, 1949, in a certain notice of motion for judgment then therein depending wherein Marguerite T. Bain was plaintiff and the said petitioner was defendant, upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of fifteen hundred dollars, with condition as the law directs.

RECORD

Virginia:

Pleas before the Circuit Court of Norfolk County, at the Courthouse of said County, on the 4th day of January, 1950.

Be it remembered that heretofore, to-wit: On the 14th day of September, 1949, came the plaintiff and filed *his* Notice of Motion for judgment, in the words and figures following, to-wit:

Marguerite T. Bain, Plaintiff,

v.

United States Casualty Company, Defendant.

TAKE NOTICE, That plaintiff will on the 3rd day of October, 1949, move the Circuit Court of Norfolk County, Virginia, for a judgment against you, defendant, in favor of plaintiff for Seven Hundred and Fifty (\$750.00) Dollars, with interest from June, 1949, and Twenty-two Dollars and fifty cents (\$22.50) costs, and the costs of these proceedings, for this, to-wit:

That heretofore, to-wit, on the 29th day of June, 1949, plaintiff obtained a judgment in the Circuit Court of Norfolk County against Izaac Augustus Williams for Seven Hundred and Fifty (\$750.00) Dollars, costs and interest, by reason of the negligent operation of a certain motor vehicle, which was being driven by Izaac Augustus Williams, and owned by J. P. Trant & Company, Incorporated, and Bryant Sorey, and execution was issued on said judgment and returned page 2 } "no effects"; that you, defendant, did on or about the 24th day of April, 1949, at the time of the said accident with plaintiff, have a certain policy of insurance on the said motor vehicle on which you promised and agreed to pay all damages occasioned by the negligent operation of said vehicle by the owners or by the one using it, with the owners consent; and that on or about April 24th, 1949, Izaac Augustus Williams, who was operating the said motor vehicle, with the consent of the owner, and at this time did so negligently and recklessly operate the same, causing it to collide with the automobile in which plaintiff was riding, and thereby injuring plaintiff all over her person; and plaintiff has secured the aforesaid judgment for said injuries.

MARGUERITE T. BAIN

By R. WINSTON BAIN Counsel.

By TOM E. GILMAN, Counsel.

And the return of the Sergeant of the City of Richmond on said Notice of Motion, is in the words and figures following, to-wit:

Executed in the City of Richmond, Virginia, this 12 day of Sept., 1949, by delivering in duplicate a copy of within Notice to Thelma Y. Gordon the Secretary of the Commonwealth of Virginia and as such Secretary of the Commonwealth the Statutory Agent for United States Casualty Company, place of residence and place of business of said Thelma Y. Gordon being in the City of Richmond, Virginia, Fee of \$2.50 paid Secretary at time of service.

FRANK A. CONDO,
City Sergeant of Richmond, Va.,
A. J. WILLIAMS,
Deputy Sergeant.

page 3 } And a special plea filed by the defendant on the
25th day of October, 1949, is in the words and figures
following, to-wit:

Now comes the defendant, United States Casualty Company, by counsel, and states that in addition to relying upon all matters and things provable under the general issue, it will rely upon the following defenses:

That the automobile insurance policy which it issued on the motor vehicle referred to in the Notice of Motion does not cover the injuries sustained by the plaintiff, upon which a judgment for \$750.00 against Isaac Augustus Williams is based; that the motor vehicle referred to in the Notice of Motion in this case was not, at the time of the accident in which the plaintiff received her said injuries, being operated with the consent, either express or implied, of the owners of the said motor vehicle, or of any one acting for them or on their behalf; that the said Isaac Augustus Williams, driver of the said motor vehicle at the time of the said accident, was operating the same without the consent, either express or implied, of the owners of said motor vehicle, his operation of the same being wholly unauthorized and unlawful; and that the defendant is not liable to the plaintiff in any manner whatsoever, either under the terms and provisions of the said police of insurance or otherwise;

UNITED STATES CASUALTY
COMPANY
By EDWARD S. FEREBEE
Counsel.

page 4 } And a Special Plea filed by the defendant on the
3rd day of November, 1949, is in the words and figures following, to-wit:

Now comes the defendant, United States Casualty Company, by counsel, and states that, in addition to relying upon all matters and things provable under the general issue and under the Plea heretofore filed in this cause, it will rely upon the following defenses:

That the automobile insurance policy which it issued covering the motor vehicle referred to in the Notice of Motion, namely 1947 International Logging Tractor, B. L. D. 250-35818, does not cover the injuries sustained by the plaintiff, upon which a judgment for \$750.00 in her favor against Isaac Augustus Williams is based; that the said motor vehicle referred to in the Notice of Motion in this case was not, at the time of the accident in which the plaintiff received her said injuries, being operated by J. P. Trant and Company, Incorporated, the named insured under the said insurance policy, or with the permission, either express or implied, of the said J. P. Trant and Company, Incorporated or the owner of the said motor vehicle, or of anyone acting for either of them or on their behalf; that the said Isaac Augustus Williams, driver of said motor vehicle at the time of said accident, was operating the same without the permission or consent, either express or implied, of the said J. P. Trant and Company, Incorporated or the owner of the said motor vehicle, his operation of the said being wholly unauthorized and unlawful; that

the said J. P. Trant and Company, Incorporated is
page 5 } not liable or legally obligated to the plaintiff herein
for any damages sustained by her in the accident aforesaid; that the plaintiff is not entitled to recover from the defendant under the terms of the said insurance policy for the reason that there has been no final or other determination of any liability or obligation on the part of the said J. P. Trant and Company, Incorporated to the plaintiff, either by judgment against the said J. P. Trant and Company, Incorporated or by written agreement of the said J. P. Trant and Company, Incorporated, the plaintiff and the defendant, as provided for in the said insurance policy, the recovery of such judgment or the execution of such written agreement being a condition precedent to any recovery by the plaintiff against the defendant in this action; and that the defendant is not liable to the plaintiff in any manner whatsoever, either

under the terms and provisions of the said policy of insurance or otherwise.

UNITED STATES CASUALTY
COMPANY
By EDWARD S. FEREBEE,
Counsel.

page 6 } In the Circuit Court of Norfolk County, Virginia.

Marguerite T. Bain

v.

United States Casualty Company

NOTICE OF APPEAL.

To: Messrs. R. Winston Bain and T. E. Gilman, Attorneys
for Marguerite T. Bain:

PLEASE TAKE NOTICE, That on the 22nd day of December, 1949, the undersigned will present to the Honorable Edward L. Oast, Judge of the Circuit Court of Norfolk County, Virginia, at the court house of said county, the stenographic report of the testimony and other proceedings of 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.

UNITED STATES CASUALTY
COMPANY
By EDWARD S. FEREBEE
Attorney

Legal service of the above notice is hereby accepted, this 22nd day of December, 1949.

R. WINSTON BAIN,
TOM E. GILMAN,
Attorneys for Marguerite T. Bain

J. P. Trant.

page 7 } In the Circuit Court of Norfolk County, Virginia.

Marguerite T. Bain

v.

United States Casualty Company

TRANSCRIPT OF TESTIMONY.

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled case, in said court, on the 7th day of November, 1949, before the Honorable Edward L. Oast, Judge of said court.

Appearances: Messrs. R. Winston Bain and T. E. Gilman, Attorneys for the plaintiff.

Mr. Edward S. Ferebee, Attorney for the defendant.

Phlegar & Phlegar
Shorthand Reporters
Norfolk, Virginia

page 8 } The witnesses were sworn and excluded on motion
of counsel for the plaintiff; and the following evidence was introduced:

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

Examined by Mr. Gilman:

Q. Your name is J. P. Trant?

A. Yes, sir.

Q. How are you connected with the J. P. Trant and Company, Incorporated?

A. Vice-president.

Q. And the business of J. P. Trant and Company is the cutting of logs and manufacturing logs into lumber; is that correct?

A. Yes, sir.

Q. What position did Bryant Sorey occupy with you, Mr. Trant?

A. He was the foreman of the logging.

Q. And lived at St. Brides?

A. Yes.

J. P. Trant.

Q. Did he have charge of a considerable amount of your equipment, Mr. Trant?

A. Yes, sir.

Q. When I say, "Mr. Trant," I mean you, the page 9 } vice-president of J. P. Trant and Company, Incorporated?

A. Yes, sir.

Q. Did he have charge of a 1947 International truck, BLD-250-35818?

A. He had charge of all of them. What is the number, did you say?

A. A 1947 International BLD-250-35818?

A. Yes, sir.

Q. Is that your truck?

Mr. Ferebee: If Your Honor please, I object to that question, on the ground that the title certificate, issued by the Commissioner, Division of Motor Vehicles, determines the owner of the truck, and that any testimony given by this witness would be hearsay, and therefore inadmissible and irrelevant. The title certificate would be the best evidence of ownership.

Mr. Gilman: If Mr. Ferebee were correct, we could never set aside a title.

Mr. Ferebee: If Your Honor please, I think the title certificate is the best evidence of ownership of the motor vehicle. This evidence is not the best evidence, and is therefore objectionable.

The Court: I overrule the objection.

By Mr. Gilman:

Q. Is that your truck, Mr. Trant?
page 10 } A. Yes, sir.

Q. I mean, also the truck of the J. P. Trant and Company, Incorporated?

A. Yes, sir.

Q. And that truck was in charge of whom?

Mr. Ferebee: Your Honor please, I would like to have the record show that my objection continues to all this line of questioning. The title policy is available. The witness has it in his hand. Consequently, any evidence that he might give by word of mouth in contradiction to the title policy is inad-

J. P. Trant.

missible and irrelevant on this point of ownership. The best evidence as to who owns the truck is the registered owner with the Commissioner, Division of Motor Vehicles. I renew my objection. I think that now the Court will begin to see that testimony by this witness is admissible on this point.

The Court: Do I understand that the certificate of title is available?

Mr. Ferebee: He has it in his hand.

Mr. Gilman: I am going to develop that, Mr. Ferebee, as to just why it is in somebody's else's name.

Mr. Ferebee: It is not a question, if Your Honor please, as to why it is in someone else's name. It is a page 11 } fact that the title is in someone else's name. The title certificate is the best evidence of title. This witness, regardless of what he may think about the ownership of that truck, is governed and bound by the actual terms of the title certificate issued by the Commissioner, Division of Motor Vehicles. Consequently, evidence to the contrary is inadmissible on that point.

The Court: I think the objection would be well taken if there were some third person, but under the circumstances here I will continue to overrule your objection and grant your exception.

Mr. Ferebee: And with the understanding that my objection continues to all of this line of questioning?

The Court: To the whole line.

By Mr. Gilman:

Q. Who was in charge of that truck on the 24th of April, Mr. Trant?

A. W. B. Sorey.

Q. He was in charge of it and also had it in his possession?

A. Yes, sir.

Q. He kept it on his premises at all times?

A. Yes, sir.

Q. Did he have the privilege of using it as he saw fit?

A. Yes, sir.

page 12 } Q. If he wished to, he could let somebody else use it?

