

2687  
190-977

# Record No. 3601

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**VIRGINIA TRANSIT COMPANY**

v.

**DORIS DURHAM**

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FROM LAW AND EQUITY COURT OF CITY OF RICHMOND, PART TWO.

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## RULE 14.

15. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

M. B. WATTS, Clerk.

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

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SUPREME COURT OF APPEALS



## RULE 14—BRIEFS

1. **Form and contents of appellant's brief.** The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

(d) Argument in support of the position of appellant.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. **Form and contents of appellee's brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate reference to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

3. **Reply brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him, not referred to in his petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

4. **Time of filing.** (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

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

5. **Number of copies to be filed and delivered to opposing counsel.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

6. **Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

7. **Non-compliance, effect of.** The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.





## INDEX TO PETITION

Record No. 3601

	Page
Preliminary Statement . . . . .	1*
The Issues Under the Pleadings . . . . .	3*
Assignments of Error . . . . .	5*
The Questions for Decision . . . . .	5*
The Theory of the Defendant . . . . .	6*
The Plaintiff Proved Only the Fact of the Accident . . . . .	6*
The Defendant Proved the Plaintiff Cannot Recover . . . . .	8*
The Testimony Altogether is Conclusive Against the Plaintiff . . . . .	30*
Argument	
The Plaintiff Cannot Recover Under the Rule of <i>Res Ipsa Loquitur</i> . . . . .	31*
The Plaintiff Cannot Recover Upon the Theory the Operator of the Bus Negligently Failed to Stop the Bus With the Hand Brake . . . . .	38*
Instruction No. 2 Should Not Have Been Given . . . . .	42*
The Trial Court Should Have Set Aside the Verdict of the Jury . . . . .	44*
Conclusion . . . . .	44*

## Authorities Cited

<i>Jones v. Hanbury</i> (1932), 158 Va. 842 . . . . .	41*
<i>Stephens v. Virginia Electric and Power Company</i> (1945), 184 Va. 94 . . . . .	34*, 43*
<i>Virginia Electric and Power Company v. Lowry</i> (1936), 166 Va. 207 . . . . .	31*, 43*



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

AT RICHMOND.

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**Record No. 3601**

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VIRGINIA TRANSIT COMPANY, Plaintiff in Error,

*versus*

DORIS DURHAM, Defendant in Error.

---

PETITION FOR WRIT OF ERROR AND  
*SUPERSEDEAS.*

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*To the Honorable the Chief Justice and the Justices of the  
Supreme Court of Appeals of Virginia:*

PRELIMINARY STATEMENT.

Virginia Transit Company respectfully represents that it is aggrieved by a final judgment in the principal sum of Seven Thousand Five Hundred Dollars (\$7,500.00) rendered against it in Law and Equity Court of the City of Richmond, Part II, on February 1, 1949, in an action where Doris Durham 2\* sought recovery \*of Fifteen Thousand Dollars (\$15,000.00) for personal injuries she sustained shortly after three o'clock in the afternoon on Saturday, June 5, 1948, when she was struck by westbound passenger bus No. 67 of Virginia Transit Company when the air brakes on the motor bus failed and the operator of the bus lost control of it.

The bus collided with a northbound automobile at the intersection of Third and Grace Streets in the City of Richmond

and then ran over the sidewalk and came to a stop against a column at the entrance to People's Drug Store at the northwest corner of the intersection.

Doris Durham was struck as she was walking westwardly away from the northwest corner.

Doris Durham was plaintiff and Virginia Transit Company was defendant in the Trial Court, and for convenience they will be designated by the same terms in this Petition for Writ of Error and *Supersedeas*.

Petitioner is advised that entry of judgment against petitioner constituted reversible error to the prejudice of petitioner which warrants review and reversal of the judgment; and petitioner therefore prays for a Writ of Error and *Supersedeas*.

Stenographic transcript of the record, including all proceedings in the trial court, is submitted herewith, together with all original exhibits which were offered in evidence.

Reference will be made to the transcript throughout this petition; all references to the record being designated by the letter "R" followed by appropriate page numbers.

### 3\*      \*THE ISSUES UNDER THE PLEADINGS.

The Notice of Motion for Judgment (R., pp. 1-2) alleges that the defendant negligently knocked down the plaintiff upon the sidewalk.

The defendant filed a plea of the General Issue (R., pp. 2-3) and grounds of defense (R., pp. 4-5) alleging that the injury to the plaintiff was due to an unavoidable accident by reason of the breakage of an air line which could not have been anticipated, discovered or prevented by the defendant in the exercise of due care for the safety of the plaintiff.

### THE PROCEEDINGS IN THE TRIAL COURT.

Trial by jury was had on January 31-March 1, 1949 (R., pp. 5-6).

After all the testimony for both parties had been introduced, the defendant moved to strike the testimony (R., p. 191) upon the ground that no negligence had been proved against the defendant which would support a verdict for the plaintiff. The court overruled the motion and the defendant duly excepted (R., p. 191).

The defendant insisted in the trial court and says now that the uncontradicted testimony precludes any recovery by the plaintiff under the doctrine *res ipsa loquitur*; and the defendant insisted further in the trial court and says now that there



is no evidence whatsoever that the operator of the bus was in anywise negligent in the sudden emergency which confronted \*him without any fault whatsoever on his part, and consequently the plaintiff cannot recover in any view of the case.

The defendant objected and excepted to the granting of any instructions for the plaintiff upon the ground that there is no evidence to support any instructions for the plaintiff (R., p. 192).

The defendant further objected and excepted specifically to *Instruction No. 2* (R., p. 201) upon the ground that the instruction erroneously told the jury that they may infer the injury to the plaintiff was due to negligence of the defendant, despite the fact that the uncontradicted testimony is that the break in the air line could not have been anticipated, discovered or prevented by the exercise of any known degree of care, and despite the further fact that there is no evidence the operator was in anywise negligent; and the defendant further objected and excepted to the granting of *Instruction No. 2* upon the ground that the instruction erroneously told the jury that "in the absence of evidence satisfactorily showing freedom from negligence the jury might find a verdict for the plaintiff.

Under the instructions given, the jury returned a verdict of seventy-five hundred dollars (\$7,500.00) for the plaintiff (R., pp. 5-6).

The defendant thereupon moved to set aside the verdict as contrary to the law and the evidence and without evidence to support it (R., p. 198), but the court then and there overruled the motion without any review of the trial proceedings, 5\* without any \*argument upon the motion (R., p. 198), and without delivery of any opinion; and judgment was accordingly entered upon the verdict of the jury for the plaintiff (R., pp. 5-6); all subject to exception by the defendant (R., p. 6).

### ASSIGNMENTS OF ERROR.

The defendant insisted in the trial court and says now:

1. The testimony fails to convict the defendant of any negligence which will support a verdict for the plaintiff.

2. The trial court committed reversible error to the prejudice of the defendant when the court granted *Instruction No. 2* for the plaintiff.

3. The trial court committed reversible error to the prejudice of the defendant when the court declined to set aside the

verdict for the plaintiff and enter up final judgment for the defendant upon the ground that the verdict is contrary to the law and the evidence and without evidence to support it, or in lieu thereof grant the defendant a new trial upon all the issues in the case on account of misdirection of the jury by the court.

### THE QUESTIONS FOR DECISION.

The questions for decision are :

1. Does the testimony fail to convict the defendant  
6\* \*of negligence; which will support a verdict for the plaintiff?
2. Did the trial court commit reversible error to the prejudice of the defendant when the court gave *Instruction No. 2* for the plaintiff?
3. Did the trial court commit reversible error to the prejudice of the defendant when the court refused to set aside the verdict of the jury and enter up final judgment for the defendant upon the ground that the verdict is contrary to the law and the evidence and without evidence to support it, or in lieu thereof grant the defendant a new trial upon all the issues in the case on account of misdirection of the jury by the court?

### THE THEORY OF THE DEFENDANT.

The defendant says all the foregoing questions must be answered in favor of the defendant.

### THE PLAINTIFF PROVED ONLY THE FACT OF THE ACCIDENT.

*The plaintiff* testified in her own behalf (R., pp. 9-17), and twelve other witnesses testified in support of her claim; but neither the plaintiff nor any of her witnesses saw the bus before it struck the plaintiff or knew how the accident occurred.

1. The plaintiff knew merely that she was struck by the bus at the northwest corner of Third and Grace Streets  
7\* a few \*moments after her husband left her, as she walked westwardly along the north sidewalk of Grace Street. She was in the hospital seven hours, and afterwards she was confined to bed at home for approximately six weeks.



2. *J. H. Durham*, the plaintiff's husband, heard the impact and heard his wife scream, but when he looked toward his wife, she had already been struck (R., pp. 17-22).

3. *William V. Chapman* was struck as he came out of the drug store, and he did not see the bus until after he had been injured (R., pp. 23-27).

4. *Mrs. Jeannine Pearson*, the daughter of the plaintiff, was told of the accident after it occurred (R., pp. 27-30).

5. *Dr. Kenneth J. Cherry* (R., pp. 31-38); 6. *Dr. James T. Tucker* (R., pp. 38-43); 7. *Dr. Louis Perlman* (R., pp. 43-47); and 8. *Dr. R. D. Butterworth* (R., pp. 84-88) testified the plaintiff was generally bruised and that she sustained a laceration about seven inches long on her left foot, but no tendons were cut and no bones were broken. After the laceration healed, permanent scar tissue adhered to the underlying muscles in the foot and limited the motion of the foot to the extent of a fifteen to twenty per cent permanent disability in the foot.

9. *Wray Selden* took photographs and gave street and sidewalk measurements at the scene of the accident (R., pp. 48-51).

