

Record No. 5387

**In the
Supreme Court of Appeals of Virginia
at Richmond**

**VIRGINIA ELECTRIC AND
POWER COMPANY**

v.

WILLIE O. MABIN

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

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

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

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5387

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 12th day of September, 1961.

VIRGINIA ELECTRIC AND POWER COMPANY,
Plaintiff in Error,

against

WILLIE O. MABIN, Defendant in Error.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of Virginia Electric and Power Company a writ of error and *supersedeas* was awarded it by the Chief Justice of the Supreme Court of Appeals on September 11, 1961, to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 10th day of February, 1961, in a certain motion for judgment then therein depending wherein Willie O. Mabin was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of sixty thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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* * * *

In the Court of Law and Chancery of the City of Norfolk,
on the 14th day of October, 1960.

* * * *

ORDER.

This day came again the parties, the plaintiff in person and by counsel and came as well the defendant by its counsel, and pursuant to adjournment came again the jury to-wit: William H. Lloyd, Albert C. Leggett, James Latta, Earl Ainsley, Robert E. Gray, Bertram Freund, and Norman B. Corson, who now having heard all the evidence, the plaintiff, by counsel, moved the Court to strike the defendant's evidence upon the grounds that the defendant was negligent as a matter of law, which was the proximate cause of the injury, and to submit the case to the jury on the question of contributory negligence and damages, which motion after having been fully heard and maturely considered by the Court is overruled, to which action of the Court, the plaintiff, by counsel, duly excepts, thereupon the defendant, by its counsel renewed its motion as heretofore made to strike the plaintiff's evidence and enter up Summary Judgment for the defendant, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court, the defendant, by counsel duly excepts.

Now the jury having heard all the evidence and argument of counsel returned a verdict in the following words and figures, "We the jury find for the plaintiff and fix the damages at \$50,000.00," thereupon the defendant moved the
page 25 } Court to set aside the verdict of the jury and enter
up Summary Judgment for the defendant, upon the grounds that there was no evidence to support the verdict, and that the verdict is contrary to the law and the evidence, or in the alternative grant the defendant a new trial upon the issues in the case on account of all the errors committed in the case.

The further hearing of which motion is continued.

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In the Court of Law and Chancery of the City of Norfolk,
on the 10th day of February, 1961.

This day came again the parties, by counsel and the motion heretofore made to set aside the verdict of the jury and grant the defendant a new trial upon the grounds that the said verdict is contrary to the law and the evidence, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court the defendant, by counsel, duly except.

Whereupon it is considered by the Court that the said plaintiff recover of the said defendant the sum of Fifty Thousand Dollars, (\$50,000.00), with interest thereon to be computed after the rate of six per centum per annum from the 14th day of October, 1960, until paid together with his costs about his suit herein expended.

To all of which action of the Court the defendant, by counsel, duly except.

And thereupon the said defendant having signified it's intention of presenting to the Supreme Court of Appeals of Virginia, a petition for a writ of error and *supersedeas* to the judgment herein, it is ordered that execution upon said judgment be suspended for a period of sixty days from the date hereof, upon the said defendant or someone for it entering into and acknowledging a proper suspending and *supersedeas* bond, conditioned according to law, before
page 28 } the clerk of this Court, in the penalty of Sixty
Thousand (\$60,000.00) with surety to be approved
by said clerk.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To Mr. W. L. Prieur, Jr., Clerk, Court of Law and Chancery
of the City of Norfolk, Norfolk, Virginia:

Defendant Virginia Electric and Power Company hereby notes an appeal from judgment entered on February 10, 1961, upon verdict of the jury on behalf of plaintiff and against defendant in the sum of \$50,000.00, with interest thereon from October 14, 1960, and defendant hereby signifies its intention of filing petition for writ of error and *supersedeas* with the Clerk of the Supreme Court of Appeals of Virginia or with one of the Justices of that Court within the time prescribed by law.

Defendant assigns as error:

1. Failure of the trial court to grant defendant's motion to strike the evidence at conclusion of plaintiff's testimony and at conclusion of all the testimony; and
2. Failure of the trial court to grant defendant's motion to set aside the verdict of the jury and enter up final judgment for defendant on the ground that the verdict is contrary to the law and the evidence.

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VIRGINIA ELECTRIC AND
POWER COMPANY
By ARCHIBALD G. ROBERTSON
T. L. SAWYER
JOHN M. HOLLIS
LEWIS T. BOOKER
Counsel.

WILLCOX, COOKE, SAVAGE &
LAWRENCE

National Bank of Commerce Building
Norfolk 10, Virginia

HUNTON, WILLIAMS, GAY, POWELL
& GIBSON

1003 Electric Building
Richmond 12, Virginia
Of Counsel.

CERTIFICATE.

I certify that I have served a copy of this Notice of Appeal and Assignment of Error on Messrs. Davis and Boyd, counsel for plaintiff, by mailing a copy to their office, 724 Royster Building, Norfolk, Virginia, this 27th day of March, 1961.

JOHN M. HOLLIS.

Filed 3-27-61 Court of Law and Chancery.

By L. M. CALVERT, D. C.

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Mr. Boyd: May it please the Court, we would like to offer into evidence certain interrogatories taken in this case by Davis and Boyd, as propounded, and we can identify them by reading them into the record.

The Court: I understand. If there is no objection on the part of counsel, I will mark them received, mark them as "Plaintiff's Exhibit 1," and I will deal with it as one exhibit.

Mr. Boyd: Mr. Davis will read the questions, and I will read the answers. This is questions by our firm to the Power Company. Mine will be the answers of the Power Company.

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• • • • •

Q. State whether the wire was insulated, covered or bare, at the time the plaintiff received the injuries.

A. Bare.

Q. State the distance the wire was above the roof, with any variations due to sag or difference in height of cross-arms on the two poles between which the wire was strung.

A. On the northeast corner of the house (front), the wire was six feet one inch above the roof.

On the southeast corner of the house, rear, the wire was two feet five and one-half inches above the roof.

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• • • • •

Q. State the location of the wire in feet from the easterly edge of the roof, to a point on the front edge of the roof perpendicular from the wire, and to a similar point at the rear edge of the roof.

A. The wire was a distance of one foot ten inches from the easterly edge of the roof at the front edge of the roof, and a distance of four and one-half inches from the easterly edge at the rear edge of the roof.

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Mr. Boyd: It is stipulated that United States Weather Bureau at the Municipal Airport, Norfolk, Virginia, reports the weather condition on July 17, 1959 as follows: "At 11:00 a. m., 78° temperature, humidity 74%, wind seven knots or eight miles per hour, direction northeast. At 12:00 noon, on

July 17, 1959, the temperature was 78°, humidity 78%, and the wind was eleven knots, or twelve and a half miles per hour east northeast."

Vol. I.
page 9 } There was no precipitation or thunder showers reported.

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N. MERRILL BECK,
witness called by Counsel for plaintiff, having first been duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Boyd:

• • • • •

Q. Mr. Beck, at our request, did you make a survey of
property located on the corner of O'Keefe Street and Johnson
Avenue?

A. Yes, sir, I did.

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• • • • •

Q. You have indicated on this plat certain figures. When
you indicated a ground elevation figure of 47.39, what does
that mean?

Vol. I. A. It means at forty-seven and 39/100 of a foot
page 14 } above a certain arbitrary plane.

Q. Will you explain what you mean by that ar-
bitrary plane, so we can tell what the figures on here mean?

A. I don't want to confuse anybody. In order to avoid
negative numbers, we pick an arbitrary elevation. In this
room, if we had to do something, we'd say the floor is elevation
fifty, and the ceiling is sixty. Subtract fifty from sixty, you
get ten foot. We don't want to get negative numbers. If we
called that zero, out on the ground would be minus three.
It would be confusing.

Q. So you picked a relative, arbitrary figure from which you
can deduct?

A. Yes, sir. They are in feet.

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The Court: This is "Plaintiff's Exhibit 3."

Webster M. Chandler.

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Mr. Boyd:

Q. Mr. Beck, you have on here certain indications, and so that the jury will have this clear, I want to ask you, you have on here ground elevation 47.48?

A. Yes, sir.

Q. And elevation of roof edge 66.88?

A. Yes, sir.

Q. How would you ascertain the distance from the ground to the roof?

A. Subtract the smaller number from the larger.

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WEBSTER M. CHANDLER,
witness called by Counsel for the plaintiff, having first been
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Davis:

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Q. Now, Mr. Chandler, are you familiar with the
Vol. I. safety criteria and standards in the electrical in-
page 19 } dustry today?

A. I believe so, sir.

Webster M. Chandler.

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Q. What are those national standards which are accepted in the industry all over the United States?

A. The standard for pole line construction and maintenance are outlined in the National Electrical Safety Code.

Q. Do you have a copy of that code with you?

A. Yes, sir, I do.

Q. Can you refer to it, please, and see if you can locate in that code the standard that would apply to the installation and maintenance of a wire carrying 2400 volts of electricity?

A. Yes, sir. In paragraph 234C-4-A, the clearances for wires carrying the voltage of 2400 volts are, above buildings or from buildings, are three feet horizontal and eight feet vertical.