A. Yes, sir.

Q. And without objection to you?

A. That is right.

J. P. Trant.

CROSS EXAMINATION.

By Mr. Ferebee:

Q. Mr. Trant, do you have the title certificate for this 1947 International truck that has just been referred to?

A. Yes, sir.

Q. Have you had it in your hand and in your possession during all of this questioning by counsel?

A. Yes, sir.

Mr. Ferebee: I call for the production of the title certificate, and ask that it be introduced in evidence.

(Received and marked "Defendant's Exhibit No. 1.")

(Mr. Ferebee): I ask the Court for permission to withdraw the original and submit a copy of this title certificate so that the title, itself, may be returned to Mr. Trant.

The Court: Is there any objection?

Mr. Gilman: No, sir.

page 13 } The Court: Very well.

By Mr. Ferebee:

Q. Mr. Trant, I notice from this title certificate, issued by the Commissioner, Division of Motor Vehicles, which incidentally is No. 3098282, that the title to this 1947 International truck is in W. B. Sorey, Great Bridge, Virginia, with a lien in favor of J. P. Trant and Company, Incorporated, Portsmouth, Virginia, in the amount of \$2,550.42. There is no question of the fact, is there, Mr. Trant, that the actual title to this truck is in Mr. Sorey?

A. That is right.

Q. So that when you said that J. P. Trant and Company, Incorporated, was the owner, you meant that really—

Mr. Gilman: He can testify, please.

Mr. Ferebee: He is on cross examination, Mr. Gilman, if you don't mind.

Mr. Gilman: You are testifying now; you are not cross-examining.

The Court: Proceed with the cross examination.

By Mr. Ferebee:

Q. I will repeat the question, Mr. Trant. When you testi-

J. P. Trant.

fied on direct examination that this truck was owned by J. P. Trant and Company, Incorporated, what you really meant to say was that J. P. Trant and Company, Incorporated, has a lien on the truck, but that the actual title and page 14 } ownership is in Mr. W. B. Sorey?

A. That is right.

Q. That was the state of the title and the state of the lien on the title as of April 24, 1949, the date of this accident?

A. Yes, sir.

Mr. Ferebee: I have no further questions of the witness at this time but, if Your Honor please, I would like to reserve permission to put him on in connection with the defendant's case.

RE-DIRECT EXAMINATION.

By Mr. Gilman:

Q. Mr. Trant, I understand you to say that the J. P. Trant and Company, Incorporated, bought this truck and put it in Mr. Sorey's name for certain reasons?

A. Yes, sir.

Mr. Ferebee: If Your Honor please, I do not think the witness said anything like that.

Mr. Gilman: He say so now.

Mr. Ferebee: I object to the question on the ground that it is a leading question.

By Mr. Gilman:

Q. Why was the truck placed in Mr. Sorey's name?

Mr. Ferebee: If Your Honor please, I object to page 15 } this question on the ground that it is absolutely immaterial as to the motive for putting the title of any particular motor vehicle in any particular person's name. The title is shown by this certificate to have been in W. B. Sorey at the time of the accident. The motives for putting the title in Mr. Sorey's name are immaterial to this case, and I object to the question, sir.

The Court: Let him state the circumstances concerning the purchase of the truck.

Mr. Ferebee: I note an exception, if Your Honor please.

A. This truck was bought in Mr. Sorey's name on account

J. P. Trant.

of the quality of service that we got from the Norfolk agency, that we could not get on this side of the river at that time. The company could not buy a truck in Norfolk because it was on the Portsmouth side of the river.

By Mr. Gilman:

Q. But Mr. Sorey could buy it?

A. That is right;; because he was in the County.

Q. And the J. P. Trant and Company's money was put up for the purpose of this truck?

A. Yes.

Q. Your answer is "yes"?

A. Yes, sir.

page 16 } Q. And this is the same truck that was in an accident with the automobile of K. A. Bain on April 24 of this year in which his wife, Marguerite, was injured?

A. Yes, sir.

Q. And that truck is covered by insurance—liability insurance—with the United States Casualty Company?

Mr. Ferebee: If Your Honor please, I object to that question. The policy speaks for itself.

Mr. Gilman: I understood you were going to introduce that. I call for the policy.

Mr. Ferebee: Here it is. (Handing to Mr. Gilman.)

Mr. Gilman: And this truck is listed in this policy. I introduce this as an exhibit.

(Received and marked "Plaintiff's Exhibit No. 1.")

Mr. Gilman: That is all.

Mr. Ferebee: I would like to ask some further questions of this witness. Perhaps it would be better to develop the questions right now, as long as he is on the stand, if Your Honor.

The Court: All right.

RE-CROSS EXAMINATION.

By Mr. Ferebee:

Q. Mr. Trant, at the time this truck was purchased, the J. P. Trant and Company, Incorporated, knew that page 17 } the title was going to be put in Mr. Sorey?

A. Yes.

J. P. Trant.

Q. And the J. P. Trant and Company advanced the money for the purchase of it, but had the title intentionally put in Mr. Sorey's name?

A. Yes.

Q. And the J. P. Trant and Company, in order to secure itself for the amount of the purchase price, had a lien put on the title for the amount that it advanced?

A. Yes, sir.

Q. Mr. Sorey uses that truck for his own purposes, as well as for the purposes of the J. P. Trant and Company, Incorporated, does he not?

A. Yes. He could use it for anything that he wanted to. It is in his possession.

Q. He does, in fact, use it in his farming operations, does he not?

A. I think he does. He could do it and it would be perfectly all right.

Q. While the truck is being maintained by Mr. Sorey and kept by Mr. Sorey at his residence and farm at St. Brides, does the J. P. Trant and Company, Incorporated, exercise any control over that truck?

A. Yes. We could order it wherever we wanted it.

Q. But in the absence of any order, Mr. Sorey page 18 } exercises complete control over it?

A. Yes, that is right.

Q. Did you give any order to Mr. Sorey regarding the use of that truck on Sunday, April 24, 1949?

A. No, sir.

Q. Did anyone connected with J. P. Trant and Company, Incorporated, give any such instructions on that date?

A. Not that I know of.

Q. The business which your company conducts is never operated on Sunday, is it?

A. Very seldom.

Q. Did it conduct any operations on Sunday, April 24, 1949?

A. No, sir.

Q. Do you know Isaac Williams, the colored boy who was driving this truck on the day of the accident?

A. Yes. I knew he worked for Mr. Sorey.

Q. Did either you or anyone for or on behalf of J. P. Trant and Company, Incorporated, give permission to Isaac Williams to operate the truck on that date?

A. No, sir.

Q. Did you know that he was operating it?

J. P. Trant.

A. No, sir.

Q. Did anyone connected with your company know that he was operating it?

page 19 } Mr. Gilman: I doubt if Mr. Trant knows.

Mr. Ferebee: I am asking so far as his knowledge is concerned.

The Court: Of course, his answer would be purely within his knowledge.

(The last question was read by the reporter.)

By Mr. Ferebee:

Q. To the best of your knowledge.

A. Not that I know of.

Q. I notice from this insurance policy, which has been introduced in evidence by the plaintiff, that trucks listed in that policy are to be used principally for commercial purposes. So far as you know, has that truck ever been used for any purpose other than commercial purpose?

A. No, sir.

Q. Has any request ever been made to you or to your company for the use of that truck for any other than a commercial purpose?

A. Not that I know of.

Q. I notice also that in this policy it says that the use of the truck may be for personal, pleasure, family and other business purposes of J. P. Trant and Company, Incorporated. Has it ever been used for any of those collateral purposes, such as personal, pleasure, family and other business purposes?

A. Not that I know of.

page 20 } Q. Who usually operates that truck?

A. You mean who drives it?

Q. Yes, who drives it?

A. They change around from one to the other a lot of times. We have so many drivers that I would not know which one was driving a certain truck.

Q. Do you know whether or not the drivers who do actually drive that truck have drivers' licenses?

A. All of them are supposed to have drivers' licenses. We do not put any on who do not have drivers' licenses.

Q. Have you ever known it to be driven by anyone who did not have a driver's license?

A. No, sir.

J. P. Trant.

Q. Would your company grant permission to anyone to operate it who did not have a driver's license?

A. No, sir.

Mr. Gilman: I object, if Your Honor please. It is not pertinent to the issue. We are interested in what happened at this particular time. It is not the custom, or what Mr. Trant usually does, or what his employees usually do.

Mr. Ferebee: If Your Honor please, I submit it is material, because the driver who was operating the truck at the time of the accident was not a licensed driver. Consequently, it becomes necessary to establish the back-
page 21 } ground as to the use of the truck, whether it has or has not been operated by unlicensed drivers. That is the purpose of this line of questioning. I think Mr. Trant is entitled to answer the question—within his knowledge, of course.

The Court: Of course, his answer would only reflect what he, himself, would personally have done. As I understand, Mr. Sorey was an employee of Trant. Mr. Sorey was the one who had the truck.

Mr. Ferebee: But the insurance policy, if Your Honor please, is issued to J. P. Trant and Company, Incorporated, only, and not to Mr. Sorey. That is the purpose of this line of questioning.

By Mr. Ferebee:

Q. Mr. Trant, does Mr. Sorey work for the J. P. Trant and Company, Incorporated, on Sundays?

A. He would work for them at any time that it was necessary, but I do not know of any time in recent years that we have had to work on Sundays.

Q. Was he working for your company on Sunday, April 24, 1949?

A. Yes; he was employed at that time.

Q. But did he perform any acts for or on behalf of your company on that date?

A. I don't know.

page 22 } Q. You mean that so far as you know, he did not?

A. That is right.

Q. Has any judgment ever been obtained by Mrs. Marguerite T. Bain against J. P. Trant and Company, Incorporated?

A. I don't know.

J. P. Trant.

Q. You know that she sued your company, as well as Isaac Williams, and then she, through her counsel, took a non-suit as to your company?

A. That is right.

Q. So the answer is that she has not obtained any judgment against your company?

A. That is right.

Q. Has any written agreement ever been entered into between Mrs. Marguerite T. Bain and your company, whereby your company agreed to pay her any damage as a result of this accident in question?

A. Not that I know of.

Mr. Ferebee: No further question, Your Honor.

RE-DIRECT EXAMINATION II.

By Mr. Gilman:

Q. Mr. Trant, St. Brides is a considerable distance from your plant, isn't it?

A. Yes, sir.

Q. About how far?

page 23 } A. Between 25 and 30 miles, I reckon.

Q. And the same distance, or more, from your home?

A. Yes, sir.

Q. And Mr. Sorey had absolute charge of this truck, and what he did with it, or to whom he let have it, was all right with you?