10. *M. M. Mallory* took pictures at the scene of the accident and testified the street was wet and the weather was a little misty shortly after the accident (R., pp. 51-52).

8\* 11. *John T. Hanna* gave measurements at Third and Grace Streets (R., pp. 52-54).

12. Upon rebuttal *Roland R. Williams* (R., pp. 179-180, 182-185), a salesman for Hungerford Coal Company, testified he had operated bus No. 67 in the years 1940 to 1942; and in effect he testified that *in the absence of an emergency* he could stop the bus within less distance than the operator stopped it in the emergency which suddenly confronted him. Williams admitted, however, that he had never operated a bus when an air line broke, and consequently that he had never been confronted with an emergency such as confronted the bus operator when the plaintiff was injured.

#### THE DEFENDANT PROVED THE PLAINTIFF CANNOT RECOVER.

Neither the plaintiff nor any of her witnesses in anywise contradicted any of the seventeen witnesses for the defendant, and every witness for the defendant who testified regarding the occurrence of the accident corroborated the bus operator in his version of the accident; and the testimony for the defendant, being reasonable and credible and uncontradicted, it must be accepted as true.

1. The uncontradicted facts according to *Patrick P. Allen* (R., pp. 54-69).

About three o'clock in the afternoon Saturday, June 9\* \*5, 1948, Patrick P. Allen was operating Mack bus No. 67 westwardly on Grace Street from Fourth Street toward Third Street. Grace Street at that time was a one way street at that locality.

Allen testified as follows:

(R., p. 55):

\* \* \* \* \*

"Q. How long have you been a bus operator for the company?

"A. Well, I have been employed by the company the 9th of May it will be five years.

"Q. Were you the bus operator in charge of westbound bus No. 67 that was involved in the accident that resulted in the trial today?

\* \* \* \* \*

(R., p. 56):

"Q. Now as you came westwardly immediately before this accident happened do you remember whether or not you stopped at Fourth Street?

"A. Yes, sir, I did.

"Q. Why did you stop there?

"A. I stopped there to pick up and discharge passengers.

"Q. How was your bus operating?

"A. Perfect, good.

"Q. Did you have any difficulty with anything at Fourth street?

"A. No, sir, I didn't.

"Q. Had you had any difficulty with anything wrong with the bus before you reached Fourth street?

"A. No, sir.

10\* "Q. Did you come to a full stop at Fourth street when those passengers got on and off?

"A. Yes, sir.

"Q. Now when you started from a standstill with that (R., p. 57) particular bus, No. 67, how many changes of gear are there to go into to get full speed?

"A. Well, low, second and high.



"Q. Now what kind of brakes did your bus have on it? I mean what controls the brakes?

"A. It is controlled by air.

"Q. Is there also a hand brake on that bus?

"A. Yes, sir, there is.

"Q. Now if anything happens to your air is it possible to shift the gears or is the gear-shift dependent upon having air?

"A. You can't shift gears if you don't have any air. It is an air clutch and it don't shift without air.

"Q. Now when you left Fourth street going towards Third street what did you do so far as shifting any gears was concerned?

"A. Well, after I loaded and unloaded I pulled into low gear, pulled on across into the intersection, into second and then (*sic*) on into high as I had speed for it.

"Q. Did you have any difficulty shifting those gears?

"A. No, sir, I didn't.

"Q. Was anything wrong with the bus at that time?

"A. No, sir, not that I know of.

"Q. Now do you recall whether or not you got a buzzer signal to stop at Third street?

11\*     \*(R., p. 58):

"A. Yes, I had a bell for Third street.

"Q. How far through the block were you when you got that signal?

"A. Oh, I guess about middle way of the block. They generally ring them about the middle of the block. Some ring right—

"Q. What you have to tell is what happened this day.

"A. I don't know exactly where the bell was rung at, but it was approaching Third street—for Third street.

"Q. What was the volume of traffic there on Grace street that afternoon say between Fourth and Third streets, if you remember?

"A. Well, there was some traffic on there, I don't know how much it was, but it is generally a good deal of traffic on Saturday evening on Grace street.

"Q. Was the street open to the north curb so you could travel in the lane next to the curb or was that lane blocked by parked vehicles?

"A. There was some parked vehicles there.

"Q. So westbound which lane were you in?

"A. I was following the lane of the automobiles out of

the bus lane. In other words, the bus lane was blocked and I was in the lane with the traffic.

"Q. You mean there were cars parked at the curb and you were in the lane next left of that?

(R., p. 59) :

"A. That is right, sir.

"Q. Now did you undertake to stop in response to that signal at Third street?

12\* "A. Yes, sir, I did.

"Q. Now tell the jury what happened.

"A. Well, when I applied my brakes I didn't have any. I first mashed the accelerator—I mean the brake pedal and it didn't take and I mashed it on down and it still didn't take. Automobiles were stopped ahead of me for the traffic light and I had to whirl around from behind them to go into the bus stop safety zone and keep on going.

"Q. Now from the time you discovered you had no air had you heard any sound of anything breaking or any other sound?

"A. I heard something but I don't recall what it was, whether it was a backfire or air lines busted or what. I heard something pop, but I didn't notice it.

"Q. Now did you run out into the intersection?

"A. Yes, sir, I did.

"Q. When you ran out into the intersection did you have the green light or ran against the red light?

"A. The red light was against me.

"Q. Do you recall whether or not there was any north-bound automobile crossing that intersection at that time?

(R., p. 60) :

"A. Yes, there was one approaching my lane after I went in the safety zone to keep from hitting these cars in the back. This automobile was going north on Third street. Well, he was coming and I was, too. We collided and when we collided it knocked me off balance and into the drug store.

"Q. Did you try to duck away from him?

"A. Yes, sir, I did.

"Q. Did he try to duck away from you?

13\* "A. Well, I couldn't say whether he did or not.

"Q. Were you operating the steering wheel with one hand or two hands?

"A. Both hands.

"Q. Were you hurt in the accident?



"A. Yes, sir, I was; my knees.

"Q. Were you hurt enough to lose any time from work?

"A. Yes, sir, I lost four weeks.

"Q. Did you try to stop that bus with the hand brake?

"A. Yes, sir, I did.

"Q. How did it happen you didn't stop it.

"A. Well, I was too close on him to stop it.

\* \* \* \* \*

(R., p. 62):

"Q. Did you say you hit the northbound automobile?

"A. Yes, sir, we collided together. I can't say definitely whether he hit me or I hit him. In other words, we collided in the intersection.

"Q. Did that collision knock you out of your seat and throw you off balance?

"A. Yes, sir, it did.

"Q. What happened to you when the two hit?

"A. Well, I don't know. I was trying to stop the bus. I don't know what all did happen, everything was happening so fast. I can't say definitely what I was doing.

\* \* \* \* \*

14\* "Q. What happened to you?

"A. I was taken to the hospital.

\* \* \* \* \*

(R., p. 63):

"Q. Your hand brake, of course, or emergency brake as you call it is in no way connected with the air brake?

"A. No, sir.

\* \* \* \* \*

"Q. Now you said you applied your foot brake, which is your service brake, and that did not work?

"A. That is right.

"Q. Did you then undertake to apply your hand or emergency brake before colliding with the automobile?

"A. I don't know. You see, I pulled away from these automobiles, the automobiles in front of me, and then I was

(R., p. 64) in the intersection and I collided with the automobile. I applied the hand brake, but when—

“Q. You don’t know whether—

“Mr. Robertson: Let him finish.

“A. (continued) But when I applied this hand brake I don’t know, after I hit the automobile or before I don’t know, but I know I applied it.

\* \* \* \* \*

“Q. About how fast were you traveling at the time you said you undertook to apply your service brake and found it wouldn’t work?

“A. I would say 10 or 12 miles an hour?

\* \* \* \* \*

15\*      \*“(R., p. 65):

“Q. Tell me another thing; when you approached Third and Grace at what distance were you from the intersection when the light changed from green to red?

“A. Well, there was an automobile ahead of me, I don’t know just what distance it was—in other words I was in the—far enough behind the automobiles parked that I could get in the safety zone. In other words, I left this right lane and went over in the bus lane up to the curbing to keep from going into the back of him.

“Q. Did you see the light change?

“A. Yes, sir, I saw the light change.

“Q. Was it changing?

“A. Yes, sir.

“Q. How close were you to the intersection when you saw (R., p. 66) it changing?

“A. Well, I was maybe—I would say a couple of bus lengths from the intersection.

\* \* \* \* \*

“Q. Were you supposed to stop at that intersection anyway to pick up passengers?

“A. Yes, sir, I was supposed to let someone off there.

\* \* \* \* \*

"Q. Which side of Third street did you stop on to let off passengers?

"A. On the east side.

\* \* \* \* \*

(R., p. 68):

"Q. Mr. Allen, speaking under oath to the best of your recollection, how far were you away from going into the crossing when you used \*your air brake and found you didn't 16\* have any air? What is your present recollection, the best you can testify under oath?

"A. Well, I would say I was just about a bus length. In other words, I was approaching the safety zone and that would put me about a bus length from it.

"Q. And was it at that time that you cut out to your right from the thing in front of you?

"A. Yes, sir, because it was cars parked on the right side and I had a very little hole to get in there and get around it.

\* \* \* \* \*

"Q. You referred to the safety zone. Is that the safety zone where people stand to get on the bus?

"A. Yes, sir.

"Q. Were you going to stop there to pick up passengers?

"A. Yes, sir. I was to stop to let off passengers. I had a bell to stop there to let off passengers.

"Q. Don't you apply your brake to begin to stop or at least start to make the application of your brake before you reach the safety zone?

"A. Naturally.

"Q. So in this instance that is what you did according to your recollection?

"A. Yes, sir."