Q. What would be the requirements for such a wire two feet five and one-half inches from a tin roof vertical?

A. It should be eight feet above that roof.

Q. But assuming that the power company wanted to install a 2400 volt wire up against the house, or at that distance of the house, what would be required to enable them to

Vol. I. do that?

page 21 } A. The only way I know that that can be done would be to install an insulated cable, a cable in which the outside covering was sufficient to prevent any transfer of voltage through it.

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CROSS EXAMINATION.

Examined by Mr. Booker:

Q. Mr. Chandler, is it standard construction practice to use this insulated cable you just referred to?

A. Yes, sir, I would say it is standard construction practice in some areas.

Q. Is it used here in Norfolk?

A. I know of several specific cases where it is used.

Q. For general construction purposes, it is used in Norfolk?

A. I wouldn't say general, no, sir.

Dr. William Clarke Pole.

Q. How large would that be in diameter?

A. I would say that a cable insulated for operation at this voltage would probably be an inch in diameter outside, maybe slightly less than an inch.

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page 22 } RE-DIRECT EXAMINATION.

Examined by Mr. Davis:

Q. You say you know of several instances in Norfolk where that is installed?

A. Yes, sir.

Q. Tell us one.

A. One specifically I know of on Redgate Avenue just east of Colonial. The conductor goes north of Redgate along the side of a house.

Q. And it is insulated?

A. Yes, sir. It is a high voltage cable installed between poles in that particular instance.

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DR. WILLIAM CLARKE POLE,
witness called by Counsel for Plaintiff, having first been duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Davis:

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Dr. William Clarke Pole.

Q. Dr. Pole, did you have occasion to treat Willie Mabin here for any injuries that he received in July of 1959?

A. I did, yes, sir.

Q. Will you tell the Court and jury what his condition was when you first saw him, and what treatments, if any, you used?

A. I first saw Mr. Mabin in the emergency room of the Norfolk General Hospital on July 17, 1959, and the brief history that we obtained was one of falling off of a second story building.

He stated that he stood up and his back struck an electrical wire and he fell two stories to a hard dirt surface below. His complaints at that time were those of pain in the low back, and pain in the left leg.

Upon examination, he was in moderate distress. The lower portion of the back was tender, and there was tenderness and swelling over the right hip area, and motions of the right hip were painful.

There was a compound fracture or fracture extending through the skin in the bone of the lower leg on the left side, immediately below the knee, and the skin was cut
Vol. I. or lacerated for about two inches.

page 34 } We obtained x-rays following this, and there was
a fracture of the body of the first lumbar bone in the back. This is above what we call the low back at about the belt.

There were multiple fractures of the right ilium, or hip bone, and also of the pubic bone in the pelvis.

These were in fairly good condition; and the left upper tibia, or bone immediately below the left knee, was fractured, and this was the one that was compounded through the skin and was displaced.

After supportive therapy and general physical and what have you, Mr. Mabin was taken to the operating room and the wound of the left lower leg was cleaned. The bones were put in good condition, and the skin was closed and he was put in a long plaster cast, and admitted to the hospital.

The post-operative condition that day and the following day was uneventful.

On July 19, two days later, he complained of numbness in his toes. He was seen at that time by another member of my group, who called Dr. Joseph T. McFadden, a neuro-

Dr. William Clarke Pole.

Vol. I. surgeon, and he performed a myelogram or dye test
on the back, to see if there was pressure on the
page 35 } spinal cord.

This failed to show any pressure, and the following day, he still had this numbness, so we removed part of the cast to be able to check more accurately the status of the legs, and at that time, he had normal sensation, but he was unable to move either lower extremity below the hip.

He was seen by Dr. John Byrd on July 22, who is an internist, and given a general physical examination, and he was again seen by Dr. McFadden who performed a second myelogram on July 22 and demonstrated the defect at the level of the first lumbar vertebra where the fracture occurred.

Later in the day, Dr. McFadden operated in this area and found pressure on the cord. From an orthopedic viewpoint, Mr. Mabin remained on a so-called Stryker frame. It is a bed that can be turned face up or face down without the patient moving, for the fracture of his spine.

The fracture of his leg was maintained in a splint or cast. They were changed at various times, and the fractures of the pelvis were simply treated with the bed rest.

These were followed by x-ray, and the patient was taken from this frame and put into a regular bed when
Vol. I. there was sufficient healing for it.

page 36 } He was also seen by Dr. Patrick Devine, who is an urologist, because of the paralysis of the muscles of the bladder and of the bowels.

The pelvis went on to heal, which was sufficient to permit the patient to be on a regular bed, and then to sit up; and by the same token, the back progressed nicely, and we applied a so-called dorsal lumbar support, or a heavy canvas corset with steel stays, and allowed him to sit up in bed with this, and when the tibia had healed sufficiently, we removed the cast and started walking.

There was no return of any muscle function below the knee, and both feet tended to turn in, so we ordered and had fitted short leg braces to hold the feet in proper position, and to help stabilize the lower leg.

There was not sound union of the fracture in the left lower leg for approximately a year, and this produced some symptoms of pain, but he was able to get up and walk with it.

Mr. Mabin was discharged from the hospital on January 15, 1960, following a program of walking or beginning ambulation about the floor with a walker, which is a four-poster type of

Dr. William Clarke Pole.

platform which gives the patient something to hold
Vol. I. to, and then he progressed to crutches and was
page 37 } discharged with crutches; but at this time, he was
unable to walk except with assistance.

He was followed in my office on February 22 at which time he could move about slowly with someone steadying him and wearing his braces and supports and so forth, and on February 22, x-rays of the pelvis showed that these fractures had healed very soundly. The leg bone showed a lack of sound healing at that time.

On April 20, he was able to walk with a very slow and somewhat unsteady gait; and on June 16, he was able to walk alone with crutches with somewhat slow, bent over type of gait.

I last saw Mr. Mabin on August 29, at which time there was essentially no change from the previous examination.

Q. From your examination, Doctor, can you tell us his situation in regard to bowel and urine control, as far as you noticed that?

A. I have questioned him each time in the office as to bowel control, and he has so far gained no return of control in the bowels.

Q. Can he actually walk on those legs at this
Vol. I. time?

page 38 } A. Yes, sir, with crutches and with braces.

Q. Does he have any use or motor use of his legs from the knees down?

A. No, sir.

Q. Can you tell us whether or not as a result of his injury there is present atrophy in his muscles?

A. There is. There is fairly marked atrophy of the legs below the knees.

Q. Will you explain to the jury what atrophy is?

A. It is a wasting or diminution in size of a muscle when that part is not used.

Q. I show you a picture of his legs, and ask you, is that what you mean, the thinness and wasting away of those legs?

A. Yes. No muscle volume or mass to the calf region, and the picture also shows some turning in of the feet and some downward attitude of the toes which are consistent with the paralysis.

Q. Will that become more pronounced or not?

A. It probably would if he did not wear the shoe and brace.

Dr. William Clarke Pole.

Q. Can you also point out where he had this compound fracture of the leg, on this picture?

A. Yes, sir. Immediately below the knee and Vol. I. this is the area of the compounding and of the page 39 } surgical repair, the left knee, the left lower leg.

Q. You say the last time you looked at an x-ray of that leg, had the leg completely healed?

A. There was not sound union, no, sir.

Q. Would the question of his age have something to do with that or not?

A. Not particularly. In other words, he has what you call not a sound union of the compound fracture of that left leg. Technically, he has a delayed union. We expect a sound union.

Q. Did you notice on any part of his body any evidence of a burn?

A. On admission, we did not raise him up to examine that part of his back. Two or three days later there was a transfer, a horizontal line approximately six inches in length.

Q. Where was it?

A. Across the upper back, about the level of the shoulder blades.

Q. I show you another picture of his back.

The Court: Identify the picture for the record.

Mr. Davis: P-9.

Q. I show you Plaintiff's Exhibit 9, and ask you Vol. I. if you can identify any markings on his back as a page 40 } residual of the burn you just mentioned.

A. The two scars on the upper back are at the level of the transverse area which was initially consistent with the superficial burn. The entire area healed, but the two small areas we see on the photograph are areas of scar tissue, the burn apparently being deeper in those areas than elsewhere.

Q. Can you tell us about this? You did not perform that?

A. That is a scar from Dr. McFadden's spinal surgery.

Q. Doctor, in your opinion, will Mabin ever be able to walk in a normal fashion?

A. No, sir.

Q. What would you state the percentage of his disability is with reference to his ability to follow any gainful occupation?

George P. Smith.

A. That would be one hundred per cent disability.

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Q. Can you tell us the number of daily visits made to this man on your bill?

Vol. I. A. We billed one hundred sixty-eight. I probably
page 45 } made about twice that many.

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GEORGE P. SMITH,
witness called by Counsel for the Plaintiff, having first been
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Boyd:

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Q. Are you familiar with a house that is located on the corner of O'Keefe and Johnson Street, number 775 as shown on Plaintiff's Exhibit 4?

A. Yes, sir.

Q. That is Johnson Avenue?

A. Yes, sir.

Q. You know this house?

A. Yes, sir.

Q. Who owns this house?

A. I and my wife.

George P. Smith.

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Q. I am asking you at the time the pole was over here, where the X was, and was moved, was anything else done in this area?