A. That is right.

RE-CROSS EXAMINATION II.

By Mr. Ferebee:

Q. As a matter of fact, Mr. Trant, since Mr. Sorey was the owner of that truck, there was nothing that you could do to prevent him from using it any way he wanted to, was there, until you exercised your lien to take over the truck?

A. I don't get that.

Q. I will put it another way: Mr. Sorey is the registered owner of that truck. The J. P. Trant and Company, Incorporated, is the lienor—that is, they have a lien on the truck for \$2,550.42. As long as the title is in Mr. Sorey's name, he could do anything in the world he wanted with that truck until such time as you sought to enforce your lien, couldn't he?

A. Either way he could.

page 24 } HAYWOOD SOREY,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Bain:

Q. State your name, please sir.

A. Haywood Sorey.

Q. Where do you live, Mr. Sorey?

A. St. Brides.

Q. Where are you employed?

A. By Mr. Sidney Charlton.

Q. Do you live in the Village of St. Brides?

A. Yes, sir.

Q. Do you know where Mr. Bryant Sorey lives?

A. Yes, sir.

Q. How far from him do you live?

A. I guess about 100 yards.

Q. Is your home on the road which leads from the main highway to the Village of St. Brides?

A. Yes, sir.

Q. Do you know a colored man named Isaac Augustus Williams, whose nickname is "Smiley"?

A. Yes, sir.

Q. Do you know his wife?

A. No, sir, I don't know his wife; I don't know her.

Q. Were you at your home on Sunday morning,
page 25 } April 24, 1949?

A. Yes, sir.

Q. What were you doing that day?

A. Well, I was just sitting out there on the front porch that morning.

Q. Did you have occasion to see the colored man that I refer to as "Smiley" on that morning?

A. Yes, sir.

Q. What was he doing at the time you saw him?

A. He was driving by my house towards the highway.

Q. What was he driving?

A. An International log truck.

Q. Do you know whose truck that was?

A. Well, it was the one that Mr. Sorey had over at his house.

Q. When you saw him drive by in that truck, was anyone else in the truck with him?

A. Nobody but him and a woman.

Q. And a colored woman?

A. Yes, sir.

Haywood Sorey.

Q. In which direction were they proceeding on the highway when you saw them?

A. They were going towards the highway.

Q. Do you recall about what time that was?

A. Well, I just imagine it was about the middle page 26 } of the morning. It was sometime before 12 o'clock.

I just happened to be sitting out there on the porch, and he went by.

Q. Did you see that truck any more that day?

A. No, sir, I did not see it any more that day.

Q. Was it the same truck that was in an accident later that day?

A. Yes, sir. I seen it the next day. It was the same one.

Q. The same truck?

A. Yes, sir.

Q. How far from Bryant Sorey's home was the truck when you saw Smiley driving it?

A. Right in front of my house, about 100 yards.

Q. You say that is about 100 yards?

A. About.

Q. Was it coming from the direction of Bryant Sorey's?

A. Yes, sir.

Q. Does Bryant Sorey's home sit back in a big yard off the highway?

A. Beside the railroad track.

Q. And that is across the highway from where you live; is that correct?

A. Yes, sir; on the other side of the highway page 27 } from where I live.

Q. Are you related to Mr. Bryant Sorey?

A. Yes, sir; half brother.

Q. Do you of your own knowledge know where Smiley was going with the truck?

A. No, sir, I do not.

CROSS EXAMINATION.

By Mr. Ferebee:

Q. Mr. Sorey, on which side of the road do you live that runs from Mr. W. B. Sorey's house over to the Great Bridge road?

A. I live on the right side.

Q. As you go from St. Brides towards the Great Bridge road?

A. Yes, sir.

Haywood Sorey.

Q. Where were you at the time you saw the truck?

A. I was sitting in my front porch.

Q. You were sitting in or on your front porch?

A. On the front porch.

Q. And the truck passed in front of your house?

A. Yes, sir.

Q. Going to your right as you looked at the truck?

A. That is right.

Q. And the truck was about 100 yards from you?

page 28 } A. No, sir, it wasn't 100 yards from me then.

Q. How many—50 yards?

A. About the length of this room.

Q. How far would you estimate that to be?

A. I guess about 30 feet.

Q. About 30 feet?

A. Yes, sir.

Q. When did you first see the truck?

A. I seen it when it went by the house.

Q. When it was right in front of you?

A. Just before it got to me I seen it coming down and I happened to look up.

Q. You looked up as it was just opposite you?

A. Yes, sir.

Q. And as it was just opposite you, you saw two people in there?

A. Yes, sir.

Q. And the person sitting nearest to you in the cab of that truck was a woman?

A. Yes, sir.

Q. And there was somebody sitting on the other side of her?

A. Yes, sir.

Q. You could not tell who that was at the time?

page 29 } A. Yes, sir. When I noticed who it was, I threw my hand up.

Q. Did he wave back?

A. No, sir, I don't think he waved back. If he did, I did not see him.

Q. If he was sitting on the left-hand side of the cab and the woman was sitting on the right, how could you see him?

A. I seen him before the woman got right in front.

Q. You just finished answering my question by saying that you looked up when the truck was just opposite you, Mr. Sorey.

Haywood Sorey.

Mr. Bain: He testified that he saw the truck approaching him.

Mr. Ferebee: If Your Honor please, this witness is on cross examination.

The Court: Yes, sir.

By Mr. Ferebee:

Q. You answered my question by saying that when you looked up, the truck was directly opposite you, didn't you, Mr. Sorey?

A. I thought you meant before he got to me.

Q. "Directly opposite" means like I am sitting in front of you, doesn't it?

A. Yes, sir.

Q. That is what you understand "directly opposite" to mean, don't you? So when I asked you the question if the truck wasn't directly opposite you, you knew what I was asking you, didn't you?

A. Yes, sir. It was before. Before it got to me, I seen it coming, and I looked up at him and threw my hand up.

Q. Why did you answer my question by saying that when you looked up he was directly opposite you?

A. I thought you mean he was coming towards me like that before he got to me.

Q. If I am asking you, "Am I sitting directly opposite you now?" you do not think I mean, "Am I walking towards you?" do you?

A. No, sir.

Q. You know that I mean that I am sitting directly opposite you right now?

A. Yes, sir.

Q. So you understood that question at the time I asked you the question?

A. No, sir, I did not understand it when you first asked me.

Q. You did not understand it?

A. No, sir.

Q. Why didn't you tell me you did not understand it?

A. That was what I meant: When he was coming towards me.

Q. Tell us how far he was down to your left when you first did look up?

A. Well, he was about 30 feet, I guess, when I looked up and seen him.

Q. At that time you could not see who it was at all, could

Haywood Sorey.

you, because the corner post of that cab would be between you and the driver; isn't that right?

A. I could probably wait until the truck got up there so I could see who was in it.

Q. In other words, Mr. Sorey, you had to wait until the truck got directly opposite you in order to see past that right-hand corner post of the cab, didn't you, to see who was driving?

A. I could see kind of by the window. I never paid a whole lot of attention. I was just waiting for it to get there. I just happened to see him, and recognized him, and threw up my hand.

Q. You recognized him when he was directly opposite you?

A. Yes, sir.

Q. Again you answered my question by saying that you recognized him when he was opposite you. That was when you saw who was driving that truck?

A. When I seen him to my left, just before he page 32 } got to me.

Q. I have again asked you if you recognized him when he was directly opposite you, and again you said you did. Is that what you mean?

A. I saw him just before he got to me.

Q. Why didn't you say that in answer to my question?

A. I did not remember what you meant.

Q. You did not remember twice as to what I meant? Each time you misunderstood what I was asking you; is that correct?

A. Yes, sir.

Q. Mr. Sorey, you are decidedly unfriendly to Mr. W. B. Sorey, your half brother, aren't you?

A. Well, no, sir, not exactly. The man asked me would I testify to it, and I would.

Q. I did not ask you that. You and your half brother, Mr. W. B. Sorey, are on very bad terms, aren't you?

A. No, sir—and yes, sir, too, now.

Q. You have been for sometime?

A. Every time I quit him and get another job, he gets mad.

Q. And you are mad with him, also?

A. Up until this he has been speaking and I have been speaking.

Q. What do you mean by "up until this"?

page 33 } A. Up until this trial.

Q. You mean you are mad with him now?

A. No, sir, I am not mad with him.

Haywood Sorey.

Q. Is he mad with you?

A. I guess he must be. He told me Saturday—

Mr. Ferebee: I object to any remarks.

Mr. Bain: You asked him.

Mr. Ferebee: If Your Honor please, it is not responsive to my question.

Mr. Bain: You don't know whether it is or not until you have heard the answer.

Mr. Gilman: You asked as to the feelings existing between them, and he is prepared to tell you.

Mr. Bain: You called for an answer which you now object to, because you think it might be objectionable to you.

Mr. Ferebee: If Your Honor please, I would like to call the Court's attention to the fact that the question I asked him was whether he was or was not on good terms with his half brother, Mr. Sorey. I was not asking him as to the details of any transaction between them, or any conversation between them. If my friends wish, and are permitted by the Court to ask such questions on re-direct examination, that is their privilege, but certainly his answer now is not responsive to my question. I do not understand that I am to page 34 } be put in the position of being bound by any statement that he makes which is not responsive to the direct question that has been asked.

The Court: The question you asked was whether or not Mr. W. B. Sorey was now unfriendly to the witness?

Mr. Ferebee: Yes, sir.

By the Court:

Q. Answer that question.

A. I still think just as much of him as I ever did. I went up there Saturday—

Mr. Ferebee: Now, if Your Honor please, I think the witness again is straying from the question.

My Mr. Ferebee:

Q. Mr. Sorey, you have not talked to anybody about this case before today, of course?

A. No, sir.

Q. Not a soul?

A. Just Mr. Bain. He come and asked me would I testify that I seen the boy driving, and I told him, "Yes, sir."

Archie Sorey.

Q. He asked you to testify that you had seen the boy driving?

A. I was talking to Mr. Skulthrope, and he asked me did I see it, and I told him, "Yes, sir."

page 35 } Q. Who asked you?

A. Mr. Skulthrope.

Q. Who is Mr. Skulthrope?

A. A fellow who lives at St. Brides.

Q. Whom else have you talked to about this accident?

A. That is all.

Q. Mr. Skulthrope and Mr. Bain?

A. Yes, sir.

Q. When did you talk to Mr. Skulthrope?

A. He was talking about it.

Q. I asked you when you talked to him?

A. Probably a week later after the accident.

Q. When did you first talk to Mr. Bain?

A. I don't remember what day it was. It has been about a month ago, I guess. It may not have been that long.

Q. Didn't you talk to him before June of 1949?

A. I don't know, sir, what month it was.

Q. You know when this case was first tried against Isaac Williams in June of this year? You know that, don't you?

A. No, sir, I don't even know when that was.

Q. Well, it was tried in June of 1949. You had talked to Mr. Bain before then, hadn't you?

A. I don't know, sir, whether I had or not.

page 36 } Q. When was the last time you talked to Mr. Bain about this case?