## 2. The facts according to *Milton Bebout* (R., pp. 70-76).

Milton Bebout, a Yellow Cab driver, had stopped at the southeast corner of Third and Grace Streets headed west, waiting for the traffic light (R., p. 71). As the light changed to \*caution he saw a northbound automobile pass, going 17\* toward Broad Street (R., p. 71), and when the light changed to green Bebout started forward (R., p. 75). About the same instant he heard the crash of the impact, and

he saw the westbound bus swerve to its right and go upon the sidewalk (R., p. 71). He did not see the impact and could not estimate the speed of either the automobile or the bus (R., p. 71), and he did not actually know whether one entered the intersection ahead of the other or whether both entered the intersection at the same time; but he testified they both started through the intersection on the caution light (R., p. 71), and that the automobile, traveling five or six feet from the right curb, had crossed a little more than half way over Grace Street when the impact occurred (R., p. 73); and he finally said the automobile entered the intersection before the bus entered it (R., p. 73).

3. The facts according to Mrs. Harold Lawrence (R., pp. 77-84).

Mrs. Harold Lawrence was the second passenger in the long front seat on the right side of the bus, facing south (R., p. 78). She had boarded the bus at Sixth and Grace Streets (R., p. 78). The bus stopped at Fourth Street, and one passenger boarded it and one passenger got off there (R., p. 79). As the bus neared Third Street she saw the automobile coming north and wondered why it did not stop (R., p. 79); and at the same time she saw the bus driver trying to get out of the way of the automobile (R., p. 79). She did not hear any signal for the bus to stop at Third Street (R., p. 81), but she heard a *blowing noise* (R., p. 81). She did not know precisely when she heard the noise, except that it was as the bus was \*crossing Third Street (R., p. 82). She did 18\* not see the traffic light (R., p. 83), and she thought the bus stopped at Third Street though she was not sure (R., p. 84).\*

4. The facts according to *Miss Jean Merkle* (R., pp. 88-91).

Miss Jean Merkle, a John Marshall High School student, was a passenger in the long seat on the right side of the bus (R., p. 89). She testified the bus stopped at Fourth Street (R., p. 90) and left Fourth Street in a normal manner (R., p. 90). Midway the block she heard a noise from the back, a "kind of backfire of some sort or explosion" (R., p. 90). Someone rang to get off, but the operator could not stop, and when he got to Third Street he did not stop. She looked up

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\*Actually, as appears from all the evidence in the case, the bus did not stop at Third Street.



and saw a column coming toward her, and that is all she remembered (R., p. 90). She did not see the traffic light or the northbound automobile (R., p. 90), but the operator "was trying to stop the bus and trying to keep it coming around" (R., p. 91).

5. The facts according to *Miss Mary Silvia* (R., pp. 91-95).

Miss Mary Silvia, a DuPont operator, was a passenger in the long seat on the left side of the bus directly behind the operator, facing Broad Street (R., p. 92). She boarded the bus at Eighth and Grace Streets, and according to her the bus stopped for passengers at Fourth Street (R., p. 93). About midway the block toward Third Street she heard an explosion from the back of the bus (R., p. 93) which sounded like a flat tire (R., p. 94). She did not see the traffic light or the northbound automobile (R., p. 93), and she "did not know 19\* what the bus driver did (R., p. 94). She estimated the fastest speed of the bus between Fourth Street and Third Street at ten or twelve miles per hour (R., p. 93).

6. The facts according to *Mrs. Nora Dempster* (R., pp. 95-98).

Mrs. Nora Dempster, a supply clerk employed by Kingan & Company (R., pp. 95-96), was a passenger in a seat on the left side of the bus about opposite the center door, facing toward the front of the bus (R., p. 96). She got on at Fourth Street (R., p. 96) and heard the buzzer for the bus to stop at Third Street (R., pp. 96-97), but the driver could not stop (R., p. 97). About the middle of the block (R., p. 98) she heard an "explosion like an air came out of something all at once and a soldier jumped up \* \* \* and started kicking the door" (R., p. 97). At that time the operator was trying to stop (R., p. 97). He had the green traffic light, but the light could have changed before he reached Third Street (R., p. 98). The fastest speed of the bus through the block was twelve or fifteen miles per hour or less (R., p. 98). Mrs. Dempster saw the automobile at the moment of impact, and the bus driver was then swerving to his right (R., p. 98).

7. The facts according to *H. C. Baker* (R., pp. 181-182).

H. C. Baker, a mechanic employed by Virginia Transit Company, was called to the scene of the accident before the bus was taken away and found "the air line had pulled out" (R., p. 182).

8. The facts according to *C. W. Galloway* (R., pp. 98-101).

C. W. Galloway, Assistant Superintendent of Equipment for Virginia Transit Company at Richmond, saw the bus about five o'clock on the Saturday afternoon of the accident 20\* when the bus was brought to the Company shop (R., p. 99) and put over a lift for an inspection the following Monday (R., p. 100). Galloway examined the bus Monday morning and found the air line that controls the brakes "broken aloose in the rear of the bus" (R., p. 100). A fitting soldered on the end of the air line had come loose from the line (R., pp. 100-101).

9. The facts according to *Edward A. Falwell* (R., pp. 101-109).

Edward A. Falwell, a mechanic with Virginia Transit Company and Virginia Electric and Power Company for approximately thirteen years (R., p. 102), and prior to that a bus driver for Virginia Electric and Power Company for eleven years (R., p. 102), examined the bus on Monday morning (R., p. 102), and according to Falwell the air line that controls the brakes had pulled out of its fitting. Falwell took the air line off, and it was tagged for identification (R., p. 103). The end that had pulled out was sagging down at the back end of the bus (R., p. 104). The end comes soldered from the factory. During Falwell's entire experience as a bus operator he had never had a similar break, and the break on bus No. 67 is the first one of the kind he ever saw (R., pp. 105-106). He did not know what caused the break (R., p. 106). Falwell described the air line as a flexible hose (R., p. 106), and said the connection was tight (R., p. 107). The flexible hose connects with a copper line (R., p. 107) which is practically straight up and down the length of the bus (R., p. 108). When Falwell examined the bus on Monday morning, all other air lines at the back of the bus were in good order (R., p. 109).

21\*      \*10. The facts according to *Raymond S. Challenor* (R., pp. 125-127).

Raymond S. Challenor, Night Foreman for the defendant, has been employed by Virginia Transit Company and its predecessor, Virginia Electric and Power Company, since 1925 (R., pp. 125-126). He has general supervision of the nightly inspection of buses in Richmond (R., pp. 126-127), and he testified bus No. 67 was inspected on the night of June 4, 1948 (R., p. 127).

11. The facts according to *Ray H. Moore* (R., pp. 109-125).

Ray H. Moore is General Superintendent of Equipment and Maintenance for Virginia Transit Company throughout the Company's system, including Richmond, Norfolk and Portsmouth (R., pp. 109-110). He graduated in engineering at Rose Polytechnic Institute, Terre Haute, Indiana, in 1925 (R., p. 110). He drove a bus to pay his way through school (R., p. 110), and after graduation he was employed for a number of years with J. G. Brill Company in Philadelphia, on automotive works in the engineering service department (R., p. 108), then with Pennsylvania Lines at Norristown for five or six years (R., p. 110), then with Harrisburg Railways for seven years (R., p. 110); all in similar activities (R., p. 110). He came to Richmond in 1948 (R., pp. 110-111).

According to Moore bus No. 67 is a Mack bus which was purchased new on October 4, 1940 (R., p. 111), and on June 5, 1948, the bus had been run 279,000 miles (R., p. 111), but the bus is standard equipment, good for 400,000 or 500,000 miles due to the fact that it is maintained on a prescribed schedule to keep it in first class condition (R., p. 112).

22\* The bus is given a nightly operating inspection (R., pp. 112-113), and when it has been operated 6,000 miles it is given a preventive maintenance inspection (R., p. 113); and it is given a lubrication inspection after each 3,000 miles of operation (R., p. 113).

To keep abreast of developments in motor bus transportation, Moore reads the standard trade magazines and attends meetings of the transit industry two or three times each year (R., pp. 113-114). He is also a member of the Society of Automotive Engineers (R., p. 114).

According to Moore bus No. 67 cost between \$11,000 and \$12,000 when it was purchased, and Virginia Transit Company methods of installation, inspection, lubrication and maintenance are the best yet developed in the motor bus transportation business (R., p. 114).

Moore testified that the air line which broke was Titeplex flexible air line hose and that Titeplex flexible air line hose is the best known type of air line in the passenger motor bus business (R., 114), and that the hose which broke had been installed on May 14, 1948 (R., p. 115), to replace one which was leaking (R., p. 115). Moore explained that flexible hose is subject to pinhole leaks and leaks from abrasions (R., p. 115), but bus No. 67 had been given its regular nightly inspection on the night before the accident (R., p. 115), and it had been given its scheduled 6,000 mile preventive maintenance inspection on January 12, 1948 (R., p. 116).

23\* \*Moore introduced a new piece of Titeplex flexible air line hose in evidence as Exhibit C (R., p. 116), and he demonstrated from it why it was he could not explain what caused the failure of the air line on June 5, 1948 (R., p. 117).

Moore testified that flexible air line hose is preferable to a rigid air line for the reason that a flexible line absorbs vibrations (R., p. 117). Virginia Transit Company purchases its Titeplex flexible air line hose from the Mack Company, and the Mack Company purchases it from Titeplex Metal Tubing Company (R., p. 117), which is a high type manufacturing company (R., p. 117).

According to Moore it is a rare thing for an air line to fail (R., p. 118), and he had tried to discover the cause of the failure on bus No. 67, but he had been unable to ascertain the cause (R., p. 118).