A. I think, I don't think, I think it was moved to widen the street, because that is where it was.

Q. What else was done? Did you see anything else done? Was anything else moved out here?

A. The corner was rounded off there.

Q. The curb was moved?

A. Yes, sir.

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Q. Will you tell me what kind of roof is on top of this house?

A. Tin roof.

(Witness back on stand.)

Q. Has that roof ever been painted?

A. Yes, sir.

Q. Does the roof have a television aerial on it?

A. Yes, sir.

Q. Has the roof ever been repaired?

A. Yes, sir.

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WILLIE O. MABIN,
plaintiff called by counsel, having first been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Davis:

Q. You are Willie O. Mabin. Are you the plaintiff in this case?

A. That is right.

Q. Mr. Mabin, how old are you?

A. I will be seventy-three my next birthday.

Q. Do you recall being hurt back last year in July?

A. Yes, I do.

Q. Where were you when this happened?

A. I was at the corner of O'Keefe and Johnson Avenue.

Q. What had you gone there to do?

A. I went there to repair a leak in the roof.

Vol. I. Q. Had you done some other work there on that
page 77 } same building?

A. Yes, I had. I had fixed a leak on the front.

Q. Where was this leak on the roof that you were going to fix this day?

A. That leak was right near the edge of the gutter.

Q. Was that on the O'Keefe Street side?

A. Yes, sir.

Q. Where had you been working prior to June of 1959?

A. I was working at the Norfolk Navy Yard.

Q. Did you retire that month?

A. I retired the first of last June, twelve months ago.

Q. At the time before you retired, and after and since you retired, did you undertake to do odd jobs like roof repairs and so forth?

A. Yes; little jobs around different places, I did.

Q. How much were you able to earn in that sort of activity?

A. Well, sometimes I earned forty dollars a week, sometimes fifty, and sometimes forty, and sometimes thirty-five dollars a week.

Vol. I. Q. On this particular day, were you on, was this
page 78 } the building of George Smith at the corner of Johnson and O'Keefe?

A. It was.

Q. Can you tell us what you did there that morning?

A. I went up there to work on the opposite side, and there was a fellow that came in from Atlanta, and I told him I'd be

Willie O. Mabin.

through in a few minutes. I had a leak to fix over, and I went across on the other side.

Q. Did you use the ladder to get up on the roof?

A. Yes, I did. I put the ladder up on the little low part to get on the roof.

Q. Was that in the rear of the house?

A. Kind of on the corner to the opposite side, in the back.

Q. Did you have any tools with you or material?

A. I had a bucket of cement and a trowel and a hammer.

Q. How were you dressed, Willie?

A. I was thinly dressed. I had on a light shirt, light under-shirt and summer pants.

Vol. I. Q. When you got up on the house, did you see
page 79 } a wire up there?

A. I did.

Q. Did you know that that wire was not insulated?

A. I did not.

Q. Did you know that wire carried dangerous high voltage electricity?

A. No, I didn't.

Q. Did you know that you could get hurt by that wire?

A. I knew I could get hurt by it; that if it had no insulation on it.

Q. Did you think it had insulation on it?

Mr. Hollis: Your Honor, the witness just said it did not have insulation on it. I don't see now how he thought he did or didn't.

A. I heard that. I heard the wire didn't have any insulation on it.

Mr. Davis:

Q. Had anyone warned you about that wire being dangerous?

A. No, sir.

Q. Do you know anything about electricity?

A. I don't.

Vol. I. Q. Did you notice any signs on the house or
page 80 } roof or attached to the wire or anywhere else
stating it was "high voltage electricity, beware"?

A. No, sir, I didn't see any signs at all.

Q. How was the wire about the roof? About how high was it where you went to work, the very place you were going to work?

Willie O. Mabin.

A. It was just about, to my idea, now just about, well, not quite six feet.

Q. I mean where you were going to do the work that you went up there to do?

A. Oh, well, it was much lower there, just low enough when I turned around like that, it hit me in the back.

Q. Were you under the wire?

A. I was.

Q. What position did you get in to do this work?

A. Kind of stooped forward because the leak was right on the edge. I had my trowel in my hand, and Mr. Morris said something to me at that time, and I felt the wire hit me in the back and just about the time I went to see where, when I turned to see what it was, that is all I remember.

Q. You heard someone on the ground speak to Vol. I. you, you say?
page 81 } A. Yes, sir.

Q. Was there any other way to get to the place that you had to make the repairs except the way you did?

A. Well, now, if I had stretched a double section ladder, which I didn't have, why no doubt I could have reached it.

Q. But from the top of the roof where you were working, there was no other way to get to it?

A. No, sir, it wasn't.

Q. Were you careful in getting under the wire not to come in contact with it?

A. Yes, I was that.

Q. Did you know there was any danger on top of that roof from the wire?

A. I did not.

Q. Was it windy that day?

A. Yes, the wind was blowing.

Q. Can you tell the Court and jury whether just before you were injured you noticed that wire move?

A. Yes.

Q. When was that?

A. When I was going over there, I saw it moving, Vol. I. but I didn't feel it was any danger to do this little
page 82 } job, and I just reached under there and began to do the job, and that is what happened.

Q. After you felt something touch you in the back, did you notice the wire move?

A. I didn't get a chance to see the wire any more. At the time I started to look, that is the time I come off the roof.

Q. Do you remember falling?

Willie O. Mabin.

A. I don't remember even falling. I remember when I hit the earth, though.

Q. Do you have a distinct recollection of anything that happened after that?

A. Sir?

Q. Do you have a very good memory of anything that happened after you were shocked?

A. Yes, I remember someone telling me not to move.

Q. I see.

A. I was trying to get up, but I couldn't move.

Q. Can you state how far in feet above the roof this wire was right where you were, doing this work?

A. Well, I can't directly say how high it was, but
Vol. I. the highest part of it was almost as high as I
page 83 } was.

Q. How far up the roof were you doing this work? About how far up from the back of the house?

A. Well, I could show you.

Q. Have you seen this plat before?

A. Yes, I have.

Q. This is O'Keefe Street, and this is Johnson Avenue?

A. Yes.

Q. This is the rear of the house. This is the front of the house?

A. Yes, sir.

Q. Take the pencil, Mabin, and put it down where you think you were on the edge of the roof at the time you were hurt.

A. This is O'Keefe Street?

Q. Yes, and this is the top of the house. This is Johnson Avenue, and this is O'Keefe.

A. And this is the top.

Q. That is the edge of the roof, and this is the edge of the roof along here, you see.

A. Right here.

Q. Well, put a cross mark there, and put "W.O.M." for the plaintiff.

Vol. I. For the record, that appears to be about one-
page 84 } third of the distance from the rear of the house
toward the front of the house.

Where was this wire with reference to the valley on which you were working?

A. My idea, it was running at an angle across the valley.

Q. It was right over the valley?

Willie O. Mabin.

A. Right over the valley.

Q. And when you were working under the wire, the wire was right over you?

A. Yes, it was.

Q. Can you give us some sort of an estimate of about how close you were to the wire while you were under it, trying to do this work?

A. I was just about a foot and a few inches.

Q. You estimate that was the distance between you and the wire?

A. Yes, sir.

Q. Did I understand you to state that you felt something touch you?

A. I felt something touch me, and I kind of slightly looked around. I didn't get a chance to look around because when it come back, it come back with so much force, it struck me with so much force that it burnt my top
Vol. I. page 85 } shirt, undershirt, and burned a streak across my
shoulder.

Mr. Davis hands clothing to Messrs. Hollis, Sawyer, and Booker.)

Q. I show you two garments, and ask you if you recognize these?

A. Yes, sir. This is the shirt I had one.

Q. Is this the undershirt you had on?

A. That is the undershirt I had on.

Q. Now, are these the holes you were referring to where you were shocked?

A. That is right.

Mr. Davis: (Showing clothing to jurors) This is the shirt, and this is the undershirt.

If Your Honor please, I'd like to enter these as an exhibit.

The Court: Any objection?

Mr. Hollis: No, Your Honor.

The Court: Received. Marked "Plaintiff's Exhibit 14 and 15."

Mr. Davis:

Q. Did I understand you to say you felt anything when the shock hit you?

Willie O. Mabin.

A. Yes. When it first touched me, I didn't know
Vol. I. what it was. I didn't pay so much mind, but when I
page 86 } slightly looked around, it seized me and that is all I
remember, until somebody told me not to move on
the ground.

Q. Did you state exactly what position you were in at that time?

A. I was kind of down on my hands and knees, one hand down and the other position to work.

Mr. Hollis: At what time?

Mr. Davis:

Q. Was that just before you were hurt?

A. Yes, sir. Just as near as I can get it at around 11:00 o'clock, in the day.

Q. Were you hurt immediately after that, while you were in that position?

A. Yes, sir, that is right.

Q. Did you state to Dr. Pole that you stood up?

A. I tell you. I didn't state to Dr. Pole I stood up. Of course, at that time, my impression was it was directly after I got in the hospital, and I didn't know exactly what I was saying. Of course, I never like to dispute nobody, nothing they say, but I don't remember telling him that I stood up.