A. I haven't said anything to him at all up until the day I come over here—Friday. I seen him that day. We were talking, but didn't say nothing about the case.

Mr. Ferebee: No further questions.

ARCHIE SOREY,

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

Examined by Mr. Bain:

Q. State your name, please sir.

A. Archie Sorey.

Q. Where do you live, Mr. Sorey?

A. I live in Berkley now. I lived in St. Brides until about three months ago.

Archie Sorey.

Q. Were you living in St. Brides during the month of April of this year?

A. Yes, sir.

Q. Were you there on April 24, 1949?

A. Yes, sir.

Q. Did you see an accident in which a truck, belonging to the Trant Lumber Company, and a car, belonging to Mr. Kenneth Bain, were involved?

A. I did not see it, but I was right there before page 37 } they got the little girl out of the car.

Q. You went to the scene of the accident?

A. Yes, sir.

Q. Do you know Mr. Bryant Sorey?

A. Yes, sir.

Q. What is your relationship, if any, to that man?

A. Just half brother; that is all.

Q. Did you see a colored man named Smiley at the scene of the accident?

A. He was in the truck when I got there.

Q. Was he still in the truck at that time?

A. He was standing about the front door; right in the door.

Q. Did you know him?

A. Yes, sir, I knowed him.

Q. After the accident what did you do?

A. I went and got Mr. Sorey and brought him back.

Q. Which Mr. Sorey do you mean?

A. W. B. Sorey.

Q. Where does he live?

A. He lives up at St. Brides, just across the railroad track.

Q. Were you in your car?

A. Yes, sir.

Q. What developed after you brought him back page 38 } to the scene of the accident?

A. The law come, and he took Smiley over and brought him to jail.

Q. To which jail was he taken? Do you know?

A. Norfolk County.

Q. And that is here in the City of Portsmouth?

A. Yes, sir.

Q. Did you have any conversation with Mr. Bryant Sorey after that?

A. He said, "Come on and carry me back home. We are going to get Smiley out of jail." I went on back, and he dressed, and took his car and drove them back to Portsmouth.

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1 case. is daughter to the Maryview Hospital. She was a trained nurse over there.

Q. Whose daughter?

A. Mr. Sorey's—Bryant's. Then we came over here and picked up Smiley. He went on his bond.

On the way back to the country Mr. Sorey said—

Mr. Ferebee: If Your Honor please, I object to any statement Mr. Sorey said.

The Court: I sustain the objection.

By Mr. Bain:

Q. Did the colored man, Smiley, make any statement?

Mr. Ferebee: If Your Honor please, I object to any statement made by the colored man Smiley, or Isaac page 39 } Augustus Williams. That is objectionable on several grounds, if Your Honor please. This is an action against the United States Casualty Company. Any statement made by any individual not in the presence of the United States Casualty Company would be hearsay and not admissible. The second ground is: Any statement he might make having to do with the use of the truck would be a conclusion, and not as to the circumstances under which the truck was gotten. Another ground is: It is not relevant because of the fact that it would call for a conclusion as to whether he did or did not have permission. Of course, I don't know exactly what the answer will be, but I have an idea that it will be along those lines. For any of those reasons the evidence would be inadmissible. I object to the question and to this witness' answering further along those lines.

Mr. Bain: If Your Honor please, the colored man Smiley was the defendant in the civil action, and a judgment was entered against him. He admitted that he was the driver of the truck on this particular night. In this particular suit we are concerned with the matter of his permission. Any statement that he made concerning that authority, or any statement that he may have made which would show that any improper action was involved, would certainly be admissible in this case to develop the conduct of the page 40 } individual, himself, who was the driver, and also his employer who had the authority to deal with him and to loan him the truck as he saw fit. That is what we are trying to develop at this time as far as Smiley is concerned.

Mr. Ferebee: If Your Honor please, I understand what

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my friend is seeking to develop, but he has not answered the objection which is that this would be strictly hearsay evidence. It is not binding on the United States Casualty Company. Isaac Williams, the driver of the truck, at no time was representing the United States Casualty Company. It is an unsworn statement, regardless of what it might be, that has no relevancy in this case, and consequently it would be objectionable as being strictly hearsay evidence.

Mr. Bain: ~~Any action by the J. P. Trant Company, or any of its employees or agents, is admissible against the insurance company. They have insured the company and, in insuring the company, they have insured the operation of these vehicles by any employee of the company who was authorized, either expressed or implied, to so operate. Any statement concerning that use is certainly admissible against the insurance company.~~

page 41 } Mr. Ferebee: If Your Honor please, the answer to that line of argument is that this colored man was not an employee of J. P. Trant and Company on Sunday, April 24, 1949. The evidence is in by Mr. Trant that none of his employees worked on Sunday; that nobody was acting for or on behalf of the J. P. Trant and Company on that Sunday with reference to this truck. Even though the man might have been working for J. P. Trant and Company during the week, he was not their agent on Sunday. Consequently, any statement he made is not a statement by J. P. Trant and Company. That still leaves unbridged the gap between J. P. Trant and Company and the United States Casualty Company. The defendant in this suit is the insurance company. Any statements made by anybody else, if they are objectionable on the ground of hearsay, they are objectionable and inadmissible in this particular suit. Consequently, I renew my objection to this line of answering by the witness, and this line of questioning by counsel.

Mr. Bain: If Your Honor please, Mr. Trant testified on the stand that for the past several years there had not been any occasion to work on Sunday, but he was an employee of the company, and it doesn't make any difference whether it is Monday or Sunday, or what day it is. He was
page 42 } an employee and on the pay roll of the company and used the property of that company on this particular day. So the fact that to say that Sunday is not a working day, to my way of thinking, has no merit, whatsoever. As far as bridging the gap between the J. P. Trant Company and the United States Casualty Company, they have written

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insurance for this company as to the operation of its trucks. Here is the driver of the truck who was involved in a serious accident. He, himself, has made certain statements. I submit to Your Honor that the United States Casualty Company, as the insurer, is bound by the statements of their own insured, which Smiley is in the position of.

The Court: Was Smiley Williams an employee of the J. P. Trant Company?

Mr. Ferebee: Actually I think the evidence will show—and the reporter can read it back—that Mr. Trant said he was employed by W. B. Sorey. We will have the reporter to read it back if there is any question about it. Regardless of that fact, if Your Honor please, he was not an employee of either the J. P. Trant and Company or Mr. Sorey on a Sunday when he was not employed by them. In other words, his days of employment are week days. On a Sunday page 43 } he has nothing more to do with W. B. Sorey or the J. P. Trant and Company than the Court does, or one of counsel sitting at this table. He is an outside individual—a stranger—and any act that he performs on that day is not for or on behalf of Mr. Sorey or the J. P. Trant and Company, Incorporated. So, I submit that anything he might say would have absolutely no bearing and would have no connection either with Mr. Sorey or with the J. P. Trant and Company, Incorporated. Doubly so does that apply to the United States Casualty Company. He has never been employed by them. The hearsay rule and the objection to the introduction of evidence on the basis of hearsay is not to be waived merely because here is an insurance company which has issued a policy. The same rules of evidence apply in a suit against an insurance company as they do in a suit against any other individual or person. Consequently, I say that if it is objectionable, if it is inadmissible because it is hearsay, it is likewise hearsay and inadmissible in this particular action.

Mr. Bain: As far as this colored man's being employed by W. B. Sorey, that was not my understanding at all. My understanding has been all the way through this case that the colored man is on the pay roll of J. P. Trant and Company, and his foreman is Mr. Sorey. It so happens page 44 } that the colored man lives right over there near where the foreman lives. But the foreman, Mr. Sorey, does not pay the colored man for his services. The colored man is subject to the directions of Mr. Trant, over here in Portsmouth, through his foreman.

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I submit again that being in that position, he is in the position of the insured under the policy, and any statement made by him would be admissible against the insurer.

The Court: I am going to overrule your objection. Let him answer the question.

Mr. Ferebee: I note an exception, if Your Honor.

By Mr. Bain:

Q. Go ahead and answer the question, Mr. Sorey, as to what the colored man, Isaac Augustus Williams, nicknamed Smiley, said while you were in the car?

A. We came on and picked up Smiley over here and went on back towards the country, back to where we were living. Bryant said, "Smiley, let's say that Pete borrowed the truck to save me and the company and the insurance company." He put Smiley out right there at the railroad track, and he carried me on home.

Q. What did the colored man Smiley say, Mr. Sorey?

A. Smiley said, "We will try it. I think he will say that he borrowed the truck."

page 45 } Q. Who is the Pete that was referred to?

A. That is the boy that stayed back there with them—Pete Griffin.

Q. Is that a colored man?

A. Yes, sir.

Q. Mr. Sorey, have you ever seen the colored man Smiley driving the truck of the company?

A. Not driving that truck, but I have seen him driving other trucks, coming from work. I worked with them a long time.

Q. You worked for the company?

A. Yes, sir.

Q. You have seen that colored man driving the trucks before?

A. Bringing them in in the evening. He would bring them in.

CROSS EXAMINATION.

By Mr. Ferebee:

Q. Mr. Sorey, what was the cause of the falling out between you and your half brother, W. B. Sorey?

A. I haven't fell out with him.

Q. You are not on good terms with him, are you?

A. He don't bother me and I don't bother him.

Archie Sorey.

Q. You don't have anything to do with him, either?

A. No, sir.

page 46 } Q. Why?

A. When a man treats me dirty, I go and get another job and leave him.

Q. So you believe your half brother, W. B. Sorey, treated you dirty?

A. Yes, sir.

Q. And consequently you hold that against him?

A. Yes, sir. I don't hold it against him; I just quit him and went somewhere else and got me another job.

Q. But since he did you dirty, you want to do him dirty?

A. I am not trying to do him dirty. I am just going to tell the truth.

Q. Let's see how much of the truth you are telling. On these occasions when you have seen Isaac Williams driving trucks, you say that he was coming from the woods?

A. I have seen him drive the truck from the woods, yes, sir.

Q. And they were trucks used in lumber operations, were they?

A. Yes, sir.

Q. Tractors?

A. Not tractors. I said trucks, that they haul the men on.

page 47 } Q. They were logging equipment, were they?

A. That is right.

Q. You have never seen him operate a 1947 International truck? You have just said that you didn't?

A. I have seen him drive a truck, too.

Q. A truck?

A. Yes, sir; to drive that truck.

Q. Why didn't you tell counsel that on direct examination?

A. I said I have seen him drive them trucks.

Q. You told counsel you had never seen him drive that truck, Mr. Sorey?

A. No.

Q. Why did you tell him that?

A. I didn't tell him that.

(That portion of the testimony was read by the reporter.)