According to Moore a special solder is used in the manufacture of Titeplex flexible air line hose, to withstand heat (R., p. 119).

Moore testified also that when an air line breaks, the operator cannot change gears (R., p. 119), but can stop the motor by cutting off the ignition (R., p. 120). In event of a failure of air line, unless the operator cuts off the ignition, Moore was of opinion that the hand brake would not stop the bus for the reason that the motor would be pulling the bus (R., p. 120).

According to Moore the air line on bus No. 67 "pulled out" (R., p. 126); it was not a loose connection (R., p. 121); and he did not think the solder melted (R., p. 121).

24\* \*Moore was present when the air line was taken off the bus, and he testified the air line was not then clogged (R., pp. 178-179).

12. The facts according to *V. C. Iacopinelli* (R., pp. 127-129).

V. C. Iacopinelli, a police officer of the City of Richmond, was called to the scene of the accident and questioned the operator of the bus (R., pp. 128-129), and the operator told him the air line broke when he attempted to stop and he grabbed for the hand brake (R., pp. 128-129).

Iacopinelli testified also that he "entered the bus and looked at the hand brake and saw it pulled" (R., p. 128).

13. The facts according to *Cecil M. Rickert* (R., pp. 129-134).



Cecil M. Rickert, General Superintendent in Charge of Maintenance for Citizens Rapid Transit Company (R., p. 130), which operates the motor bus transportation system in Hampton and Newport News (R., p. 130), corroborated Ray C. Moore generally, and testified that bus No. 67, after 279,000 miles of operation (R., p. 131), was standard up-to-date equipment (R., p. 131), and that the methods of inspection and maintenance in use by Virginia Transit Company are the best thus far developed in the passenger motor bus transportation business (R., pp. 131-132).

Rickert testified also that Titeplex flexible air line hose is the best obtainable in the industry (R., p. 132), and that air line failures are rare (R., p. 132). According to Rickert, 25\* he examined the hose that broke (R., p. 132), and he could not ascertain what caused it to break (R., p. 132); and he did not know any type of inspection which could have prevented the break (R., p. 134). He could find no defect in the hose (R., p. 133), and the life of the hose is normally about the same as the bus (R., p. 133). The hose is manufactured by a standard company (R., p. 133), and comes from the manufacturer with the fitting soldered upon the hose (R., p. 133); and there is no way to inspect the soldered connection (R., p. 133).

14. The facts according to *J. B. Blaiklock* (R., pp. 134-141).

J. B. Blaiklock, Superintendent of Equipment for Capital Traction Company of Washington, D. C. (R., p. 134), which operates 1,000 passenger motor buses (R., p. 134), testified that Capital Traction Company uses Titeplex flexible air line hose as the best obtainable type of air line (R., pp. 130, 134); and according to Blaiklock, Capital Traction Company maintains a research engineering department (R., pp. 134-135) which is in constant search of new methods and materials, and seeks continually to prove the value of new methods and materials (R., p. 135).

Blaiklock testified further that bus No. 67 with an accrued operation of 279,000 miles was up-to-date standard equipment (R., p. 135), and that he would expect the bus to be good for an operation of 500,000 miles (R., p. 135). He testified also that Virginia Transit Company's methods of inspection and maintenance are the best known in the transportation business (R., p. 136), and that there was no better air line made than Titeplex flexible air line hose (R., pp. 135-136); a flexible

air line being preferable to a rigid air \*line such as  
26\* copper piping for the reason that a flexible line absorbs vibrations between the motor and the air tank (R., p. 136), while such vibrations cause a rigid line to crystallize and break.

Blaiklock had examined the air line which broke on bus No. 67, and he could not determine what caused it to break (R., pp. 136-137). He could see no cause for the break (R., p. 139), and such failures are very rare (R., pp. 136-137); and no method of inspection will disclose any means whereby such breaks can be prevented (R., p. 136). He distinguished the failure which occurred on bus No. 67 from a pinhole leak which develops progressively and can be discovered by inspection (R., p. 138) for the reason that the air can be felt or heard as it escapes from the pinhole leak in the air line (R., p. 138).

On June 5, 1948, the solder which holds the fitting to the flexible hose came loose on bus No. 67, but no hidden defect could be found, and according to Blaiklock, the fitting could not have been knocked loose from the flexible hose in the accident for the reason that the position and method of installation of the air line prevents its being knocked loose by a blow (R., p. 140). Blaiklock had never known a similar failure in thirty years' experience with Capital Traction Company (R., p. 139).

15. The facts according to *O. M. Thornton* (R., pp. 142-153).

O. M. Thornton is Assistant Manager of Titeplex, Incorporated, which was organized in 1916 and put its product on the market in 1917 (R., p. 142). The company had phenomenal growth and expansion during World War I and World War II, and it is today pre-eminent in its field (R., p. 142).

27\* \*Thornton explained the evolution for the specifications for material, design, manufacturing methods, tests and inspections which have been developed in the protection of Titeplex flexible air line hose (R., p. 143), and he explained how a flexible line takes up vibrations (R., p. 143) and is less apt to break than a rigid line (R., p. 143). The Titeplex product was used in both World Wars for fuel oil lines and air lines throughout the motor transport corps and upon all ordnance vehicles including combat vehicles (R., pp. 144-145). The Company maintains its own research department (R., p. 144).

The company now sells its product to the Mack Company, American Car Foundry, J. G. Brill, and General Motors Corporation (R., 146) as the best known standard flexible air line hose in general use today (R., 146). Titeplex flexible air line hose is tested during manufacture (R., p. 146) under water and subject to pressure so that leaks will be disclosed by bubbles (R., p. 146); it is subjected to a spot solder test to demonstrate the quality of the fitting to the hose (R., p. 147); it is tested for air pressure resistance (R., p. 147); and it is tested in a vibrating machine for textile strength and resistance to vibrations (R., p. 147).

The solder used is a special type of solder which is resistant to heat and will melt only at high temperature (R., p. 148). As vehicles become progressively larger, they generate more heat, and through constant research and development of its product the Company seeks to counteract the heat problem (R., p. 149).

According to Thornton, no known method of inspection would have done any good in the case at bar (R., p. 149), 28\* and every piece of Titeplex flexible air line hose is tested before it leaves the factory (R., p. 150).

Thornton did not know what caused the failure (R., p. 150), and he had never known any such failure in any other instance (R., p. 151). The life expectancy of the air line is indefinite. It may last throughout the life of the vehicle. No one can tell (R., p. 152).

16. The facts according to C. A. Scharfenberg (R., pp. 153-163).

C. A. Scharfenberg, Executive Engineer at the Allentown plant of the Mack Manufacturing Corporation (R., p. 154) graduated from Lehigh University in 1933 (R., p. 154).

He testified that bus No. 67 is up-to-date standard equipment which should be good for 500,000 miles, and he testified that Titeplex flexible air line hose is a standard product and that there is no better air line hose available in the market (R., p. 155).

According to Scharfenberg, the failure on bus No. 67 is the only one of its kind he ever saw (R., p. 156). He explained the special type of solder which is used (R., p. 156). He approved the methods of inspection employed by Virginia Transit Company as standard practice (R., p. 157), and he did not know what caused the failure on June 5, 1948 (R., p. 157). So far as he knew there was no way the failure could have been anticipated or discovered or prevented (R., p. 157) without a destructive test of the air line (R., p. 157).

\*Scharfenberg testified also that after the air line  
 29\* broke the operator could not change gears (R., p. 158),  
 and that so long as the engine got gas, it would continue  
 to pull in the same gear in which it was running when the  
 break occurred (R., p. 159).

Scharfenberg testified further that if an operator heard the  
 air line break and thereupon applied the brakes, they would  
 not be effective, since 20 or 25 pounds air pressure is required  
 for effective brake pressure (R., p. 161). The maximum air  
 pressure is from 85 to 105 pounds (R., p. 161). If an opera-  
 tor applies the brakes instantly after an air line break occurs,  
 he will get some effect (R., p. 162); and he will get additional  
 effect by application of the hand brake (R., p. 162). If a con-  
 nection pulls loose, however, which is what happened on bus  
 No. 67, the air pressure will vanish in a matter of seconds (R.,  
 p. 163).

17. The facts according to *Louis A. Bode* (R., pp. 163-178).

Louis A. Bode, Superintendent of Equipment of Baltimore  
 Transit Company (R., p. 164), explained that solid air line  
 connections break more readily than flexible hose connections,  
 and for that reason Baltimore Transit Company uses flexible  
 hose connections (R., p. 164).

Bode testified that bus No. 67 is standard up-to-date equip-  
 ment which should be good for 500,000 miles and that Titeplex  
 flexible air line hose is as good as any to be had (R., p. 167).

He testified further that Virginia Transit Company  
 methods of installation, inspection and maintenance conform  
 to first class present day standard operating practice  
 30\* (R., p. 167). \*He had examined the air line which broke,

but he could not tell what caused the failure (R., p. 168),  
 and he said the break which occurred is a very rare type of  
 failure (R., p. 168).

Bode explained that an air line sometimes gets stopped up  
 and blows off the end; but that did not happen on bus No. 67  
 (R., pp. 168-169), and no kind of inspection would have done  
 any good (R., p. 169).

Bode testified also that the position and method of installa-  
 tion of the air line made it impossible for the collision to have  
 caused the failure (R., p. 169); and the solder did not melt  
 (R., p. 172).

According to Bode, if an air line fails, the air pressure col-  
 lapses in a matter of seconds (R., p. 172). The operator of  
 bus No. 67 cannot shift gears if the air pressure falls below  
 65 pounds (R., p. 173), and if bus No. 67 was running in high



gear and the air pressure failed, the operator would have had to cut off the ignition and apply the hand brake to stop the bus (R., p. 174).