Q. Do you have any idea about what you might have said?

A. I have no idea even about what I said, because
Vol. I. I was in so much misery, and I was suffering so
page 87 } bad.

Q. Did you stand up on that roof?

A. No, sir. Just like I told you—

Q. Was there room enough under that wire for anybody to stand up?

A. Between the wire and the edge of the roof?

Q. Where you were working?

A. I don't think it was. I don't think it was. I don't know positive. I don't think it was.

Q. Do you know what caused the wire to swing?

A. What caused it? The wind was blowing.

Q. Was it a pretty good breeze, or how can you describe it?

A. It was a pretty good breeze, yes, it was.

Q. Do you know the direction of it?

A. It was going right across the house.

Q. From the east that would be?

A. Yes, sir.

Willie O. Mabin.

Q. Were you ever in the roofing business?

A. Sir?

Q. Were you ever in the roofing business.

A. I did a little work around. I used to have, I didn't have a shop or anything like that, not a licensed shop to do

Vol. I. business.

page 88 } Q. You did it on odd job basis?

A. That is right.

Q. Mabin, before you were hurt, how was your general health?

A. My health? I was in perfect condition.

Q. You were pretty active for your years, were you?

A. Yes, sir, I was; just like a boy.

Q. Were you active? Were you active in working with boys' groups at that time?

A. Yes, I worked right along with them.

Q. Were you teaching Sunday School at that time?

A. Yes, I was.

Q. Was that at the Goodwill Baptist Church?

A. That is right.

Mr. Davis: Witness with you.

CROSS EXAMINATION.

Examined by Mr. Hollis:

Q. What date were you born?

A. I was born September 15, 1887.

Q. Wouldn't that make your present age seventy-three?

Weren't you seventy-three on your last birthday?

Vol. I. A. I believe it would.

page 89 } Q. Now, I believe you stated that you were retired from the Navy Yard on June 1 of 1959. How many years had you worked for the Navy Department?

A. Well, I worked in the sheet metal shop. I worked about fifteen years.

Q. Isn't it true that you worked in the Navy Yard for two or three months in 1941?

A. It is. I, yes, I did.

Q. And then I believe you worked there from 1942 until you retired in 1959?

A. I retired in 1959.

Q. Didn't you start work there in 1942 before that?

A. I just can't recall now.

Willie O. Mabin.

Q. It was back during the war, wasn't it, that you went to work over there?

A. I reckon so.

Q. And didn't you also work for the government back in 1917 and 1918?

A. I did.

Q. What kind of work did you do for the government in 1917 and 1918?

A. I was a boat builder's helper.

Q. Was that in the Navy Yard?

Vol. I. A. In the Navy Yard.

page 90 } Q. And then when you went back to work in the Navy Yard, what kind of work did you do?

A. Let me see. When I went back there that time, I worked at the shipwright's shop, I believe, mostly in the dock.

Q. Then you changed over to another job, I believe. What was that?

A. That was sheet metal.

Q. What kind of work did you do there?

A. Just a sheet metal helper.

Q. Did you work inside or outside?

A. Outside. Metal help.

Q. How long did you do that kind of work?

A. I don't know that.

Q. Just approximately.

A. Let's see. I guess it was about a year and a half at that, I think.

Q. What type of work were you doing on the outside on the sheet metal?

A. We were building rooms and setting in cabinets and one thing and another like that from shop seventeen.

Q. When you went from shop seventeen, which is the sheet metal shop, where did you go next?

Vol. I. A. I went to the machine shop, shop thirty-page 91 } eight.

Q. And about how many years did you work in the machine shop?

A. I went in there in 1950 and came out in 1959, June 1.

Q. I believe you were what was called a machinist helper, were you not?

A. That is right.

Q. And you worked as a marine machinist helper at times, did you not?

A. I don't know.

Q. Did you work on the outside, on ships sometimes?

Willie O. Mabin.

A. Yes, sir.

Q. What kind of work would you do on these ships?

A. As machinist? Well, it was on diesel turbine engines, you know. I helped the machinist take them down, and I'd go to the shop and get tools, one thing and another like that.

Q. And did you come in contact with any electricity while you were working over there?

A. Well, yes. But all the electricity I came in contact with was barred in. They had protection.

Vol. I. Q. Did they ever give any instructions to you
page 92 } while you worked in the Navy Yard on safety?

A. Yes. We had a safety meeting the first of every month.

Q. And did they give you a book or some instruction books on safety, too?

A. That is right.

Q. And was there anything in that book about electricity and safety?

A. I think there was something about electricity and in regard to dull tools and one thing and another.

Q. Anything in there about not touching electricity or electric wiring?

A. No, I didn't see anything.

Q. You didn't see that?

A. No, sir. I might have read it, but I have forgotten.

Q. But these stand-up safety meetings, was electricity discussed from time to time?

A. They had most of the electricity meetings in the shops, but they talked mostly about my kind of work in the machine shop.

Q. Didn't they say something to you about electricity from time to time at those safety meetings? Not how to use it, but about staying away from it?

Vol. I. A. You go down in the ship, you'd see a sign
page 93 } up there, "Danger, so many thousand volts."

Q. And those signs, you knew when you saw one of those, of course, to stay away from electricity, would you not?

A. Sure.

Q. If you saw that sign, you'd stay away from it?

A. Yes. It had a covering, not a covering but kind of a hedging around it to keep people from slipping and falling in or something like that.

Q. At the stand-up safety meetings, was electricity, electric safety discussed?

Willie O. Mabin.

Mr. Davis: Counsel is repeating himself. He asked him that once before. Don't think he should keep going over the same ground.

Mr. Hollis: I don't think he answered.

Mr. Davis: He answered your previous question. He said those were held in the electric shop.

The Court: Cross examination. I will allow it.

Mr. Davis: I note exception. Counsel is going over the same ground.

Mr. Hollis:

Q. Did they ever discuss electric safety at these stand-up safety meetings in the machine shop?

Vol. I. A. No, sir, they never discussed it.

page 94 } Q. Did you attend all those meetings?

A. In the Yard, I'd go to them unless they had them and I didn't know where they had them, because our safety meeting was always held on the outside, and the inside work, their safety meeting was held in the shop.

Q. Besides your safety meetings, didn't your leading man sometimes talk to you about safety?

A. Practically every day he would tell us about safety.

Q. When your leading man would tell you about safety every day, didn't he from time to time tell you to stay away from electric wires?

A. No, he didn't especially specify that. He usually specified carefulness of going on the dock and carefulness in keeping your hand on the hammer so you wouldn't hit nobody, and many things like that, but so far as discussing electricity, that didn't come in our line.

Q. Isn't it true that sometimes they would tell you to keep your tools grounded when you were using electric tools?

A. They always advise for every workman or mechanic to work with perfect tools; to keep your tools sharpened.

Vol. I. Q. Did they tell you to keep them grounded
page 95 } when you used electric tools?

A. I don't know about that.

Q. You don't know about it?

A. I know about machine tools.

Q. There were some machine tools that operated on electricity?

A. Machine tools worked on the engines I had reference to.

Q. Are there machine tools that work on electricity?

Willie O. Mabin.

A. Yes. That comes under the head of the electric shop.

Q. Did they not tell you when you used those tools to keep them grounded?

Mr. Davis: There is no evidence he used those tools. There is no evidence he worked in the electric shop.

Th Court: I believe you asked that question.

Mr. Davis: It is not proper cross examination to start with.

Mr. Hollis:

Q. What did the tools run by?

A. What kind of tools have you reference to?
Vol. I. Engines?

page 96 } Q. Tools that you used? Tools that the men
used? What did the drill run by?

A. All the drills are run by electric.

Q. And you used those from time to time?

A. Well, I didn't have no need to. I always carried the articles that they were going to bore holes or grind or anything like that up there, and the mechanics would do that.

Q. But you saw them do it?

A. Yes, I saw them turning the switch on, yes, I did.

Q. And didn't you plug them in?

A. No, I didn't plug them in.

Q. All right. Isn't it true that you had been on the roof that you fell from the day before you fell?

A. Sure.

Q. How many times had you been up there?

A. Two times.

Q. Is that including the day you fell?

A. That is right. The day I fell. Including the day I fell.

Q. When you were up there before, had you seen this wire?

A. Yes, I saw the wire.

Vol. I. Q. When is it that you had been up there? How
page 97 } long before this accident?

A. Well, I don't know. We had a rain pretty soon, and she had a couple of leaks. I don't know exactly how long. Wasn't no more than a week, I believe. Just about a week.

Q. When you were up there before, you say that you saw the wire?

A. I saw the wire.

Willie O. Mabin.

Q. How close to the wire did you get on that day?

A. The first time I was up there?

Q. The first time.

A. Oh, well, at the center of the roof, I had a leak to fix on the Johnson Avenue side, and I stepped right across the wire to fix that leak.

Q. You stepped right across the wire?

A. I stepped right across it to fix the leak because the wire wasn't no more than that high from the roof.

Q. The wire was right over near the O'Keefe side of the roof?

A. I was fixing the leak on the Johnson Avenue side. The wire come across the roof like that. I stepped across this wire to fix that leak on the front next page 98 } to the front porch that faces Johnson Avenue.

Q. You stepped across this wire?

A. Yes, sir.

Q. How far were you from the edge of the roof on the O'Keefe Street side when you stepped across it?

A. I had to go down in that gutter too, to fix it.

Q. You had to go down in the O'Keefe Street side gutter?

A. No. I had to go down in the Johnson Avenue side gutter to fix that. That is where I find the leak on the Johnson Avenue side, and on the opposite side in the back.