By Mr. Ferebee:

Q. You answered Mr. Bain by saying that you had never seen him drive that truck, didn't you?

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A. I never seen him drive that truck, not that day; not that day, but before that.

Q. You did not qualify that by saying, "that day" in answer to his question, did you?

A. I just said I seen him drive the day before page 48 } then, or days before then—before that day.

Q. The day before which day?

A. That was during the week time when I was working with them.

Q. When did you stop working for Mr. W. B. Sorey?

A. Around four months ago. I went back to the Ford Plant.

Q. Four months ago would be around July, wouldn't it?

A. Yes; around four or five months. I would not say exactly.

Q. How long did you work for Mr. W. B. Sorey?

A. I have worked with them off and on ever since I have been big enough to work. I quit and stayed gone 14 months. He kept after me to come back, so I went back to him.

Q. When did you go back to him; that is what I mean.

A. I can't exactly tell you.

Q. It was this past summer, wasn't it?

A. It was during the summertime.

Q. That you went back to work for him?

A. Yes.

Q. And these times that you saw Williams operating a truck was during the summer?

A. Yes, it was during the summer, until I quit. I don't know exactly how long I stayed there. Maybe Mr. Trant can tell you how long I stayed there, or Mr. Sorey can page 49 } tell you.

Q. You have not talked to anybody about this case before today, have you?

A. No, sir.

Q. Not a soul?

A. Nobody; I didn't talk to nobody.

Q. Until today?

A. Until today.

Q. How did anybody know what you were going to testify to today?

A. Nobody wasn't supposed to know.

Q. They were not supposed to know, but they must have known or they would not have had you down here.

A. I got a summons to come to court.

Q. They summoned you without talking to you at all? You

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have not talked to anybody about what you have testified to today?

A. No, sir.

Q. How could you account for the fact that counsel for Marguerite T. Bain would subpoena you down here if they did not know what you were going to say?

A. Maybe he seen me down there that night, or seen me the day it was tried up yonder.

Q. Did you see Mr. Winston Bain at St. Brides on the night of the accident, April 24, 1949?

page 50 } A. I seen Mr. Bain that night. I did not say a word to him.

Q. You did not say a word to him?

A. No, sir.

Q. He just issued you a subpoena because he saw you down there at the scene of the accident and you had not talked to him before today?

A. No, sir.

Q. You never talked to him before today?

A. Friday he come up and asked, "Are you getting along all right?" I said, "Fine."

Q. You have never told him any of these circumstances that you have just related from the witness stand?

A. No, sir.

Q. And he is just as much surprised as anybody else to hear them from your lips today?

A. I guess he is. I will get up and tell the truth for anybody.

Q. Where do you work now?

A. For the Ford Motor Company.

Q. When did you have your falling out with W. B. Sorey?

A. We ain't had no falling out. I just quit.

Q. When did he do you dirty?

A. I don't think I have to answer that question,
page 51 } have I, Judge?

Mr. Ferebee: I think it is a proper question, if Your Honor please.

The Court: Yes, go ahead and answer the question.

A. I worked with him—

By Mr. Ferebee:

Q. I asked you when.

A. When did he do me dirty?

Isaac Augustus Williams (colored).

Q. That is the question.

A. He has done me dirty all his life.

Q. You never have liked him?

A. Never have.

Mr. Ferebee: No further questions.

ISAAC AUGUSTUS WILLIAMS (colored),
called as a witness on behalf of the plaintiff, having been first
duly sworn, testified as follows:

Examined by Mr. Gilman:

Q. Your name is Isaac Augustus Williams?

A. Yes, sir.

Q. Where do you live, Isaac?

A. St. Brides.

Q. How near to Mr. Sorey?

A. How near?

page 52 } Q. Yes.

A. About 100 yards, I imagine.

Q. Right across the street?

A. Yes, sir.

Q. Have you been working for the J. P. Trant and Com-
pany?

A. Yes, sir.

Q. How long have you been working for them?

A. Five or six years.

Q. In April of this year you were working for the Trant
Lumber Company?

A. Yes, sir.

Q. On the night of this accident, Isaac, you were driving
an International truck belonging to the J. P. Trant Lumber
Company, were you not?

A. Yes, sir.

Mr. Gilman: That is all.

CROSS EXAMINATION.

By Mr. Ferebee:

Q. Isaac, what kind of work do you do?

A. I run a loading machine—a skidder, they call it.

Q. That is used in the woods for lumber operations?

A. Yes, sir.

Isaac Augustus Williams (colored).

page 53 } Q. What days of the week do you work?
A. Monday until Friday night.

Q. Do you ever work on Sundays?

A. No, sir.

Q. Were you doing any work for Mr. Sorey or for the J. P. Trant and Company, Incorporated, on Sunday, April 24, the day of this accident?

A. No, sir.

Q. Do you have a driver's license?

A. No, sir.

Q. Have you ever driven Mr. Sorey's trucks?

A. No, sir.

Q. I wish you would tell the Court what were the circumstance surrounding the use of this truck on this particular Sunday.

A. All right, sir. My wife wanted to go and see her mother. I went over to see Mr. Sorey—I and Joshua Alexander Lee. I asked him could he loan the truck to Joshua Alexander Lee to take my wife over to see her mother.

Q. Who was it that you asked that?

A. Mr. Sorey.

Q. Mr. W. B. Sorey?

A. Yes, sir. He said yes, he could take it, if Joshua Alexander Lee did the driving. He took the truck over there to my wife's mother's and parked it.

page 54 } Q. About what time of day was it that you and Joshua Alexander Lee went to see Mr. Sorey?

A. I would say around 10 o'clock, I imagine.

Q. About what time was it that you left to go over to Great Bridge?

A. About 12.

Q. Who drove the truck from St. Brides over to Great Bridge?

A. Joshua Alexander Lee.

Q. Joshua Alexander Lee?

A. That is right.

Q. Who else was in the truck with him?

A. I and my wife.

Q. You and your wife?

A. That is right.

Q. After you got over to Great Bridge—which I think is where your mother-in-law lives—?

A. Yes, sir.

Q. —what happened to the truck?

Isaac Augustus Williams (colored).

A. Joshua Alexander Lee, he parked the truck. He caught the bus and went to Norfolk.

Q. Where did he park the truck?

A. At my wife's mother's home. He told me he was coming back on the 6 o'clock bus. When the bus come along, he didn't get off the bus. Mr. Sorey told Joshua Alexander to have the truck in before dark. He did not get off, page 55 } and I took the truck to bring it in to keep Joshua Alexander from having trouble with Mr. Sorey.

Q. At the time Lee went into Norfolk, what time did he say he was coming back out?

A. On the 6 o'clock bus.

Q. You say you met the 6 o'clock bus and he was not on it?

A. Yes, sir.

Q. Did he say anything to you about what to do with the truck if he did not get back?

A. No, sir.

Q. Did you ask him what to do with it if he did not get back in time?

A. No, sir.

Q. So when he did not show up on that 6 o'clock bus, you figured that in order to keep him from getting in trouble, you would take the truck and drive on back?

A. Yes, sir.

Mr. Gilman: I object to the form of the question. He is leading and cross-examining him about matters that were not brought out on direct examination. He is your witness, Mr. Ferebee.

Mr. Ferebee: If Your Honor please, he is on the witness stand as a witness for the plaintiff, as to the circumstances surrounding the use of the truck. These are mat- page 56 } ters having to do with the use of the truck. I submit that I am entitled on cross examination to ask him this form of questions.

Mr. Gilman: I submit it is a new matter brought out by Mr. Ferebee. He makes him his own witness. I only asked him if he was driving the truck of Mr. Trant on the night of the accident. That was all I asked him. Now, the circumstances under which he got the truck, why he was driving, and the permission whether expressed or implied, and so forth, are matters of defense. He is your witness as to those matters.

The Court: The general rule of evidence is that he is your witness as to any new matter which is brought out.

Isaac Augustus Williams (colored).

Mr. Ferebee: I will ask the questions in this fashion:

By Mr. Ferebee:

Q. Who was in the truck going from Great Bridge on the way back to St. Brides?

A. Back to St. Brides?

Q. Yes.

A. I and my wife.

Q. Had you ever driven a truck of Mr. Sorey before this occasion?

A. No, sir.

page 57 } Q. Had you ever asked him for permission to drive the truck at any time?

A. No, sir.

Q. As to the duties which you perform for Mr. Sorey, do they call for the driving of trucks?

A. No, sir.

Q. Why did you get Joshua Alexander Lee to go with you to see Mr. Sorey?

A. Because I didn't have no driver's license, and I knew he would not let me have the truck.

Q. What relation is Joshua Alexander Lee to you?

A. My uncle.

Q. What kind of work does he do for Mr. Sorey?

A. He drives a truck.

Q. He drives a truck for Mr. Sorey?

A. Yes, sir.

Q. At the time you were driving the truck on the way back you had this accident?

A. Yes, sir.

Q. At the time you were driving did you have permission, either from the Sorey or from J. P. Trant and Company, to drive that truck?

A. No, sir.

page 58 } RE-DIRECT EXAMINATION.

By Mr. Gilman:

Q. Joshua Alexander Lee is your uncle?

A. Yes, sir.

Q. Do you live with him?

A. No, sir.

Q. You live near him?

A. Yes, sir.

Isaac Augustus Williams (colored).

Q. You and your uncle live right there in sight of Mr. Sorey?

A. Yes, sir.

Q. You and Joshua went to Mr. Sorey to get the truck?

A. Yes, sir.

Q. You asked permission to carry your wife to see her mother?

A. Joshua Alexander used the truck to carry me and my wife to see her mother.

Q. Mr. Sorey told you to have the truck back by sundown?

A. He didn't tell me; he told Joshua Alexander Lee.

Q. Were you there?

A. Sir?

Q. Were you there?

A. Yes, sir.

Q. He was talking to both of you?
page 59 }

A. I wasn't the one driving.

Q. I understand that. You have said numerous times that he told both of you to have the truck back?

A. He told Joshua Lee to have the truck back.

Q. And Joshua did not get back to Great Bridge in time, so you say that in order to protect your uncle, you took the truck on in, or started to take it in?

A. Yes, sir.

Q. You and Joshua both work for Mr. Trant?

A. Yes, sir.

Q. The Trant Lumber Company?

A. Yes, sir.

Q. Is this the same man, Joshua Alexander Lee, that they call "Pete"?

A. That is right.

Q. I believe you were arrested?

A. Yes, sir.

Q. Who got you out of jail?

Mr. Ferebee: If Your Honor please, I submit that question is irrelevant.

Mr. Gilman: I am getting to the conversation.

The Court: I will sustain that. I do not think it has any bearing here.