Bode thought some unknown hidden defect caused the failure on June 5, 1948 (R., p. 175), and he testified that in event of a break in the air line, he did not know how many seconds it takes to lose effective air pressure (R., p. 178).

### THE TESTIMONY ALTOGETHER IS CONCLUSIVE AGAINST THE PLAINTIFF

The testimony altogether is conclusive against any recovery by the plaintiff, and after all the testimony had been 31\* introduced, the defendant, as already stated, moved to strike the testimony upon the ground that no negligence of the defendant had been shown which would support a verdict for the plaintiff (R., p. 191), but the court overruled the motion subject to exception by the defendant.

### ARGUMENT.

#### *The Plaintiff Cannot Recover Under the Rule of Res Ipsa Loquitur*

The rule applicable upon the *res ipsa loquitur* phase of the case is the rule which was applied in *Virginia Electric and Power Company v. Lowry*, (1936) 166 Va. 207, where the plaintiff sought without success to recover damages for personal injuries he sustained when a streetcar upon which he was a passenger was derailed.

Mr. Justice Hudgins delivered the opinion in the Lowry case and said (pp. 218-221):

(p. 218)

\* \* \* \* \*

"After all evidence for both sides is in, and a motion is made to take the decision from the jury, either by a motion for a directed verdict, or a non-suit, or, according to the practice in Virginia, to strike the evidence, it is not the duty, or within the province of the court, to determine whether the evidence is equally balanced, or whether the preponderance of the evidence is on one side or the other. But it is the duty of the court to determine whether or not there exists any reasonable hypothesis on which the jury could base a finding of

defendant's negligence. If such a hypothesis exists, then the motion should be overruled.

32\* \*That is, where the evidence is such that reasonable men may fairly differ as to whether it is sufficient to convict the defendant of negligence, it then becomes the duty of the court to submit the case to the jury, under proper instructions.

"Applying these principles to the evidence presented in the case under consideration, we have a passenger guilty of no contributory negligence injured by the derailment of the car in which he was riding; an accident which does not usually happen when the carrier exercises that high degree of care which the law requires for his safety. These facts make out a *prima facie* case. (p. 219) To meet the case thus made defendant produced proof, pointing out that the derailment was due to a specific thing, namely, a broken axle, which in turn was the result of a defect of unknown origin and of indeterminate duration; that in the purchase of this particular piece of machinery, it had exercised that high degree of care which the law requires; that the method of inspection was that which had been demonstrated to be practicable by its adoption and use on the part of a recognized class of persons engaged in similar affairs, and such inspection did not, and could not have revealed the defect.

"There is no doubt about the cause of the derailment; there is no uncertainty as to the manner in which defendant has performed its obligation for the care and safety of its passengers. The evidence fully establishes the fact that the standard of care it exercised, fully complied with the test stated in both the majority and minority opinions in *Richmond-Ashland Railway Co. v. Jackson*, 157 Va. 628, 162 S. E. 18. On consideration of all the evidence we find no reasonable hypothesis on which to sustain a verdict based on negligence of defendant.

"Prior to the decision in the *Tomlinson Case*, *supra*, and while the rule in Virginia placed the burden on the carrier to disprove negligence in this class of cases, a similar question was before the court in *Roanoke Ry. & Elec. Co. v. Sterrett*, 108 Va. 533, 62 S. E. 385, 387, 19 L. R. A. (N. S.) 316, 128 Am. St. Rep. 971. Sterrett, a passenger on a street railway

33\* car, was injured \*when the bridge, over which the car was passing, collapsed. The collapse of the bridge was due to an imperfect weld in the stringer upholding it, and this defect could not have been detected by the most careful scrutiny. The court quoted Hutchinson on Carriers, vol. 2 (3d Ed.), sections 903, 904, as follows: 'Where an accident arises

from a hidden and internal defect, which a careful and thorough examination would not disclose, and which could not be guarded against by the exercise of a sound judgment and the most vigilant oversight, then the proprietor is not liable for the injury, (p. 220) but the misfortune must be borne by the sufferer as one of that class of injuries for which the law can afford no redress in the form of a pecuniary compensation.'

"It is true plaintiff contends that the breaking of the axle was the *result* of the derailment, and not the *cause*. One or more witnesses did testify that the car, at the time of the derailment, was running at a speed of thirty to thirty-five miles per hour, but even if it was, such a rate of speed over the rails on the Richmond-Petersburg line, ordinarily, would not be excessive or dangerous. This roadbed is situated in the middle of the turnpike, the space between the tracks is not paved, except at street intersections, and is devoted exclusively to street car traffic. The time of the accident, as heretofore stated, was about mid-day. The street is straight, with a slight downgrade. There is nothing in the evidence to suggest that the speed of the train was a contributing cause of the derailment.

"Plaintiff testified that he heard a loud bumping noise under the car as it passed over several intersections before reaching Halifax avenue. This indicated, to him, that a part of the running gear, or machinery, was hanging down, and striking the hard surface of the street at intersections, but he failed to prove that the noise was heard, or should have been heard, by any employee of defendant. There were several other passengers on the car, and two motormen, who testified that they heard no unusual noise or bumping sound prior to the derailment. After the wreck a thorough examination was made of all parts of the machinery and equipment, and all except the axle was found in good order, and in proper place.

The evidence is full-handed that the sole cause of the 34\* derailment \*was the breaking of the axle, and no other rational conclusion can be reached from the evidence.

"Plaintiff further contends that decision in the case is controlled by *Norfolk Coca-Cola Bottling Works, Inc. v. Krausse*, 162 Va. 107, 173 S. E. 497, in which recovery was allowed for injury sustained by swallowing bits of glass (p. 221) while drinking Coca-Cola from a bottle. It was held that the finding of the glass in the bottle was itself evidence that due care had not been exercised; and that if defendant had done everything it said it did, it would have been impossible for glass to have gotten in the bottle. Exactly how the glass came to be in the sealed bottle was not explained. It was clearly

established that the bottle had been continuously in the possession of defendant, or its dealer, from the time it was filled with Coca-Cola, until plaintiff opened it in the presence of an employee of the dealer. In the case under consideration, the cause of the derailment was clearly established. It is a matter of common knowledge that occasionally there is a defect in metal or in machinery which causes it to break regardless of the care used to manufacture, select and maintain such machinery.

"For the reasons stated, the judgment of the trial court is reversed, the verdict of the jury set aside, and a final judgment here entered for defendant."

So also in *Stephens v. Virginia Electric and Power Company*, (1945) 184 Va. 94, where the plaintiff was denied recovery for injury sustained from electricity which escaped from defendant's switchbox. Mr. Justice Gregory delivered the opinion of the court and said (pp. 97-100):

(p. 97)

"It is conceded that in order for the plaintiff to have sustained a recovery she necessarily was compelled to rely upon the doctrine of *res ipsa loquitur*. If she is entitled to recover her recovery must be based upon presumed negligence, for no actual negligence was disclosed.

"All of the evidence discloses that the defendant exercised proper care in the acquisition of the switch, that it properly installed it, and that it properly inspected it.

"The evidence discloses that the coil in the switch had burned out causing a gap of almost an inch or a little wider. An inspection of the switch an hour after the accident disclosed that nothing else was out of order. The coil was immediately replaced and the device thereafter worked perfectly. It appears that there are no moving parts in the device and there is no friction or wear and tear on it as usually is the case where there are moving parts. The coil in this type of switch seldom burns out, and its life is indefinite. Some of them have been in operation by (p. 98) the defendant for fifteen or twenty years without being replaced. However, infrequently, they do burn out. As expressed by a witness, 'those coils are sort of like your street lamps or your fuses in your home; there is no regular time for them to burn out'. When a coil burns out an arc occurs which occasions

a flare from the switch box, but every expert testified that there was no danger when the coil burns out because the current automatically is cut off.

“The switch is constructed to carry the necessary voltage required to throw the switch rails. This required voltage is from a maximum of 600 volts down to 550 volts. A direct current of electricity, as distinguished from an alternating current, flows into the switch from an auxiliary overhead wire strung from the trolley wire to the switch. As the street car passes the switch box at from three to four miles per hour the switch rails at the corner are thrown automatically. One characteristic of the direct current is that it does not build up an excess of electricity. It is uncontradicted that there was a proper ground wire, properly guarded, running from the switch box to the ground and welded to a piece of pipe which was driven in the ground five or six feet.

36\*      \* “The switch used in this instance is standard equipment and in use in nearly all large cities in the United States. It requires only routine maintenance and is almost free from failures. It is known as the Cheatham switch and has been manufactured and sold throughout the United States for the past twenty-four years. It is uncontradicted that no accident from this type of switch, such as was claimed to have been suffered by Mrs. Stephens, the plaintiff, has ever been heard of before that time. It is also uncontradicted that no one could have foreseen that such an accident would or could have happened. It is further established by evidence which is not disputed that the switch here involved was installed, maintained and inspected by the defendant in the approved and proper manner. Every precaution required by the best and approved practice applicable to devices of (p. 99) this kind was shown by the uncontradicted evidence to have been taken and applied in regard to this switch.

\*           \*           \*           \*           \*

“In order for the plaintiff to recover in this case it was necessary for her to show that the defendant breached a duty which it owed her and which was the proximate cause of her injury, for actionable negligence implies a duty, a violation thereof, and a consequent injury. The absence of any one of these elements is fatal to the claim. An accident which is inevitable or not avoidable by the exercise of that precaution which is expected of the ordinary man, or which is not reasonably to be foreseen by a man in the exercise of reasonable caution and prudence may not be made the ground for a negligence action.