Q. Your testimony, I believe, was that you had to step across the wire that day?

A. I really did. I stepped across the wire.

Q. Wasn't the wire less than a foot from the edge of the roof?

A. I don't know that. I said the wire was about that high from the roof. I could have stepped across without touching it easy.

Q. You could have stepped across it without touching it?

Vol. I. A. I did step across it without touching it, went page 99 } to the other side.

Q. Were you walking along the edge of the roof?

A. No. This wire came across the roof.

Q. When you were up there the first time, did you work on the same place that you worked on the day that you were hurt?

A. No. It was leaking in another place, but not the same place.

Q. Did you work under the wire the first time you went up there?

Willie O. Mabin.

A. No, sir.

Q. The day that you were hurt, had you worked on any other places on the roof before you had the accident?

A. Yes. I had worked down on the opposite side.

Q. That same day?

A. That same day, and right across on the other side. That was to fix the leak in the valley, and that was when I got knocked out.

Q. As I understand it, you went there about 9:30 that morning?

A. I don't know exactly what time it was. I don't even know exactly what time it was when I got hurt.
Vol. I. So far as I hear, it was around about 11:00 o'clock.
page 100 }

Q. You had repaired the other side, and then as I understand it, you had gone down from the roof to talk with Thomas Morris, is that correct?

A. I had fixed this side. Thomas Morris said something to me. I said, "Tom, I will be through in a few minutes." He saw me when I picked my bucket up. He came on around there, but just before that wire touched me, I glimpsed him coming around the corner, and I looked around to see where it was touching me, and that is all I remember.

Q. Now, how long had you been working in this particular place when the accident happened?

A. I had just got there.

Q. Which direction were you facing?

A. I was facing O'Keefe Street side.

Q. You were looking out in the O'Keefe Street side direction?

A. Yes, sir.

Q. And you were about one-third of the way from the back of the house on the edge of the roof?

A. That is right.

Q. The wire was directly over your head?

A. Yes.

Q. Was your answer, "Yes"?

Vol. I. A. Yes, yes, sir.

page 101 } Q. So you were working right under the wire?

A. Not directly. I was a foot and some better from the wire.

Q. You were a foot from it, but that was a foot over your head, was it not?

A. A foot off, like this, as near as I can get it.

Willie O. Mabin.

The Court: I couldn't hear your answer. Please keep your voice up.

What was your answer?

A. I said it was just about a foot off from me, not over me, but from me.

Mr. Hollis:

Q. In which direction?

A. I was like this. The wire was like this hand here. (Witness demonstrates with hand.)

Q. You mean the wire was a foot in back of you?

A. Yes, sir.

Q. Isn't it true, Willie, Mr. Mabin, excuse me, that there was not a foot distance from that wire to the edge of the roof?

A. I have told the truth.

Q. If you will just answer the questions. That is all I am asking.

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page 102 } Mr. Davis: Just answer to the best of your knowledge and ability.

A. I have told the truth.

Mr. Hollis: Please read the question.

The Reporter: "Q. Isn't it true, Willie, Mr. Mabin, excuse me, that there was not a foot distance from that wire to the edge of the roof?"

A. I made a statement that the wire was in back of me one foot; in back of me one foot. It run kind of catercornered across the roof, and I was over on this side, fixing a leak in the valley, and when the wind was blowing, it would touch me. The next time the wind blew, and it seized me. That is all I remember. As far as measuring it to find out, I ain't took no time to measure.

Q. Isn't it true that when you were down on your hands and knees, as you say, that the wire was up higher than you were, or is it?

A. I don't even hardly know. The only thing I know, I was knocked out.

Q. Before you were knocked out, you had to get under the wire at sometime, didn't you?

Willie O. Mabin.

A. So far as I can figure. I must have been under the wire for it to have hit me across the shoulders.

Vol. I. Q. Isn't it true that Thomas Morris, did he say
page 103 } something to you?

A. I was talking to him because he wanted to use my ladder.

The Court: Please talk a little louder. I am satisfied the jurors can't hear you.

Mr. Davis: Bring him up a little closer.

A. I was talking to him because he wanted to use my ladder. I told him I'd be down in a few moments, but I was going to the other side to fix that leak in the valley, and I saw him when he made a move, but I ain't seen him no more, not until he come to the hospital to see me.

Mr. Hollis:

Q. Did you say anything to anybody just before this accident happened?

A. No, it wasn't anyone up there but me.

Q. Did you say anything to anybody on the ground?

A. I was talking to Tommie Morris.

Q. While you were on the roof?

A. Yes.

Q. You were talking to Thomas Morris?

A. Yes.

Vol. I. Q. That was while you were on your hands
page 104 } and—

A. No. I was working on the opposite side.

Q. Let's get to the time you were on your hands, when you were working on your hands and knees. Were you talking to anyone?

A. No, sir.

Q. Were you saying anything? Did anybody say anything to you?

A. No, sir.

Q. Isn't it true that you raised up into that wire?

A. Isn't it true?

Q. Yes.

A. So far as having fear or anything of a wire, as many roofs as I have worked on, I have touched them at times, but I wasn't afraid of the wire because I was sure it had insulation on it.

Willie O. Mabin.

Mr. Hollis: The answer was not responsive to the question, Your Honor.

The Court: You may ask the question again.

Mr. Hollis:

Q. Isn't it true that you raised up into that wire?

A. I don't say I did and I don't say I didn't.

Q. You don't say you didn't?

Vol. I. A. I had to. I must have raised a little bit
page 105 } for that wire to have hit me from the distance I
was from it.

Q. Isn't it true that you did raise up?

Mr. Davis: If Your Honor please, I think he has answered the question.

Mr. Hollis: I don't think his answer is responsive.

Mr. Davis: It is responsive. He told you he must have raised up a little bit. That is all he can say. He doesn't remember. Why badger the fellow?

The Court: I don't think there is anything improper about the question. It is a matter of cross examination. He has a right to ask it. If he does not feel it is responsive, then I think he is entitled to ask it again. The witness will have to state his answer.

Mr. Davis: I note an objection on the ground that the answer was responsive, and this is repetition.

Mr. Hollis: Please read the question.

The Reporter: "Q. Isn't it true that you raised up into that wire?"

Mr. Davis: Object.

The Court: Did you hear the last question that was asked?

Vol. I.

page 106 } A. I admitted I raised up.

Mr. Hollis:

Q. You admit you raised up?

A. I had to raise up for it to hit me, not knowing until afterwards that it didn't have insulation on it.

Q. You admit you raised up and you admit you knew the wire was there?

A. Yes, sir.

Q. Did you remember at the time you raised up that the wire was there?

Willie O. Mabin.

A. Yes, sir.

Q. You did remember it was there when you raised up?

A. When I raised up and it touched me, I remembered knowing because I was knocked to the ground.

Q. I appreciate that. I am talking about just when you raised up, isn't it true that you forgot the wire was there and raised up?

A. No. I am not afraid of a wire that has got insulation on it. I am not afraid of that.

Q. You raised up into this wire on purpose? Is that what you told the jury?

A. Now you know I wouldn't raise up for five hundred thousand dollars underneath that wire.
Vol. I. page 107 } Q. Why wouldn't you raise up for five hundred thousand dollars under that wire, Mr. Mabin?

A. I don't love money as good as that.

Q. You don't love money as good as that?

A. No.

Q. And the reason you wouldn't raise up for five hundred million was—

A. Five hundred thousand, I said.

Mr. Davis: That is based on his knowledge of the wire now, Mr. Hollis.

Mr. Hollis: If you want to testify, Mr. Davis.

Q. Did you raise up to that wire on purpose?

A. No, I wouldn't raise up for five hundred thousand dollars.

Q. Why wouldn't you raise up for five hundred thousand dollars?

A. Why? What good would it do you?

Q. Why wouldn't you? Isn't it true that the reason you wouldn't do it was because you didn't know whether the wire was insulated or not? Isn't it true that you did not know that wire was insulated?

A. Know which wire was insulated?

Q. You did not know whether it was insulated or not, did you?

Vol. I. A. No, I didn't know whether it had insulation
page 108 } on it or not.

Q. You didn't know whether it had insulation on it or not?

A. I didn't know it.

Willie O. Mabin.

Q. The wire was strung from poles out in the street, wasn't it?

A. Yes, that is right.

Q. Didn't you think it carried high voltage electricity out there?

A. Yes, I knew it carried high voltage.

Q. You knew it carried high voltage electricity?

Mr. Hollis: Witness with you.

RE-DIRECT EXAMINATION.

By Mr. Davis:

Q. You said something about stepping across a wire. Wasn't there some antennas on the roof, television antennas?

A. I believe it was.

Q. With reference to what you knew about the electricity in this wire, when you went up on that house to make these repairs, did you know anything about electricity in the wire?

A. No, sir.

Mr. Hollis: I object on the ground it is leading.

Vol. I. Mr. Davis: It is not leading. I am simply
page 109 } referring to something he already testified.

The Court: In the Court's opinion, it is leading.

The Court sustains the objection.