By Mr. Gilman:

Q. Did this gentleman over there come with Mr. Sorey to get you out of jail?
page 60 }

A. Yes, sir.

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Isaac Augustus Williams (colored).

Q. That is Mr. Archie Sorey?

A. Yes, sir.

Q. And in the car going back home, what was the conversation about the accident and who was driving?

A. What was that?

Q. What was the conversation that you had with Mr. Sorey about the accident and about the person who was driving?

A. I told him how it happened; that was all.

Q. Did you say anything about the driver—

Mr. Ferebee: If Your Honor please, this witness is the plaintiff's witness, and that is certainly a leading question. I object to the form of the question, if Your Honor please.

Mr. Gilman: I am cross-examining him as to matters you brought out.

Mr. Ferebee: If Your Honor please, I did not bring out anything that had to do with the happenings after the accident. I did not ask him about getting him out of jail. This is the plaintiff's witness, and the plaintiff is entitled to ask him only questions on direct examination, if Your Honor please.

The Court: This is a rather unusual situation page 61 } pertaining to this witness. I think possibly that both of you are technically correct; but, I think in order to rule intelligently on it, it would be practically an impossibility. Go ahead and examine the witness.

By Mr. Gilman:

Q. What did Mr. Sorey say to you about keeping out of trouble? That you had better say that Pete had permission to use the truck?

A. Yes, sir.

Q. Didn't he say that?

A. What do you say now?

Q. You said, "Yes, sir."

A. What do you say?

Q. I say, didn't Mr. Sorey say to you, coming back in the presence of his half brother, that in order to keep out of trouble and to keep the company out of trouble, that you had better say that Pete was driving?

A. No, sir.

Q. Or that Pete was to drive?

A. Pete was supposed to drive, but he didn't ask me nothing at all.

Q. What?

A. He didn't ask me that.

Isaac Augustus Williams (colored).

Q. What did he say to you about that?

A. He asked me who was driving at the time of the wreck, and I told him.

page 62 } Q. Then what did he say?

A. He asked me why Pete wasn't driving, and I told him that he caught the bus and went to Norfolk.

Q. Then what did he say?

A. Nothing.

Q. That was all he said to you?

A. Yes, sir. He said I wasn't supposed to bring the truck in.

Q. You remember the State Police officer who carried you to jail?

A. Yes, sir.

Q. Didn't you tell him that Mr. Sorey told you that you could drive the truck?

A. I told him that we had permission to use the truck, meaning that he knowed the truck was on the road being used.

Mr. Gilman: That is all.

RE-CROSS EXAMINATION.

By Mr. Ferebee:

Q. You say that you and Lee went to see Mr. W. B. Sorey originally about 10 o'clock on this Sunday morning?

A. Yes, sir.

Q. And it was about 12 o'clock when you all left to go to Great Bridge?

A. Yes, sir.

page 63 } Q. Were you in that truck at any time before you started on the trip over to Great Bridge on that day?

A. No, sir.

Q. Did you make more than one trip between Mr. Sorey's house at St. Brides and Great Bridge on that day?

A. No, sir.

Q. It has been testified by one of Mr. W. B. Sorey's half brothers, Mr. Haywood Sorey, that this particular truck—a 1947 International truck—that was involved in this accident, went by his house sometime around the early morning or middle of the morning with only you and your wife in it. Is that correct?

A. No, sir.

Q. The only time you were in it was when you and Lee

W. B. Sorey.

and your wife were going over to Great Bridge; is that right?

A. Yes, sir.

Mr. Ferebee: That is all.

RE-DIRECT EXAMINATION II.

By Mr. Gilman:

Q. I understand you to say that Joshua Alexander Lee, your uncle, decided to go from Great Bridge to Norfolk?

A. Yes, sir.

Q. And he caught a bus?

page 64 } A. Yes, sir.

Q. What kind of bus?

A. Norfolk Southern bus.

Q. What time did he catch the bus?

A. 2 o'clock.

Q. He caught the 2 o'clock bus?

A. Yes, sir.

Q. At Great Bridge?

A. Yes, sir.

Q. Why didn't he drive the truck on in?

A. Because he wasn't supposed to drive it that far.

Q. He wasn't supposed to go any further than Great Bridge?

A. No, sir.

Q. You don't know why he did not get back, do you?

A. No, sir.

Q. Did he get tight, or something?

A. I don't know, sir.

Mr. Gilman: We rest, if Your Honor please.

page 65 } W. B. SOREY,

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

Examined by Mr. Ferebee:

Q. Your name is W. B. Sorey?

A. Yes, sir.

Q. Where do you live?

A. St. Brides.

Q. How old are you?

A. 52.

Q. What kind of work do you do?

W. B. Sorey.

A. Logging and farming.

Q. For whom do you do that type of work?

A. I have been farming for myself, and I have been logging for J. P. Trant and Company.

Q. What days of the week do you work for J. P. Trant and Company?

A. I have been working five days a week.

Q. What days?

A. Monday, Tuesday, Wednesday, Thursday and Friday.

Q. Were you working for them on Sunday, April 24, 1949?

A. No, sir, I wasn't working for them.

Q. Did you receive any directions or instructions or requests from the J. P. Trant and Company on that page 66 } Sunday to do any work for them?

A. No, sir.

Q. This particular truck that was involved in the accident in question, a 1947 International truck, is kept where?

A. It is kept at St. Brides, at my home.

Q. In whose name is the title to that truck?

A. W. B. Sorey's.

Q. Who has a lien on it?

A. J. P. Trant and Company.

Q. Who had custody and possession of that truck on Sunday, April 24, 1949?

A. I had possession of it.

Q. What is that truck used for?

A. It is used for hauling logs.

Q. Anything else?

A. It is used around the farm. If I want to move anything on the farm, or off the farm or to the farm, I move it with it.

Q. Isaac Williams, who has just testified, what kind of work does he do?

A. He runs a loading machine for me.

Q. Does he have a driver's license?

A. No, sir, he doesn't have any.

Q. Does he operate any trucks?

page 67 } A. No, sir. He operates a tractor around the farm at times.

Q. Has he ever operated any truck belonging to you or to the J. P. Trant and Company, Incorporated?

A. No, sir.

Q. What days of the week does he work?

A. He works Monday, Tuesday, Wednesday, Thursday and Friday.

Q. Does he work on Sundays?

W. B. Sorey.

A. No, sir.

Q. Did he work on Sunday, April 24, 1949, either for you or for J. P. Trant and Company, Incorporated?

A. No, sir.

Q. Is he paid by the day or by the week?

A. He is paid by the hour.

Q. Suppose it rains all week, does he get any pay?

A. No, sir.

Q. Did he get any pay from you or from J. P. Trant and Company, Incorporated, for anything that he may have done on Sunday, April 24, 1949?

A. No, sir.

Q. I wish you would tell the Court, if you will, please, Mr. Sorey, the circumstances surrounding the use of this truck on Sunday, April 24, 1949.

A. These two boys, Gus and Pete—

page 68 } Q. Wait. By "Gus," you are referring to whom?

A. Pete.

Q. Wait a minute.

A. Augustus Williams.

Q. Gus is Isaac Augustus Williams?

A. That is right.

Q. And Pete is who?

A. We call him "Smiley." We call him "Smiley" on the job.

Q. Who is Pete?

A. Pete is the fellow who has been driving. I think his name is Joshua Alexander Lee.

Q. Possibly it would be perhaps clearer and easier to keep them straight if you will refer to them as Williams and Lee?

A. Yes, sir.

Q. Please tell the Court what happened.

A. After I came home from church, Williams asked me to borrow the truck to take his wife up to his wife's mother who had a stroke. I asked him who was going to drive it and he said, "Uncle Pete is going to drive the truck." I said, "You can get the truck to take your wife up there."

Q. Who was present during that conversation?

A. Only the two and myself—only Lee and Williams were the only two.

page 69 } Q. To whom did you give permission to use the truck?

A. I gave Lee permission to use the truck.

Q. What type of work does Lee do for you?

A. He is a truck driver.

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W. B. Sorey.

Q. Does he have a license to drive?

A. Yes, sir.

Q. Who drove the truck away from your place? Do you know?

A. I don't know. I did not see the truck when it left.

Q. When did you next see the truck?

A. The next time I seen the truck was when my half brother came after me and said, "Your truck has had a wreck out there." Here he sits over there now. His name is Archie.

Q. Did either Lee or Williams talk with you after they came to see you about borrowing this truck in the morning up until the time of the accident?

A. No, sir. I never seen either one of them afterwards.

Q. At the time the accident took place, in which this particular truck was involved, was the driver of that truck, Isaac Augustus Williams, operating it with your permission?

A. No, sir. ~~I would have let him have it when he left there if I had wanted him to operate it with my permission.~~
page 70 } sion.

Q. Up until the time that this accident happened, with Williams driving it, had he ever operated that truck or any other truck of yours or Mr. Trant's?

A. No, sir.

Q. If Williams had asked for permission to drive the truck, would you have granted it to him?

A. No, sir.

Q. Now, Mr. Sorey—

Mr. Ferebee: If Your Honor please, the purpose of asking this question is to meet the evidence which was introduced over my objection at the time regarding the conversation between the other Sorey and the driver, Isaac Augustus Williams. It is being introduced solely to refute that, and is not being introduced for the purpose of substantiating or making out the defendant's case. I feel that it is incumbent upon me to have him testify to the conversation which took place in the car, for the sole purpose of contradicting the statement made here by Mr. Archie Sorey. I would like to have the Court bear that in mind as these questions are being asked.

By Mr. Ferebee:

Q. Mr. Sorey, I wish you would tell, please, what if any conversation was had in your automobile in return—
page 71 } ing from the Norfolk County Jail with Isaac Augustus Williams after you had gotten him out of jail.

W. B. Sorey.

A. No conversation that I know of; none.

Q. It has been testified to by Mr. Archie Sorey that on that ride home you told Williams to say that permission had been given to Lee to operate that truck, when actually you had given permission to Williams. Did any such conversation take place?

A. No, sir. May I ask him a question? Could I ask him a question?

Q. No. You will have to ask me, and I can put him back on the stand.

Mr. Ferebee: No further questions.

CROSS EXAMINATION.

By Mr. Gilman:

Q. Mr. Sorey, who reported the accident to you?

A. Archie Sorey.

Q. And then you went to the scene of the accident?

A. Yes, sir.

Q. Did *you* Police Officer Trower there?

A. I saw him there after—I don't know, but I judge about 30 minutes.

Q. Did you tell him that you had given this boy permission to use the truck?

page 72 } A. I told him that he did not steal the truck.

Q. Didn't you tell him that he had permission to use that truck?

A. Not to drive it. I did not tell him he had permission to drive the truck, no, sir.

Q. You deny having said that to the police officer?

A. Yes, sir.

Q. I expect to contradict you. Now, Archie reported the accident to you, and carried you to the scene of the accident and then carried you to town, did he not, to get Smiley out of jail?