"In *Roanoke R., etc., Co. v. Sterrett*, 108 Va. 533, 62 S. E. 385, 128 Am. St. Rep. 971, 19 L. R. A. (N. S.) 316, the plaintiff was riding on a street car which was passing over a bridge. The bridge collapsed and she was injured. In her action, brought against the street railway company, the evidence disclosed that the bridge had been properly inspected. This court denied a recovery, and speaking through Judge Harrison, had this to say:

37\*       \*““Where an accident arises from a hidden and internal (p. 100) defect, which a careful and thorough examination would not disclose, and which could not be guarded against by the exercise of a sound judgment and the most vigilant oversight, then the proprietor is not liable for the injury, but the misfortune must be borne by the sufferer as one of that class of injuries for which the law can afford no redress in the form of a pecuniary compensation". Hutchinson on Carriers, vol. 2, secs. 903-4 (3rd ed.). The liability of a carrier of passengers as thus defined is now almost universally adopted.

““As a matter of course, there can be no negligence where there is no breach of duty. It must appear, therefore, not only that the defendant owed a duty, but also that he did not perform it; and if the accident complained of was inevitable, it is not a case of negligence. An accident is inevitable, if the person by whom it occurs neither has, nor is legally bound to have, sufficient power to avoid it, or prevent its injuring another. In such a case the essential element of a legal duty is wanting, and it cannot, therefore, be a case of negligence. Shearman & Red. on Neg., vol. 1, secs. 15-16.’

“In most jurisdictions it is held that the presumption arising from the *res ipsa loquitur* doctrine constitutes evidence sufficient to take the case to the jury even though the defendant introduces evidence which, if true, would be sufficient to rebut the presumption of negligence. See 38 Am. Jur., Negligence, sections 309, and 355. But this is not the rule in Virginia. Here the presumption of negligence raised by application of the doctrine is entirely overcome where properly refuted by sufficient evidence.

“In *Richmond v. Hood Rubber Products Co.*, 168 Va. 11. 190 S. E. 95, 142 A. L. R. 246, we said it was first essential to the application of the doctrine that the cause of the accident be undetermined. In the case at bar the cause was determined—it was the burning out of the coil in the switch.

38\*       \*“We said in *Norfolk Coca-Cola Bottling Works v. (p. 101) Krausse*, 162 Va. 107, 173 S. E. 497, that the

doctrine of *res ipsa loquitur* is an evidential presumption sometimes resorted to in the absence of evidence, but that it is not to be applied when evidence is at hand. In the case at bar the evidence is at hand. See *Riggsby v. Tritton*, 143 Va. 903, 129 S. E. 493, 45 A. L. R. 280; *Chesapeake, etc., R. Co. v. Baker*, 149 Va. 549, 140 S. E. 648, 141 S. E. 753, and on rehearing, 150 Va. 647, 143 S. E. 299; *Chesapeake, etc., R. Co. v. Tanner*, 165 Va. 406, 182 S. E. 239; *Virginia Elec., etc., Co. v. Lowry*, 166 Va. 207, 184 S. E. 177, and *Smith v. Richmond*, ante, p. 40, 34 S. E. (2d) 371.

"In the case at bar there was an entire absence of any evidence which tended to show the existence of a single circumstance or condition which, if followed by the defendant, would have disclosed any defect in the coil.

"There is no evidence which establishes or tends to establish that the defendant violated any duty which it owed the plaintiff. It is not even suggested that there are better methods of installation, maintenance, inspection, and operation than those employed by the defendant. In the face of this evidence any presumption of negligence which might have been raised as a result of the application of the doctrine of *res ipsa loquitur* completely disappears. The burden of proving her case rested upon the plaintiff. The evidential presumption of negligence under the doctrine upon which she solely relies having been dissipated by clear and uncontradicted evidence, there remains no evidence to support her case.

"The judgment is therefore affirmed."

*The Plaintiff Cannot Recover Upon the Theory the Operator of the Bus Negligently Failed to Stop the Bus With the Hand Brake*

The evidence is uncontradicted that the failure of the air line created a sudden emergency for which the operator  
 39\* of the \*bus was in no wise responsible, and after the air line failed, there is absolutely no evidence that the operator of the bus was in anywise negligent in the sudden emergency which confronted him in his impending collision with the northbound automobile. In this connection Patrick P. Allen, the operator of the bus, testified as follows(pp. 60, 62-65):

(p. 60)

\* \* \* \* \*

"Q. Did you try to stop that bus with the hand brake?

"A. Yes, sir, I did.

"Q. How did it happen you didn't stop it?

"A. Well, I was too close on him to stop it.

\* \* \* \* \*

(p. 62)

"Q. Did you say you hit the northbound automobile?

"A. Yes, sir, we collided together. I can't say definitely whether he hit me or I hit him. In other words, we collided in the intersection.

"Q. Did that collision knock you out of your seat and throw you off balance?

"A. Yes, sir, it did.

"Q. What happened to you when the two hit?

"A. Well, I don't know. I was trying to stop the bus. I don't know what all did happen, everything was happening so fast. I can't say definitely what I was doing.

\* \* \* \* \*

"Q. What happened to you?

"A. I was taken to the hospital.

40\* \* (p. 63)

\* \* \* \* \*

"Q. Your hand brake, of course, or emergency brake as you call it is in no way connected with the air brake?

"A. No, sir.

"Q. Two separate and distinct systems of brakes?

"A. Yes, sir.

Q. Now you said you applied your foot brake, which is your service brake, and that did not work?

"A. That is right.

"Q. Did you then undertake to apply your hand or emergency brake before colliding with the automobile?

"A. I don't know. You see, I pulled away from these automobiles, the automobiles in front of me, and then I was (R., p. 64) in the intersection and I collided with the automobile. I applied the hand brake, but when—

"Q. You don't know whether—

"Mr. Robertson: Let him finish.

"A. (Continued) But when I applied this hand brake I don't know, after I hit the automobile or before I don't know, but I know I applied it.

\* \* \* \* \*

"Q. About how fast were you traveling at the time you said you undertook to apply your service brake and found it wouldn't work?

"A. I would say 10 or 12 miles an hour.

"Q. Proceeding at that rate of speed if you had applied (p. 65) your hand or emergency brake, within what distance can you stop?

41\* "A. Traveling at that speed?

"Q. Yes, 10 or 12 miles an hour?

"A. Oh, I wouldn't say because the street was slick and everything.

"Q. Could you stop within the length of the bus, you think?

"A. I wouldn't say."

In view of the foregoing uncontradicted testimony, the distance the bus ran after the air line failed is immaterial. The rule applicable here is the rule which was applied in *Jones v. Hanbury*, (1932) 158 Va. 842, where Mr. Justice Epes delivered the opinion of the court and said (pp. 860-861):

(p. 860)

\* \* \* \* \*

"Where one, without his fault, is suddenly placed by the negligence of another in such a position that he is compelled to choose instantly in the face of grave and apparent imminent peril between two or more hazards, or two or more means of attempting to escape the peril with which he is confronted, the law does not require of him the exercise of all the presence of mind and care of a reasonably prudent person under ordinary circumstances, or even of all that which a reasonably prudent man would ordinarily show in the face of danger. It makes allowances for the circumstances under which he is forced to act and the effect of the real or apparent impending peril on his mind and on his nervous and muscular reactions. If he acts under a (p. 861) reasonable apprehension of grave, imminent danger, in the honest exercise of his judg-

ment, and makes such a choice as a person of ordinary prudence *might* perhaps make under the circumstances, he is in law not responsible for any injury resulting therefrom to himself or to the one whose negligence created the emergency. The original \*negligence which created the emergency remains in law the sole proximate cause of the injury. Under such circumstances, he is not responsible for mistakes of judgment; or because, if he had chosen the other hazard, or another means of escape, or done something else, the injury would have been averted; or even because in attempting to avert the peril, he created a more dangerous situation. 1 Sherman & Redfield on Neg. (6 ed.) section 85a; 20 R. C. L. page 29; 1 Thompson Com. on Neg. sections 195-198; White's Sup. to Thompson Com. on Neg. sections 195-198; Wharton Law of Neg. sections 93-95, 304; Amer. Digest, Negligence, sections 71-72; 45 C. J., Negligence, section 517 *et seq.*; *C. & O. Ry. Co. v. Crum*, 140 Va. 333, 125 S. E. 301; *Richmond Ry & Elec. Co. v. Hudgins*, 100 Va. 409, 41 S. E. 736; *South West Impv. Co. v. Smith's Adm'r.*, 85 Va. 306, 7 S. E. 365.

"Under such circumstances, to render one liable for negligence because of the choice he made or of acts done by him in pursuance thereof, it is not sufficient that a man of ordinary prudence *probably* would have chosen or acted differently. If the evidence leaves it in doubt as to whether a man of ordinary prudence *might* have so chosen or acted, it fails as a matter of law to establish that he was guilty of negligence in so choosing or acting. It must be clear from the evidence that his choice or acts were so reckless and wanton that it cannot reasonably be said that a man of ordinary prudence might, under the same conditions, make such a choice or so act."

*Instruction No. 2 Should Not Have Been Given.*

Over the objection and exception of the defendant the trial court erroneously granted *Instruction No. 2* for the plaintiff as follows (R., p. 201):

"The Court instructs the jury that where a person received injuries from some means or instrumentality in the control of the defendant which does not ordinarily occur where reasonable care is used by the defendant, and the injury occurs under such circumstances that the defendant should  
43\* have the \*means of determining how it occurred, and the plaintiff does not have this information, then, the

jury may infer that the injury was due to some negligence of the defendant. They are not obliged to draw such an inference but may do so. And, in the absence of evidence satisfactorily showing freedom from negligence, the jury may find a verdict for the plaintiff: But on the whole case the jury must believe from the preponderance of the evidence that the injury was due to the negligence of the defendant, before they can find a verdict for the plaintiff."