Mr. Davis:

Q. Had you been previously advised there was any high voltage electricity in that wire?

Mr. Hollis: Objection.

The Court: Sustained.

A. No, sir.

Mr. Hollis: I ask the Court that he not answer.

The Court: Don't answer when it is sustained.

Mr. Davis:

Q. When did you learn there was high voltage electricity in that wire?

A. I didn't learn it until someone came to the hospital and told me, and told me about it not having insulation on it.

Willie O. Mabin.

Q. In reference to your raising up, can you tell us whether you were moving or whether you were still when that wire touched you?

Mr. Hollis: Your Honor, I think the question is senseless because you can't be raising up and be still.

Mr. Davis: That is not what I asked him.

Vol. I. Mr. Hollis: Please read the question.

page 110 } The Reporter: "Q. In reference to your raising up, can you tell us whether you were moving or whether you were still when that wire touched you?"

The Court: I think your first remark in the question makes it confusing.

Mr. Davis: I will rephrase it.

Q. Can you tell us whether you were moving or whether you were still when that wire touched you?

A. The wind blew the wire, and that is what struck me.

Q. Were you moving or still when the wire struck you?

A. I was still, sir. I was still.

Q. When you stated that you raised some, can you estimate or tell the jury to the best of your estimation just how much you did raise, if you raised?

A. As near as I can get at it, around about six inches or something like that. Six inches or so, something like that.

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(Jury out of court room).

Vol. I. Mr. Booker: If Your Honor please, we would
page 111 } like at this time to move the Court to strike the
evidence and exclude all the testimony from the
jury on the grounds that there is no showing of negligence on
the part of Virginia Electric and Power Company, more es-
pecially on the ground that the evidence of the Plaintiff him-
self convicts him of contributory negligence as a matter of
law.

• • • • •

The Court: Show in the record that the Court overrules the motion of Counsel for the Defendant, which in effect was a motion to strike the Plaintiff's evidence and enter summary

Catherine W. Boothe.

judgment for the Defendant; and exception is noted by Counsel for the Defendant.

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CATHERINE W. BOOTHE,
witness called by Counsel for the Defendant, having first been
duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Booker:

• • • • •

Q. What is your occupation?

A. Supervisor and file clerk, Personnel Office, Norfolk Naval Shipyard.

Q. As such, do you have the custody of the personnel file of Willie O. Mabin?

A. Yes, I do.

Q. Is that that in your hand?

A. Yes, sir.

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Q. Will you please tell the gentlemen of the jury the designations of the places and the periods of time that Willie Mabin worked at the Norfolk Naval Shipyard?

A. He has had several different ratings. Do you want to know each date the rating changed, or just how much of it do you want to know, because this goes into quite a bit of detail.

Q. No, I am just interested in showing in what shops he worked, and for what period of time.

A. All right. I am going to take this from this service card

Leonard Hillers.

I have. It is the same information that you will find in the folder except this is condensed and more easy to find. Is that all right?

The Court: These are normal records?

A. Yes, sir, official records.

The Court: You may refer to them.

A. He had a probational appointment April 18, 1917 as a laborer. This does not designate the shop, so he was just a common laborer working in the shipyard.

Then he worked as a helper woodworker, April Vol. I. 26, 1917.

page 114 } Then April 13, 1942, he went to work as a helper sheet metal worker, and then December 8, 1943, he went to work as a helper trainee.

Then December 10, 1945, he was reassigned to a helper machinist, and stayed a helper machinist until his mandatory retirement in 1959, May 31, 1959.

• • • • •

Vol. I.
page 124 }

• • • • •

LEONARD HILLERS,
witness called by Counsel for the Defendant, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

• • • • •

Vol. I.
page 126 } Mr. Hollis:

Q. Do you know the Plaintiff in this case, Willie O. Mabin?

A. Yes, sir.

Q. Did he work under you in the Norfolk Naval Shipyard?

A. He did.

Leonard Hillers.

Q. And about how long ago was that?

A. Well, he was under my supervision for short periods of time over the past, well, five or six years; prior to the time that he was retired or left the yard.

Q. Can you tell us approximately how long he actually worked under you?

A. Well, not more than six months at any one period of time. I had him several times over the years. Accumulatively, probably it would have amounted to a year's time.

Q. What was the nature of Willie Mabin's work?

A. He was a helper machinist.

Q. And what does a helper machinist do, just generally?

A. He assists the mechanic on the job, that is
Vol. I. assigned to the job, and in actual physical repair
page 127 } and overhaul of the various pieces of machinery.

He brings him tools, cleans up around the job site, and in general assists the mechanic at whatever he is directed to do.

Q. Where do these men work?

A. They work on board ships. I am an outside supervisor, and they work aboard in the engine room of the ship mostly.

Q. What use, if any, is made of electricity?

Mr. Davis: I object to the question. It is leading.

The Court: Finish the question.

Mr. Davis: I think he has got to ask this man—

The Court: Let him finish.

Mr. Hollis:

Q. What use, if any, is made of electricity in the areas in which the helper machinist marine works?

Mr. Davis: I object.

Mr. Hollis: I submit it is not leading. I said, "if any."

Mr. Davis: He can ask this man to describe the work Mabin does without suggesting anything. As long as he does that, I think it is proper. When he comes in here
Vol. I. and tries to point out certain areas of work, he is
page 128 } leading the witness and I object.

Mr. Hollis: Your Honor, I am not asking what Mabin himself did. I want to know what use is made of electricity in the areas he worked.

The Court: The Court will allow the question.

Mr. Davis: Exception.

Leonard Hillers.

A. We have electric-driven tools of all kinds, drills, motors of all descriptions. We have extension cords, portable lighting throughout the ship generally as the ship's power is disabled and a temporary power has to be laid into the ship. Just the general use of electricity would cover it.

Q. What voltage is most of that electricity?

A. Normally it is one hundred ten volts.

Q. Are there any other voltages used?

A. Yes. Where you have a large motor, especially the jacking engine on a ship, the jacking motor, which is an electric motor, they have four hundred forty volts. A four hundred forty volt circuit required to operate those motors.

Q. Do you give the men working under you any instructions concerning electricity?

A. Of course, it is standard shipyard order, and
Vol. I. I carry these instructions to the men, whenever
page 129 } they are working in the areas or around high
voltage especially that they are not to come in
contact or to tamper with the wires or the boxes in any
way.

Q. Are those wires which these men are instructed not to come in contact with covered or uncovered?

A. The wires are covered.

Q. There has been some mention here of stand up safety meetings. Tell us what they are and how often they are held.

A. Stand up safety meeting is a fifteen minute meeting that we have with our men once a month, the first Monday of the month, from 12:45 to 1:00 o'clock. That is the time set aside for that. It is yard-wide. All crafts, trades in the yard have this fifteen minute safety meeting once a month.

Would you like to know what they consist of?

Q. Yes. I thought you were going on.

A. Generally the topic is something that the safety department has written up. They give us a prepared form as to what our topic is, but we are not limited to that topic. We can discuss anything along the safety lines that happens to be current.

In other words, if an accident was to happen in the yard, and a man was to be injured or killed, we will talk that over and from the reports that we get back on all the

Vol. I. accidents, we try to point out where this victim
page 130 } was in the wrong, what he did wrong.

Q. Who gives those safety lectures?

A. I give the lectures, the leading man.

Leonard Hillers.

Q. Are all of your men required to attend?

A. Yes, sir, they are required to attend.

Q. And do you keep a check on that from month to month or week to week?

A. Only to this extent. If I had sixteen men working, and I don't see sixteen men there,—I know all the men by name. After a period of time, you know all the men. If he is working at a remote area, some other part of the yard and doesn't attend a safety meeting, then if I think it is necessary, I will call him aside and give him a little talk on the subject, whatever it may be.

Also, we have a fifteen minute safety talk with any mechanic in our supervision during the day. In other words, if we see a particular man needs instruction, sometimes he is doing a job and he is using a lot of unsafe practices there, we caution him.

Q. These instructions are given to both helpers and machinists?

Mr. Davis: He is leading him.

Vol. I.

The Court: Sustained.

page 131 }

Mr. Hollis: Withdraw the question.

Q. Who are these instructions given to?

A. The entire gang, all men under my supervision.

Q. Did you give these talks concerning electricity that you have testified to while Mabin was in your gang?

Mr. Davis: I object. I don't believe there has been any testimony.

Mr. Hollis: He told them not to touch the high voltage.

Mr. Sawyer: Covered or uncovered.

The Court: You object to the question?

Mr. Davis: The questions.

The Court: What was the basis?

Mr. Davis: I didn't understand the witness to say he lectured on electricity.

Mr. Hollis:

Q. You have stated, I believe, that you instructed your men on electricity?

Mr. Davis: I think—

Mr. Hollis: I withdraw it.

Leonard Hillers.

Q. When you did instruct your men on electricity was Willie Mabin in your gang?

A. He was assigned to my supervision. I
Vol. I. couldn't specify to say that I had Willie Mabin in
page 132 } the gang at any particular time when any of these
lectures concerned electricity.

Q. In addition to the safety lectures, stand up safety meetings, did you give your men any other instructions in addition to these stand up safety meetings or besides them?