A. Yes, sir; and also came over here to be a witness for us in the Trial Justice Court. He was sworn in and put on the outside like we were awhile ago, but never was called.

Q. You say that he did go with you to get Smiley out of jail?

A. Yes, sir, he went with me. He took my daughter to the hospital, and from the hospital come on down to jail and got Smiley out and went on home.

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Joshua Alexander Lee (colored).

Q. You say that there was not one word spoken about the accident?

A. I did not say there was any conversation about that.

Q. There wasn't any conversation about anything?

A. There wasn't any conversation about the page 73 } case—about the wreck.

Q. You mean right after there had just been an accident?

A. Yes, sir, I certainly do.

Q. And your man was involved and you had just gotten him out of jail the same night of the accident, and nothing was said about it?

A. Nothing was said about it.

Q. Not one word?

A. Not one word about it, no, sir.

Q. You didn't even ask Smiley why he was driving?

A. I didn't even ask him why he was driving.

Q. Because you knew he had permission to drive?

A. No, I didn't know it.

Q. Didn't you think it was quite strange that a man was driving your truck who should not have been driving, and you did not say anything about it to him?

A. I did not give him permission to drive the truck.

Q. You did not upbraid him or say a word to him about it?

A. There was no need to say anything to him, was there?

Q. Mr. Sorey, these two men work for the Trant Lumber Company under you?

A. Yes, sir.

page 74 } Q. And have been for sometime?

A. Yes, sir.

Q. And the three of you live right in sight of each other?

A. Yes, sir.

Q. Haywood Sorey lives at St. Brides?

A. Yes, sir.

Q. Right on the road?

A. Yes, sir.

Q. The house is within 25 or 30 feet of the road?

A. Yes, sir.

JOSHUA ALEXANDER LEE (colored),
called as a witness on behalf of the defendant, having been
first duly sworn, testified as follows:

Examined by Mr. Ferebee:

Q. Your name is Joshua Alexander Lee?

eme Court of Appeals of Virginia

shua Alexander Lee (colored).

Where do you live?

A. St. Brides.

Q. How old are you?

A. 40.

Q. What kind of work do you do down there?

A. I drive a truck.

page 75 } Q. For whom?

A. For Mr. Trant.

Q. Do you have a license to drive?

A. Yes, sir.

Q. What days do you work?

A. Monday, Tuesday, Wednesday, Thursday, and Friday, and sometimes Saturday.

Q. Do you work on Sundays?

A. No, sir.

Q. On Sunday, April 24, 1949, the date when this accident that we are interested in took place, did you do any work for either Mr. Sorey or J. P. Trant and Company, Incorporated?

A. No, sir, I did not do any work.

Q. I wish you would tell the Court, please, Joshua, the circumstances surrounding the use of the truck on that particular day?

A. Augustus come to me—

Q. Augustus is who?

A. The one we call Smiley.

Q. That is Isaac Augustus Williams?

A. Yes, sir. He come to me and asked me would I drive the truck to take his wife down to see her mother. She was ill with a stroke. I told him yes.

Q. Where does his mother-in-law live?

page 76 } A. Down near Great Bridge, at a place called Green Sea. I and him went over there.

Q. You went over where?

A. Over to Mr. Sorey's.

Q. That is Mr. W. B. Sorey?

A. Yes, sir; and asked him for the truck. He give me permission to drive the truck and take him and his wife down there. He told me to have the truck back by dark. I drove the truck down there and I parked the truck, and I caught a bus into Norfolk. I was supposed to catch the 6 o'clock bus out, but I missed that and had to catch the night bus out. When I got back, the truck was gone.

Joshua Alexander Lee (colored).

Q. When you and Augustus Williams went to Mr. Sorey, to which one of the two of you did he give permission to drive the truck?

A. Just me.

Q. What kind of work does Augustus Williams do for Mr. Sorey?

A. He runs a loading machine.

Q. Does he operate any trucks?

A. No, sir.

Q. Have you ever seen him drive or operate any truck for Mr. Sorey?

A. No, sir.

Q. Or for J. P. Trant and Company, Incorporated?

A. No, sir.

page 77 } Q. On this particular Sunday that we are talking about, how many trips did you make from St. Brides to Great Bridge?

A. How many in any trips?

Q. Yes.

A. Only one.

Q. Were you in that truck on more than one occasion?

A. No, sir.

Q. Who drove the truck from Mr. Sorey's house, where the truck is kept, over to Great Bridge?

A. I did.

Q. Who else was in the truck with you?

A. Isaac and his wife.

Q. How were you seated in the truck?

A. She was sitting in the middle and he was on the outside.

Q. You were behind the wheel?

A. Yes, sir.

Q. What permission, if any, did give to Augustus Williams to drive the truck?

A. I did not give him any.

Q. Did he ask you for any permission?

A. No, sir.

Q. If he had asked you for permission, would you have given it to him?

page 78 } A. No, sir.

Mr. Ferebee: No further questions.

Joshua Alexander Lee (colored).

CROSS EXAMINATION.

By Mr. Gilman:

Q. Joshua, I understand that you and your nephew, Isaac, went to Mr. Sorey, to borrow the truck to go to Great Bridge, or Green Sea?

A. Yes, sir.

Q. And he said, "All right," and asked who was going to drive?

A. I told him I was going to drive.

Q. You told him you were going to drive?

A. Yes, sir.

Q. When you got to Great Bridge or Green Sea, at the home of Isaac's mother-in-law, you decided to go to Norfolk?

A. Yes, sir. I was going to Norfolk, anyhow.

Q. What time was that?

A. Around 12 o'clock.

Q. 12 o'clock?

A. Around about that time; somewhere along in there.

Q. You must have left St. Brides then around 10:30 or 11?

A. No, sir. It don't take that long to run down there.

Q. What time did you leave St. Brides?

page 79 } A. I don't know exactly what time it was, but it
does not take over 25 or 30 minutes to run down
there.

Q. And you parked the car in the yard?

A. Yes, sir.

Q. Is that off the main road?

A. Yes, sir.

Q. How far from the main road?

A. As near as I could guess, I reckon it is about 100 yards.

Q. What bus did you take to Norfolk?

A. The bus in the afternoon.

Q. What bus?

A. The bus that comes from Elizabeth City.

Q. What time?

A. I reckon it was about 1 o'clock, I imagine.

Q. Don't you know there is not any 1 o'clock bus?

A. I didn't have no time.

Q. Don't you have any idea as to what bus you took?

A. I caught the bus that comes along there around 1, or something like that.

Q. Don't you know there is not any bus that goes along there at 12:30, or 12, or 1?

Joshua Alexander Lee (colored).

A. I did not say 12:30. I said that as near as I could guess at it, it was 1.

Q. Do you know the schedule of the buses?
page 80 } A. No, sir.

Q. It wasn't 11 o'clock, was it?

A. No, sir.

Q. And it wasn't as late as 2:15, was it?

A. It might have been; I don't know. I didn't have any time.

Q. What bus did you expect to take back?

A. The 6 o'clock bus.

Q. Six o'clock leaving Norfolk?

A. Yes, sir.

Q. Don't you know there is not any bus that leaves Norfolk at 6?

A. Yes, sir, the bus leaves at 6.

Q. It leaves from where?

A. The Norfolk Southern bus terminal.

Q. At 6 o'clock?

A. Yes, sir.

Q. On the hour?

A. In the evening.

Q. And you missed that one?

A. Yes, sir.

Q. Why did you leave the keys in this truck that you were entrusted with?

A. We don't ever take them out. When we are at home, we always leave them in there. Nobody ever bothers them.

Q. In fact, you left them in there for most any-
page 81 } body to drive who wanted to?

A. No, sir.

Q. What bus did you finally get out of Norfolk?

A. I caught the night bus, around 9 o'clock, I guess.

Q. That is, leaving Norfolk?

A. Yes, sir.

Q. And you got home at what time?

A. I guess it was around quarter past 10.

Q. You left Norfolk and got home at quarter after 10?

A. As near as I can guess at it.

Q. You did not stop at Great Bridge, did you?

A. I stopped there where I left the truck at.

Q. You mean you left Norfolk at 9 o'clock and got off at Great Bridge? How did you get from Great Bridge?

A. I caught a ride.

Q. With whom?

Joshua Alexander Lee (colored).

A. I don't know who the fellow was.

Q. You got a ride with a stranger?

A. Yes, sir.

Q. And you do not know his name?

A. No, sir.

Q. Where did he pick you up?

A. From where I parked the truck and come back to the highway, right there at the store.

page 82 } Q. What time was that?

A. I don't know, sir, what time it was. I know that I got to St. Brides around quarter past 10.

Q. As a matter of fact, you never drove that bus to Great Bridge nor did you go to Norfolk?

Mr. Ferebee: I think the question is improper. You used the word "bus," Mr. Gilman.

The Court: Do you mean truck or bus?

Mr. Gilman: Both.

By Mr. Gilman:

Q. You did not drive that truck to Great Bridge?

A. Yes, sir.

Q. And you did not catch any bus to Norfolk?

A. Yes, sir.

Q. You haven't the slightest idea what time it was?

A. No, sir; no more than I can guess at it. It was somewhere around 1, or something like that.

Q. What time did you get to Great Bridge from Norfolk?

A. I don't know exactly what time I got there from Norfolk. I caught about the 9 o'clock bus. I went up there and the truck was gone, and I went back to the highway. There was a fellow at the store, and I caught a ride with him to St. Brides.

Q. What caused you to miss the bus?

A. I was a little bit late getting to the bus terminal.

page 83 } (Thereupon, a short recess was taken, after which the following occurred:)

Mr. Ferebee: If Your Honor please, I believe we are still on the introduction of the defendant's case. I would like to offer in evidence Common Law Book No. 47 of the Circuit Court of Norfolk County, Virginia, Page 342, which has in it the proceedings which took place in this court on the 29th day of June, 1949, in the case Marguerite T. Bain, plaintiff, v.

J. P. Trant and Company, Incorporated, a corporation, and Izaac Augustus Williams, Defendants. The order is then recited in the book. I should like to offer the order in evidence, which is as follows:

“Marguerite T. Bain, Plaintiff,

v.

“J. P. Trant and Company, Inc. a Corp., and Izaac Augustus Williams, Defendants,

MOTION.