Under the decisions in *Virginia Electric and Power Company v. Lowry* (1936), 166 Va. 207, and *Stephens v. Virginia Electric and Power Company* (1945), 184 Va. 94, which have already been cited, the trial court committed reversible error to the prejudice of the defendant when it told the jury in *Instruction No. 2* that the jury might infer the plaintiff's injury was due to negligence of the defendant when the defendant had introduced uncontradicted testimony which had conclusively rebutted the *prima facie* case the plaintiff had originally presented under the *res ipsa loquitur* doctrine. The jury was required by law to base its verdict upon the evidence, and could not legally base its verdict upon any inference whatsoever.

The court also committed reversible error to the prejudice of the defendant when it in effect told the jury in *Instruction No. 2* that the defendant must satisfactorily show the jury it was free from negligence, since the court thereby put the burden of proof upon the defendant to show it was not negligent, which is not the law; and the error of the court 44\* was not cured by \*the contradictory statement that "on the whole case the jury must believe from the preponderance of the evidence that the injury was due to the negligence of the defendant before they can find a verdict for the plaintiff".

### *The Trial Court Should Have Set Aside the Verdict of the Jury.*

As previously stated, under the instructions given the jury returned a verdict of Seven Thousand Five Hundred Dollars (\$7,500.00) for the plaintiff (R., pp. 5-6), and the defendant thereupon moved to set aside the verdict as contrary to the law and the evidence and without evidence to support it (R., p. 198), but the court overruled the motion, and judgment was entered upon the verdict for the plaintiff, all subject to exception by the defendant.

## CONCLUSION.

Upon the record and under the authorities cited the defendant submits that the judgment of the trial court and the verdict of the jury must be set aside and final judgment rendered for the defendant, or in lieu thereof the defendant must be granted a new trial upon all the issues in the case since—

1. The testimony fails to convict the defendant of any negligence which will support a verdict for the plaintiff;

2. The trial court committed reversible error to the prejudice for the defendant when the court granted *Instruction No. 2* for the plaintiff;

45\*     \*3. The trial court committed reversible error to the prejudice of the defendant when the court declined to set aside the verdict for the plaintiff and enter up final judgment for the defendant upon the ground that the verdict is contrary to the law and the evidence and without evidence to support it, or in lieu thereof grant the defendant a new trial upon all the issues in the case on account of misdirection of the jury by the court.

Counsel for defendant desire to state orally the reasons for reviewing the judgment of the trial court, and hereby adopt this Petition for Writ of Error and *Supersedeas* as their opening brief in support of this Petition.

Copy of this Petition for Writ of Error and *Supersedeas* was mailed to Messrs. George E. Allen, Sr., and George E. Allen, Jr., counsel for plaintiff on May 27, 1949.

Respectfully submitted,

VIRGINIA TRANSIT COMPANY,  
By T. JUSTIN MOORE,  
Electric Building,  
Richmond 12, Virginia,  
ARCHIBALD G. ROBERTSON,  
Electric Building,  
Richmond 12, Virginia,  
Counsel.

Dated May 27, 1949.

46\*     \*We, T. Justin Moore and Archibald G. Robertson, attorneys practicing in the Supreme Court of Appeals of Virginia, do certify that in our opinion there is sufficient matter of error in the record accompanying this Petition to

render it proper that the judgment complained of be reviewed and reversed.

T. JUSTIN MOORE,  
Electric Building,  
Richmond 12, Virginia,  
ARCHIBALD G. ROBERTSON,  
Electric Building,  
Richmond 12, Virginia

Received May 27, 1949.

M. B. WATTS, Clerk.

June 17, 1949.

Writ of Error and *Supersedeas* awarded by the court. No additional bond required.

M. B. W.

## RECORD

### VIRGINIA:

Pleas before the Honorable Haskins Hobson, Judge of the Law and Equity Court of the City of Richmond, Part Two, held for the said city at the courtroom thereof in the City Hall on the 22nd day of March, 1949.

Be it remembered that heretofore, to-wit: In the Clerk's Office of the Law and Equity Court of the City of Richmond, Part Two, the 7th day of September, 1948: Came Doris Durham, by counsel, and filed a Notice of Motion for Judgment against Virginia Transit Company, which Notice of Motion for Judgment is in the words and figures following, to-wit:

Virginia:

In the Law & Equity Court of the City of Richmond,  
Part Two.

Doris Durham, Plaintiff

v.

Virginia Transit Company, Defendant



## NOTICE OF MOTION FOR JUDGMENT.

To Virginia Transit Company, a Domestic Corporation

PLEASE TAKE NOTICE THAT ON THE 20th day of September, 1948, at ten o'clock A. M. of that day, or as soon thereafter as I may be heard, I, Doris Durham, hereinafter referred to as "plaintiff" will make a motion before the Law & Equity Court of the City of Richmond, Part Two, in the courtroom thereof, for a judgment against you, Virginia Transit Company, hereinafter referred to as "defendant," in favor of the plaintiff for the sum of \$15,000.00, which sum is due and owing to the plaintiff by the defendant, for the damages, wrongs and injuries sustained by the plaintiff and caused by the defendant as hereinafter set forth, to-wit:

There heretofore, to-wit: on or about the fifth day page 2 } of June, 1948, whilst the plaintiff was travelling westwardly on foot on and along the sidewalk on Grace Street, in the City of Richmond, Virginia, at or near the northwestern corner of Third and Grace Streets, a certain passenger bus, westbound on said Grace Street, and owned, operated and controlled by the defendant, was then and there negligently and recklessly run and operated into and upon the plaintiff, and then and there knocked her down upon the sidewalk and threw her to the ground, and greatly hurt and injured the plaintiff all over her person, and cause her great and permanent injury, disability and pain, and caused her to expend and become liable for large sums of money in attempting to be cured of said injuries, and to lose a large amount of money she otherwise would have earned in her lawful work.

WHEREFORE, judgment will be asked in favor of the plaintiff against the said defendant, at the time and place hereinbefore set forth, for the said sum of Fifteen Thousand Dollars (\$15,000.00).

Given under my hand this 4th day of September, 1948.

DORIS DURHAM  
By Counsel

ALLEN & ALLEN  
Counsel.

And at another day, to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 20th day of September, 1948.

Doris Durham, Plaintiff

*against*

Virginia Transit Company, Defendant

### MOTION.

This day came the plaintiff and defendant, by page 3 } counsel, and on the motion of the plaintiff, by her attorneys, it is ordered that this case be docketed.

The defendant then by leave of Court filed herein its plea of "not guilty" and put itself upon the Country and the plaintiff likewise.

Virginia:

In the Law & Equity Court of the City of Richmond, Part II.

Doris Durham, Plaintiff

*v.*

Virginia Transit Company, Defendant

### PLEA OF NOT GUILTY.

The defendant, Virginia Transit Company, by its counsel comes and says that it is not guilty of the premises in this action laid to its charge in manner and form as the plaintiff has alleged in the Notice of Motion for Judgment. And of this the said defendant puts itself upon the country.

ARCHIBALD G. ROBERTSON, p. d.

And at another day, to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 6th day of January, 1949.

Upon motion of the plaintiff, by her attorneys, and with the consent of the defendant, by its attorneys, it is ordered that the defendant do file a statement of its grounds of defense herein on or before January 21st, 1949.

page 4 } And at another day to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 21st day of January, 1949.

This day came the defendant, by counsel, and by leave of Court filed herein its grounds of defense.

Virginia:

In the Law & Equity Court of the City of Richmond, Part II.

Doris Durham, Plaintiff

v.

Virginia Transit Company, Defendant

### GROUND OF DEFENSE.

The defendant by counsel comes and says it is not liable to the plaintiff in any amount whatsoever, and for its grounds of defense assigns the following among other things:

(1) The defendant was not guilty of negligence.

(2) Even if the defendant was guilty of negligence, such negligence was not the proximate cause of any injury to the plaintiff.

(3) Even if the defendant was guilty of negligence the alleged injuries to the plaintiff were not the direct or proximate result of negligence on the part of the defendant.

(4) The failure of the motor bus to stop was due to an unavoidable accident by reason of the breakage of an airline for which breakage the defendant was in nowise responsible.

(5) The failure of the motor bus to stop was due to the breakage of an air line which could not have been foreseen or anticipated or prevented by the defendant in the exercise of the highest degree of practicable care for the safety of the plaintiff.

page 5 } (6) The defendant denies each and every allegation of the notice of motion for judgment undertaking to charge negligence against the defendant, or undertaking to charge that such negligence if it existed was the direct and proximate cause of the alleged injuries to the plaintiff.

(7) The defendant relies upon all defenses provable under the general issue.

(8) The defendant reserves the right to amend and enlarge these grounds of defense at any time.

VIRGINIA TRANSIT COMPANY  
By ARCHIBALD G. ROBERTSON  
Counsel.

And at another day, to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 31st day of January, 1949.

This day came again the plaintiff and defendant, by counsel and thereupon came a jury, to-wit: F. C. Hayes, Frank G. Ross, Jno. T. Gee, Raymond L. Barker, C. H. McCurdy, T. N. Pollard and Richard Sale who were sworn well and truly to try the issue joined in this case and having fully heard the evidence were adjourned until tomorrow morning at ten o'clock.

And at another day, to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 1st day of February, 1949.

This day came again the plaintiff and defendant, by counsel, and the jury sworn in this case appeared in Court in accordance with their adjournment on yesterday and having heard the arguments of counsel were sent out of page 6 } Court to consult of a verdict and after some time returned into Court with a verdict in the words and figures following, to-wit: "We, the Jury on the issue joined find for the plaintiff and assess damages at \$7,500.00."