A. Well, the five minute talk. We generally, and I made a practice of this, as I was on the job, I would call one man aside and say, "This job has certain hazards about it here, and I want you to be careful of this condition that exists." In other words, if there were gratings or floor plats that were out in the engine room, I would caution the man to be extremely careful not to walk in that area or to have to cross that area, in other words.

• • • • •

Vol. I.
page 133 }

• • • • •

CROSS EXAMINATION.

Examined by Mr. Davis:

Q. In instances where high voltage electricity is present, you have signs posted, "Beware"?

A. Yes, sir.

Q. And they are usually protected by guards or heavy insulation, correct?

A. Yes, sir.

Mr. Davis: That is all.

The Court: Did you finish what you wanted to say?

A. Rubber coating insulation there.

• • • • •

Vol. II.
page 9 }

• • • • •

THOMAS M. MORRIS,

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

DIRECT EXAMINATION.

By Mr. Hollis:

* * * * *

Vol. II.
page 10 }

* * * * *

Q. What is your occupation?

A. Carpenter.

Q. Now, do you know the plaintiff in this case, Willie O. Mabin?

A. Yes, I know him.

Q. Approximately how long have you known him?

A. Oh, I would say around about fifteen or twenty years, I guess.

Q. And in what connection did you know him?

A. Well, that was doing roofing work.

Q. Who did the roofing work?

A. Mr. Mabin.

Q. Over that period of time?

A. (Witness nodded head affirmatively.)

The Court: You have to answer the question.

Vol. II.
page 11 } A. Yes, uh-huh.

By Mr. Hollis:

Q. Now, directing your attention to July 17th of last year, 1959, on that day did you see Willie O. Mabin?

A. (Pause). That is the day he got hurt, yes; I saw him that day.

Q. You saw him the day of the accident?

A. Uh-huh.

Q. Where did you see him?

A. The first time he came to my house and told me where he was working at, and I told him, all right, I will come around there later on and pick him up. He said all right.

Thomas M. Morris.

Q. And you say, "around there." Where are you talking about?

A. On O'Keefe and Johnson Avenue.

Q. Where he was going to work?

A. Uh-huh.

Q. All right. Did you go around there later that day?

A. I have been around there about near twelve o'clock, around about eleven thirty or twelve o'clock.

Q. Did you see Willie Mabin when you went there?

A. Uh-huh, yes.

Vol. II. Q. Do you recall what he was doing at the time?
page 12 }

A. Well, when I passed I was looking for the house where he was working at, and I drove by with the truck, and going by and—I looked up and I seen him on the roof working and I stopped and went on back around on Johnson Avenue side—on the O'Keefe side.

Q. Well, now, why had you gone there to see Willie Mabin?

A. I went there to see about some work.

Q. What work?

A. Fixing the roof.

Q. When was he going to do it?

A. He hadn't been there too long. He was going to look at the roof first.

Q. When was he going to look at the roof?

A. That same day.

Q. That same day when he got through with this work?

A. Yes.

Q. All right. Now, when you saw him, you say he was on the roof?

A. That is right.

Q. Did you talk with him?

A. After I went around the side, on the O'Keefe side and to the back, I called him. He came on down onto the little roof on a little ladder, and stood there and talked with me and said, "I will be ready to go in a half hour." I said, "All right, I will be back after you in half an hour."

Vol. II. Q. That is a little shed roof over the first floor on back of the
page 13 } house?

A. Back of the house, right.

Q. All right. Then what did he do?

A. Then, he turned around and walked on away from me and went back up on the roof.

Thomas M. Morris.

Q. Went back on the top section of the main roof?

A. On the main roof.

Q. All right. Did you see him when he was on the main roof at that time?

A. No, I didn't see him no more.

Q. Didn't see him. What did you do?

A. I walked on around on the side, getting ready to go back to the truck. Someone on the street hollered, "Look out," and I walked on away from the side of the house, and by the time I turned around and looked he was laying on the ground.

Q. And "he" is Willie Mabin?

A. Laying on the ground.

Q. Laying on the ground?

A. Uh-huh.

Q. Did you see him fall then?

Vol. II. A. No.

page 14 } Q. Did you see what caused him to fall?

A. No, I don't know nothing about that.

Q. Now, right after he fell did you look up at the wires?

A. I stepped out in the street. Someone said—a fellow on the street said a wire hit him.

Q. All right. Did you look up at the wires?

A. Yes, I looked up at the wire, yes.

Q. All right. What did the wires appears to you? What did you see when you looked up?

A. When I looked up the wire was kind of waving a little bit like this (demonstrating).

Q. Which wire?

A. The naked wire.

Q. The naked wire?

A. Yes.

Q. How do you know it was naked?

A. Because you can tell if a wire has insulation on it.

Q. Where were you when you looked at it?

A. Standing in the middle of the street.

Q. And were the other wires moving then?

A. No, there ain't but that one.

Q. Just that one wire was the only one that was moving?

Vol. II. page 15 } A. Over on top of the house, right.

Mr. Hollis: All right, thank you.

Thomas M. Morris.

CROSS EXAMINATION.

By Mr. Boyd:

Q. What was the condition of Mr. Mabin when you came up to him?

A. He was laying on his back with one leg up like that (demonstrating), bleeding out of his mouth.

Q. You say you looked up and you saw this wire?

A. Uh-huh.

Q. What color was the wire?

A. Well, from the looks of it on the ground, it looked like kind of brownish-like and had the weather like it kind of turned dark.

Q. A dark color?

A. Uh-huh.

Q. If you will step down here a moment—

(Witness left the witness stand.)

Q. Step over here a moment, please. When you saw Willie Mabin land, or when you saw him on the ground—

Vol. II. this is the building, this is the front of the house—
page 16 } A. Uh-huh.

Q. As you see, this is O'Keefe Street and this is Johnson Street (indicating on Plaintiff's Exhibit #3.) This is the no parking sign right there. I am now referring to Plaintiff's Exhibit #3. Will you tell us where you saw him on the ground?

A. This is the front of the building, ain't it?

Q. This is the front of the building. This is the side by the street, there is the back of the building (indicating).

A. This side. I was—I came around back here, walked around the side. He was just about in the middle of the house.

Q. Just put an "X" about where you think he fell.

A. All right.

(Witness marking exhibit with an "X").

Q. That is a red "X"; and what are your initials?

A. T. M.

Q. T. M., okay. Take the stand back there a moment, if you will.

Walter George, Jr.

(Witness resumed witness stand.)

Mr. Boyd: That will be all. Thank you.

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WALTER GEORGE, JR.,
called as a witness on behalf of the defendant, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Hollis:

Vol. II.

page 18 } Q. All right. Now, on July 21st, 1960, after the
accident involved here, did you go to the house at
775 Johnson Avenue?

A. Yes, sir.

Q. In 1959, excuse me.

A. 1959.

Q. I said 1960. Did you go there for the purpose of making
some measurements?

A. Yes, sir, I did.

Q. All right. Now, did you measure the distance between
the two poles involved, the one at the corner of Johnson and
O'Keefe Street, and the one south of that on O'Keefe Street
from which wire involved in this case was running between
those two poles?

A. Yes, sir, I did make a measurement.

Q. What was that distance?

A. That measurement was 140 feet.

Q. Now, did you also measure the distance from the pole
on the corner to the northeast corner of the roof of the house?

A. Yes, sir, I did.

Q. And what distance was that?

A. Fifteen feet.

Clinton Carter.

Q. Fifteen feet. Did you measure the length of
Vol. II. the roof?

page 19 } A. Yes, sir, I did.

Q. What was the length of it?

A. That was 47 feet, seven inches.

Q. That is running in a northerly and southerly direction?

A. Yes, sir.

* * * * *

CLINTON CARTER,

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

Vol. II.

page 20 } DIRECT EXAMINATION.

By Mr. Hollis:

* * * * *

Q. Ten years. Now, directing your attention to August
13th of last year, 1959, did you remove a wire from the prem-
ises at 775 Johnson Avenue?

A. Yes, sir.

Q. You say you did?

A. Well, I was acting foreman on the crew. We had a job
on that corner and we removed some wires between two poles
there.

Q. All right. Which wire did you remove?

A. The field phase primary and two street leg wires.

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page 21 }

* * * * *

Q. What type wire was the field phase primary which you
removed?

A. And it was copper number four bare wire.

Q. And what voltage was that wire that was

Vol. II. going through it?

page 22 } A. Twenty-three hundred to the ground.

Clinton Carter.

By the Court:

Q. To the ground? What was the last word you said?

A. Twenty-three hundred to the ground.

The Court: To the ground. All right.

By Mr. Hollis:

Q. Now, what did you do with that wire after you removed it?

A. I wrapped it up and put it with the scrap wire on the truck and turned it in to salvage.

Q. Was that normal routine?

A. Yes, sir.

Q. Had anyone instructed you to save the wire?

A. No, sir.

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page 25 }

• • • • •

Q. And is the appearance the same as the wire you removed?

A. More or less, yes, sir, it is the same old used wire. It turns green when you leave—

Q. Does it look the same?

A. Yes, sir.

• • • • •

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page 26 }

CROSS EXAMINATION.

• • • • •

Vol. II.

page 27 }

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By the Court:

• • • • •

Clinton Carter.

Q. What happens to it with age?

A. It gets just like this, it is oxidation which forms around the outside and it is a green coating on it. It immediately, when you take hold of it, it wipes off.