(6779-M)

“This day came the plaintiff, Marguerite T. Bain in person and by counsel, and the defendant, J. P. Trant and Company, Inc., a Corp., in proper person and by counsel, and the defendant Izaac Augustus Williams appeared in person; Thereupon came a jury, to-wit: Rudolph L. Brinkley, Sam Townsend, M. S. Bodwell, Floyd L. Jones, Arthur Jakeman, Frank

S. Dill and S. C. Roughton, who were duly sworn
page 84 } the truth to speak upon the issue joined, and after
having heard the plaintiff's evidence, the plaintiff
by Counsel stated to the Court that he did not desire to prosecute this case further as to the defendant, J. P. Trant and Company, Inc., a Corp., and desired the same to be discontinued. Thereupon it is Ordered that the plaintiff be nonsuited, and pay to the defendant, J. P. Trant and Company, Inc., a Corp., Five (\$5.00) Dollars damages according to law, besides the costs by the said defendant, J. P. Trant, and Company, Inc., a Corp., about their defense expended.

“After having fully heard the evidence and argument of Counsel, the jury retired to their room to consult of a verdict, and after sometime, returned into Court, having found the following verdict, ‘We the Jury find for the plaintiff Marguerite Bain, the sum \$750.00.’

“Thereupon it is considered by the Court that the plaintiff, Marguerite T. Bain, recover against the defendant, Izaac Augustus Williams, in the sum of Seven Hundred and Fifty (\$750.00) Dollars, the amount by the jury in their verdict ascertained, the interest thereon at the rate of six (6%) per cent from the 29th day of June, 1949, until paid and costs.”

W. B. Sorey. P. E. Trower.

page 85 } W. B. SOREY,
being recalled, further testified as follows:

Examined by Mr. Gilman:

Q. Mr. Sorey, you testified that the truck in question was titled in your name?

A. Yes, sir.

Q. It is actually owned by the J. P. Trant Lumber Company?

A. Yes, sir.

Mr. Gilman: That is all.

Mr. Ferebee: If Your Honor please, I object to that question on the ground that it tends to vary the certificate of title. The same objections, which I stated at great length at the beginning, apply with equal force to the answer of the witness on that point. The title clearly shows that the owner is W. B. Sorey, and that the lienor is J. P. Trant and Company, Incorporated. I submit that that question, and the answer of the witness to that question, is irrelevant and inadmissible, and should not have been permitted, and should be struck out, and I so move, if Your Honor please.

The Court: I will grant your exception.

page 86 } TROOPER P. E. TROWER,
called as a witness in rebuttal, having been first
duly sworn, testified as follows:

Examined by Mr. Gilman:

Q. State your name, Mr. Trower.

A. Preston E. Trower.

Q. You are a member of the State Patrol Force, are you not?

A. Yes, sir.

Q. And have been for how long?

A. 10 years.

Q. Did you investigate the accident of Mr. Bain's automobile and the Trant Lumber Company's truck on the night of the 24th of April of this year?

A. Yes, sir.

Q. Did you see Mr. W. B. Sorey there?

A. Yes, sir.

Q. This gentleman here?

A. Yes, sir.

P. E. Trower.

Q. Did you see Smiley, the driver—I believe his name is Isaac Williams?

A. Isaac Augustus Williams, yes, sir.

Q. Did you have any conversation with either or both?

A. Yes, both of them.

Q. What did they say with reference to permission to operate the truck?

Mr. Ferebee: If Your Honor please, I object to that question on the grounds previously stated. First, that it is hearsay and not binding on the defendant; second, that any statement made by this particular man at the time of the accident would at best express only his conclusion as to his understanding about the operation of the truck; and, third, on the ground that the best evidence as to what his authority was, or was not, at any given time is the circumstances surrounding the original turning over of the truck to him, or to anyone who gave permission to him. Consequently, the answer of this witness to that question is irrelevant, immaterial, and inadmissible.

The Court: I overrule your objection.

Mr. Ferebee: I note an exception.

By Mr. Gilman:

Q. Go ahead, sir.

A. The driver stated to me that at the time of the accident, and at the time he had the truck in his possession, he had permission to use this truck from his foreman, Mr. Sorey. Also Mr. Sorey stated that he had permission from him to use the truck, and that he was the foreman and in charge of the Trant truck in question.

Q. Did either of them mention another driver, page 88 } or anything of the sort?

A. No, sir.

CROSS EXAMINATION.

Mr. Ferebee: Without waiving my objections, if Your Honor please, I would like to cross-examine the witness on that point.

By Mr. Ferebee:

Q. Officer Trower, you have testified that the driver said he had permission to use the truck; is that correct?

P. E. Trower.

A. Yes, sir.

Q. And that was all he said?

A. That is right.

Q. You did not ask him whether he had permission to operate the truck—that is, to drive the truck, as distinguished from using the truck?

A. No. I merely assumed—

Mr. Ferebee: I object to his assumption, if Your Honor please.

The Court: I think he can state his reason for not pressing it farther than that.

A. He stated he was the driver at the time of the accident and had permission to use the truck. I assumed that that was all the information necessary for me to acquire at that time. There was no question in my mind as to page 89 } whether he had permission to use the truck and somebody else drive it for him. That did not cross my mind at all.

By Mr. Ferebee.

Q. You did not ask him any questions as to where the truck had been, when it left St. Brides and when it got to any other place?

A. I did not go into any detail with him so far as that is concerned.

Q. As a matter of fact, you were investigating another accident at the same time you were investigating this, were you not, so that you were pretty busy at that time?

A. I possibly was; maybe so. I don't know, Mr. Ferebee. Probably I was. Anyway, I did investigate this one, and we made an arrest at the scene of the accident.

Q. Of another person not involved in this accident at all?

A. Yes, sir.

Q. Likewise, when you testified that Mr. Sorey said that the colored boy could use the truck, you did not distinguish between the use of the truck and the operation of the truck?

A. No, sir.

Q. You did not ask Mr. Sorey whether he gave permission to Isaac Williams actually to drive the truck?

A. No, I did not do that.

P. E. Trower.

page 90 } Mr. Ferebee: That is all.

RE-DIRECT EXAMINATION.

By Mr. Gilman:

Q. You were there how soon afterwards, Mr. Trower?

A. Well, I have it that the accident occurred approximately 7 o'clock on the night of the 14th of April. I was quite a distance from the accident at the time I received the call, but I immediately left and went there to the scene. I would be afraid to say now how long it took me to get there, or how long it was after the accident happened before I arrived.

Q. Shortly afterwards?

A. The car was still in the same position that it ended up in after the impact. As to the time it took me to get there, or how much time had elapsed between the time I got the call and the time I arrived, I would not attempt to state.

Mr. Bain: If Your Honor please, I would like to introduce into evidence a bus schedule of the Norfolk Southern Bus Corporation, which was presented by Mr. E. M. Fletcher, the manager, as to the schedule of the buses between Great Bridge and Norfolk.

page 91 } Mr. Ferebee: If Your Honor please, I object to the introduction of it. It is not a schedule. It is merely something that is typed by somebody who is not here, and who is not subject to cross examination. This is not a schedule. It is something that was typed up. Certainly it is not the best evidence.

The Court: I will sustain your objection.

Mr. Gilman: We rest, if Your Honor please.

Mr. Ferebee: If Your Honor please, at this time I should like to make a motion to strike all of the plaintiff's evidence. That will involve an argument on the law and the case, too.

Does Your Honor wish to hear that now or should we come back after lunch and start in when we are fresh and do not have to be interrupted?

(The motion was continued until after lunch.)

page 92 } JUDGE'S CERTIFICATE.

I, Edward L. Oast, Judge of the Circuit Court of Norfolk County, Virginia, do hereby certify that the foregoing is a

true and correct transcript of the testimony and proceedings of the case of Marguerite T. Bain *v.* United States Casualty Company, tried in said court on the 7th day of November, 1949, and includes all the testimony offered, the motions and objections of the parties, the rulings of the Court, and the exceptions of the parties, and all other proceedings of said trial.

I further certify that the exhibits offered in evidence, as described by the foregoing record, and designated as Plaintiff's Exhibit No. 1 and Defendant's Exhibit No. 1, are all of the exhibits offered upon said trial, and the originals thereof have been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within 60 days after the final order in said cause, and that the attorneys for the plaintiff had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 4th day of January, 1950.

EDWARD L. OAST,
Judge.

page 93 } CLERK'S CERTIFICATE.

I, E. T. White, Clerk of the Circuit Court of Norfolk County, Virginia, do hereby certify that the foregoing transcript of testimony and other proceedings of the trial of the case of Marguerite T. Bain *v.* United States Casualty Company, duly certified by the Judge of said court, together with the original exhibits introduced upon the trial of said case, identified by the initials of said judge, were filed in my office on the 4th day of January, 1950.

E. T. WHITE,
Clerk
By A. W. SNOW, D. C.

page 94 } And at another day, to-wit: the 3rd day of October, 1949, and order of Court was entered in the words and figures following, to-wit:

This day came the plaintiff by counsel, and on his motion, it is ordered that this case be docketed.

The defendant appeared by Edward S. Ferebee, its attor-

ney, and pleaded not guilty, to which the plaintiff replied generally, and on which plea, issue is joined.

And at another day, to-wit: the 7th day of November, 1949, an order of Court was entered in the words and figures following, to-wit:

This day came the plaintiff in person and by counsel and the defendant by Edward S. Ferebee, it's Attorney, and neither party demanding a jury, the Court proceeded to hear and determine the whole matter of law and fact, and after having fully heard the evidence and argument of counsel; it is considered by the Court that the plaintiff, Marguerite T. Bain, recover against the defendant, United States Casualty Company, in the sum of Seven Hundred Eighty-Eight Dollars and Fifty (\$788.50) Cents, with interest thereon at the rate of six (6%) per cent from the 7th day of November, 1949, until paid and costs.

Thereupon the defendant by counsel excepted to the action of the Court in pronouncing judgment against the defendant, and the defendant signifying a desire to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to said judgment; It is ordered that
page 95 } execution of said judgment be suspended for a period of sixty (60) days, upon the defendant or someone for them entering into and acknowledging a bond in the penalty of One Thousand (\$1,000.00) Dollars.

I, E. T. White, Clerk of the Circuit Court of Norfolk County, do hereby certify that on November 16, 1949, the United States Casualty Company, with New Amsterdam Casualty Company, their surety, entered into and acknowledged a combination Suspending and *supersedeas* bond in the penal sum of \$1,000.00 as required in the preceding order. The said bond being conditioned according to law.

E. T. WHITE,

Clerk,

By A. W. SNOW, D. C.

page 96 }

CLERK'S CERTIFICATE.

I, E. T. White, Clerk of the Circuit Court of Norfolk County, Virginia, do certify that the foregoing is a true and correct transcript of the record in the case of Marguerite T.

Bain, *v.* United States Casualty Company, lately pending in our said Court.

I further certify that the same was not made up and completed and delivered until the attorney for the plaintiff had received due notice in writing thereof and of the intention of United States Casualty Company to apply to the Supreme Court of Appeals for a writ of error and *supersedeas* to the judgment therein.

E. T. WHITE,
Clerk Circuit Court of
Norfolk County

By A. W. SNOW, D. C.

A Copy—Teste:

M. B. WATTS, C. C.

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