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Vol. II.
page 31 }

• • • • •

By Mr. Hollis:

Q. Mr. Carter, I hand you a piece of wire and ask you to examine it.

(Witness examining wire.)

Q. How does the appearance of that wire compare with the appearance of the field phase primary wire which you removed at 775 Johnson Avenue on August 13th, 1959?

A. It is much the same, the same type of wire. It looks much just like the other wire would.

The Court: Keep your voice up, if you will, please, sir.

By Mr. Hollis:

Q. Keep your voice up. Give that answer again.

A. It is much the same type and much the same in appearance as that wire was.

Vol. II. Q. Well, is it the same type?
page 32 } A. Yes, sir.

Q. All right, sir. Now, Mr. Carter, let me ask you this: What does the wire look like when it is new, a Number 4 copper wire?

Mr. Davis: If your Honor please, there is no real particular objection to that, but there is no evidence involved in this case that it was new and, therefore, I don't think that is pertinent to the issue here.

Mr. Hollis: The only thing that I am trying to bring out, your Honor, is that this wire was not new.

Mr. Boyd: Why don't you ask him if it is a different color.

Clinton Carter.

Mr. Hollis: You would object on the grounds it is leading.

Mr. Davis: Not if it is a direct question.

The Court: You gentlemen ask you questions and the Court will rule on it.

Mr. Hollis: Excuse me, your Honor.

By Mr. Hollis:

Q. All right, Mr. Carter, does this wire look like
Vol. II. a new wire?

page 33 } A. No, sir.

Q. What is the difference in appearance?

A. This is old wire that has been used, and new wire is new wire, and it is just old wire. I mean, this is definitely an old piece of wire, and new wire is bright wire.

Q. All right. Now, has this wire oxidized?

Mr. Davis: Objection, your Honor. It is leading.

Mr. Hollis: Well, there you go.

Mr. Davis: You will just have to describe the wire.

Mr. Hollis: All right.

By Mr. Hollis:

Q. Describe the wire, then, please.

A. It is a piece of Number 4 bare solid copper wire that has oxidation on it from having been used and hung in the air.

Q. And did the other wire have oxidation on it?

Mr. Davis: Objection to the question as leading.

Mr. Hollis: I withdraw the question.

By Mr. Hollis:

Q. Was the appearance of this wire the same as the other?

Vol. II.

page 34 } Mr. Davis: That is leading and suggestive. I
object.

By Mr. Hollis:

Q. How does the appearance of this wire compare with the appearance of the other one?

A. Just about the same. They were both old used wires.

Q. Now, what happens to the oxidation on there when you rub that wire or handle it?

A. It will wipe off.

Clinton Carter.

Mr. Hollis: All right. For the record, your Honor, I would like to ask this witness this question.

The Court: All right.

By Mr. Hollis:

Q. What is the color of that wire when oxidation is on it?

A. Greenish.

Mr. Hollis: All right. Thank you.

The Court: You want to offer it in evidence?

Mr. Hollis: Yes, sir, your Honor, I would like to offer this as Defendant's Exhibit.

Vol. II. page 35 } I would make the request that as much as possible the oxidation be kept on there so the jury can get the true appearance.

Mr. Davis: We note the same objection as to its introduction.

The Court: The Court understands that. This will be received and marked as Defendant's Exhibit #8.

(Received and marked in evidence by the Court as Defendant's Exhibit #8.)

The Court: As I understand it, the handling of this would change its appearance. The Court would ask the Sergeant simply to hold it so the members of the jury may view it.

(Exhibit #8 was thereupon shown to the jury for examination by the Sergeant.)

By Mr. Hollis:

Q. What color is new wire, Mr. Carter?

A. Sir, it is bright copper.

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Vol. II.

page 36 } By Mr. Boyd:

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Q. —the wire ran all the way down the roof?

A. Yes, sir.

Everett F. Eldred, Jr.

• • • • •

Vol. II.
page 37 }

• • • • •

Q. This wire which you removed is not the wire you have here today, is it?

Vol. II. A. Well, like I said before, sir, I don't know
page 38 } whether it is the same piece of wire, or not. It
could be, or it does not necessarily have to be.

Q. What was the condition of the wire you removed; was it oxidized such as this one?

A. Yes, sir.

Q. It was entirely oxidized, was it not?

A. Yes, sir.

Q. And once it becomes oxidized, what color does it get?

A. Sort of greenish. That is the best color that I can put to it.

Q. I believe you stated to the Court that you turned the wire which you took down, the one running over the roof that you took down that day on August 13th, 1959, you took that wire and turned it in—

A. Yes, sir.

Q. —into salvage, is that what you said; and, therefore, you don't know where it is?

A. No, sir.

• • • • •

Q. And you are not saying that this wire here is
Vol. II. the one you took down?
page 39 } A. I am not saying it is or that it isn't.

• • • • •

EVERETT F. ELDRDRED, JR.,
called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Booker:

Everett F. Eldred, Jr.

• • • • •

Vol. II.

page 40 } Q. What is your occupation, Mr. Eldred?

A. I am superintendent of lines with the Virginia Electric & Power Company.

Q. For what district?

A. In Norfolk district.

Q. How much area does that cover?

A. It covers the Norfolk area and Portsmouth, Virginia Beach, and Suffolk areas.

Q. What is your educational background?

A. I am a graduate electrical engineer with a B. S. in electrical engineering from V. P. I.

Q. What is your work experience?

A. I have been with the power company in engineering work for fourteen years.

Q. Mr. Eldred, does your work require you to know the nature and size of electrical wires?

A. It does. I have occasion to come in contact with all different sizes of wires and I learned to recognize them through experience.

Q. What is the size and diameter of a Number 4 bare copper wire?

A. Well, I have checked that in the table, and the exact dimensions of Number 4 wire, the standard dimension is .204 inches in diameter.

Vol. II. Q. What is that in fractions of an inch?

page 41 } A. Well, that is about two-tenths of an inch—it would be a little over three-sixteenths, if you wanted to figure it that way, not quite a quarter of an inch.

Q. Do you in the course of your business from time to time make calculations as to the effect of wind velocity on wires?

A. I do.

Q. Is there a standard chart that is used in this connection?

A. There are standard formulas which can be used, which standards are standard in the industry, and there are standard procedures for figuring that.

Q. Mr. Eldred, assuming that the evidence in this case is that a 2300 volt number 4 bare copper line runs north and south along the roof of a certain dwelling house, the roof of which is 47 feet, 7 inches long. Assuming that the span length between the two poles supporting the wire is 140 feet long and that the north pole is 15 feet from the roof of the house.

Everett F. Eldred, Jr.

Assuming that the conductors on the north pole are 75.10 feet above an arbitrary reference point. Assume that the conductors on the south pole are 70.14 feet above an arbitrary reference point. Assume that the roof of the house is 66.88 feet above an arbitrary reference point. Assume that the line

is 6 feet, 1 inch above the roof of the house at the
Vol. II. north end and 2 feet, 5½ inches above the roof of
page 42 } the house at the south end. Assume that the wind
is blowing at the rate of 8 miles an hour from the
northeast. Do you have an opinion as to how much the line
would sway in the wind at the maximum point of sway under
those circumstances?

A. Yes, sir, I do.

Q. What is your opinion?

A. I have made some calculations using those figures, and I was just checking to be sure we had exactly the same figures. According to my calculations the sway would be .64 inches; at the greatest amount of sway at the end of the roof of the house would be .64 inches.

Q. Can you express that in fractions of an inch?

A. It is very close to five-eighths of an inch there.

• • • • •

CROSS EXAMINATION.

By Mr. Davis:

Q. You are not making any allowance for wind gust, are you?

A. No, sir, that is steady wind of eight miles an hour.

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page 46 }

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Juror No. 3: From the picture would it run in an angle across the house or in line with the house?

Mr. Davis: According to the interrogatories it ran in line with the house.

Vol. II. Mr. Boyd: The interrogatories shows it ran the
page 47 } length of the house.

Mr. Hollis: Right along the edge. This photograph is the front.

Mr. Boyd: This is the front showing where the wire starts, showing down the house and comes out here in the back.

Mr. Hollis: That's right.

The Court: Does that answer your question?

Juror No. 3: Yes, sir, thank you.

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(The jury were excluded from the courtroom.)

• • • • •

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page 52 } Mr. Booker: Your Honor, the defendant moves the Court to strike all the evidence in the case, to exclude the case from the jury and enter up judgment for the defendant upon the grounds that the plaintiff was guilty of negligence as a matter of law which precludes any recovery in this case, and upon the further grounds that the plaintiff was guilty—that the plaintiff assumed the risk of any injury which might occur to him, and that having so assumed the risk he cannot recover for any injury which actually did occur.

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The Court: The Court overrules the motion and note the exception on the grounds already stated.

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(The jury were recalled into the jury box.)

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Thereupon the defendant moved the Court to set aside the verdict of the jury and enter up Summary Judgment for the defendant upon the grounds that there was no evidence to support the verdict, and that the verdict is contrary to the law and the evidence, or in the alternative grant the defendant a new trial upon all issues in the case on account of all the errors committed in the case.

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A Copy—Teste:

H. G TURNER, Clerk.

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