Thereupon the defendant by counsel moved the Court to set aside the verdict of the jury on the grounds that it was contrary to the law and evidence, without evidence to support it, for errors committed by the Court in granting certain instructions, refusing certain instructions and modifying certain instructions, and if for any reason this motion is overruled, to grant a new trial on all issues, which motions the Court overruled.

Therefore it is considered by the Court that the plaintiff recover against the defendant the sum of seven thousand, five hundred dollars with interest there on to be computed after the rate of six per centum per annum from the 1st day of February, 1949, until paid and her costs by her about her suit in this behalf expended.

And the defendant having indicated its intention to apply to the Supreme Court of Appeals of Virginia for a writ of error from and *supersedeas* to this judgment, it is ordered that execution thereof be suspended for a period of four months upon the defendant, or someone for it, within fifteen days from this date, giving bond in the penalty of \$10,000.00, with surety to be approved by the Clerk of this Court conditioned as provided by Section 6351 of the Code of Virginia.

*Mrs. Doris Durham.*

And at said day, to-wit: At a Law and Equity Court of the City of Richmond, Part Two, held the 22nd day of March, 1949.

This day the Judge delivered to the Clerk of this page 7 } Court a transcript of the evidence and other incidents of the trial of the above-entitled case, duly authenticated, which is now filed and made a part of the record herein.

page 8 } Virginia:

In the Law & Equity Court of the City of Richmond, Part II.

Doris Durham

*v.*

Virginia Transit Company

Transcript of the testimony and other incidents in the trial of the above styled case before the Honorable Haskins Hobson, Judge of the Law & Equity Court of the City of Richmond, Part II, and a jury on January 31 and February 1, 1949.

Appearances: Mr. George E. Allen, Sr., Mr. George E. Allen, Jr., counsel for plaintiff.

Mr. Archibald G. Robertson, Mr. Ralph H. Ferrell, Jr., counsel for defendant.

page 9 } MRS. DORIS DURHAM,  
the plaintiff called on her own behalf, being first  
duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Mrs. Durham, I believe you are the plaintiff in this case?

A. That is right.

Q. How old are you?

A. I am thirty-eight.

Q. Do you recall the occasion of a bus accident?

A. Yes, sir.

Q. At 3rd and Grace Streets, Richmond?

A. Yes, sir.

Q. Were you injured in that accident?

*Mrs. Doris Durham.*

A. Yes, sir.

Q. Where were you when you sustained your injuries?

A. Well, I was in front of the People's drug store at 3rd and Grace.

Q. What were you doing?

A. I was going into People's drug store.

Q. Which way were you headed?

A. I was turning right to walk into People's drug store.

Q. Can you tell us approximately how far you had gotten across the sidewalk towards People's drug store  
page 10 } before you were struck?

A. Not really, but I would say up about 3 feet or half-way.

Q. Half-way from the curb to the entrance of the store?

A. Yes, sir.

Q. What happened when you got about there?

A. Well, I just happened to glance up; I think I turned to say something to my husband, he was crossing the street to go to the White Tower and I just glanced up and I saw this bus on me. I tried to run, but that was about all I remember about it at the time.

Q. Where were you struck; what part of your body?

A. I was struck in the back and then my foot was injured.

Q. Where were you taken following your injury?

A. To the Medical College.

Q. How long did you stay there?

A. I stayed there several hours. I believe about 11 o'clock they let me go home.

Q. Did you go back to the hospital?

A. No, sir, I didn't go back to the hospital.

Q. Where were you taken from the hospital?

A. I was taken back to my home.

Q. What was your condition when you got home?

page 11 } A. Well, that is still kind of hazy to me. I remembered being carried home, some part of it. I was just hazy for a few days.

Q. Were you able to walk when you got home?

A. No, sir, they carried me up the steps.

Q. Were you confined to your bed or your room?

A. I was in bed six weeks.

Q. Then what was your condition?

A. Well, after that I just sort of drug around from chair to bed and I didn't really leave the room. I think probably it was seven weeks.

*Mrs. Doris Durham.*

Q. You didn't leave the room for probably seven weeks?

A. Yes, just drugged around. I could hop from the chair to the bed and around like that.

Q. During all this time following the injury and during the period you were confined to your bed and your room what suffering, if any, did you undergo?

A. Oh, all the time. My back hurts me continuously, my foot hurts me continuously. I don't use my foot well when I first get up, but it improves later in the day.

Q. Which foot was it that was injured?

A. It is my left foot.

Q. What part of your left foot, which side?

A. On the outer side.

Q. Left side or right side?

page 12 } A. It is on the left side, on the outside.

Q. Do you suffer any pain now either in your foot or back?

A. Yes, sir, continuously.

Q. Do you know whether or not there are any evidences of any physical bruises or anything on your back or could you see?

A. No, sir, I couldn't see.

Q. Now how about your foot?

A. Oh, yes.

Q. What was the size of the bruise or injury on your foot?

A. You mean the length of the scar?

Q. Yes.

A. Well, it is about 7 inches.

Q. What was the general state of your health before this accident?

A. I have never been sick in my life, I don't think. I don't recall ever having anything unusual.

Q. What was the nature of the work you did before the accident?

A. I did housework.

Q. You did your own housework?

A. Yes, sir.

Q. Did you have any servant?

page 13 } A. No, sir.

Q. Have you been able to do your housework since the accident?

A. No, sir. It is a few things I might drug around and do that probably take me all day; work a little while and sit down a little while.

*Mrs. Doris Durham.*

Q. You said something about nervousness. Have you been nervous since the accident?

A. I am so nervous right now—I just stay nervous.

Q. Were you nervous before the accident?

A. No, sir.

Q. What doctors attended you?

A. Dr. Cherry and Dr. Perlin.

Q. Have you been examined by any other doctors?

A. Yes, sir, I have been examined by Dr. Butterworth and Dr. Tucker.

Q. Dr. Tucker and Dr. Butterworth?

A. Yes, sir.

Q. At whose instance were you examined by Dr. Butterworth? Who got you to go to Dr. Butterworth?

A. Mr. Allen.

Q. Who got you to go to Dr. Tucker?

A. Well, I was to go for the Virginia Transit Company.

Q. Did both of those doctors give you a thorough examination so far as you know?

page 14 } A. As far as I know they did.

Q. Do you have to employ or have anybody now to help you with your housework?

A. Only for the laundry. My daughter does the biggest part of my work.

Q. Of course, she doesn't charge you anything?

A. Oh, no.

Q. Who waited on you right after the accident?

A. My daughter.

Q. How long did she wait on you?

A. Well, she has waited on me continuously, but there were six weeks she had to do most all—everything.

Q. To what extent now can you do your own housework? Tell us as near as you can what you can and why you can't do any more.

A. I can go along and do it in a slow way all the afternoon; I can make the bed and sit down for a few minutes, I can do some cooking and sit down in between times, but I can't stand for long at a time.

Q. How long can you stand on your feet?

A. Oh, I never thought about that.

Q. Without stopping?

A. I guess I can stand from thirty to forty minutes, but I don't stand with the weight completely on my foot, because I can't stand it.



*Mrs. Doris Durham.*

page 15 } Q. Did you have any trouble standing on your feet for hours as long as you wanted before the accident?

A. Yes, sir, I could always stand up and do my work. I worked all day long and didn't sit down.

Q. Do you know whether or not there is any swelling of your foot?

A. Yes, it is quite a bit of swelling when I stand any length of time. Like if I should come to town today and have to walk any distance, tomorrow I wouldn't be able to get around at all.

### CROSS EXAMINATION.

By Mr. Robertson:

Q. Mrs. Durham, how much do you weigh?

A. I weigh 215?

Q. Did you weigh about the same at the time you were hurt?

A. I have weighed that for the past twenty years.

Q. I am going to ask you to step over here and sit in the chair and show the Jury the foot that was injured. Watch your step as you step down. Just show the jury your foot.

A. Shall I take my hose off?

Mr. Robertson: I don't think you need to take your stocking off unless you want to.

page 16 } Mr. Allen, Jr.: Take it off.

Note: Witness removes hose and shows foot to the jury.

Mr. Robertson: Now take your shoe off your other foot.

Mr. Allen, Sr.: Point out there—

Mr. Robertson: Wait a minute. You can take her after I have examined her.

Q. This is the scar here?

A. Yes.

Q. Will you take the shoe off—

A. This is also a scar on this side, too.

Q. Will you take your shoe off on the other foot so as to show how much swelling there is now. Is your foot swollen now?

A. No, sir, it isn't.

*J. H. Durham.*

Q. Now did you wear that kind of a heel before you were hurt?

A. Yes, I have always worn a low heel.

Q. So you wear the same sort of heel?

A. I wear that kind of shoe because it doesn't go over the scar.

Q. You mean the heel is about the same?

A. About the same I always wear.

By a Juror:

Q. Were any bones broken in your foot?

page 17 } A. No, sir, just the tendons were cut and the nerves.

Witness stood aside.

Mr. Allen, Jr.: I would like to make a statement. Dr. Butterworth is operating this morning and won't get here until 12:30 and we will have to put him on out of order if you will let us put him on.

Mr. Robertson: I am going to ask they finish their case before we start on ours.

Mr. Allen, Sr.: We are going to do that.

J. H. DURHAM,

called on behalf of the plaintiff, being first duly sworn, testified as follows:

### DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Will you state your name.

A. J. H. Durham; Jesse Howard Durham.

Q. What relation, if any, are you to the plaintiff in this case?

A. I am her husband.

page 18 } Q. Where were you when this accident happened?

A. I was with my wife and I was standing on the sidewalk and I intended to go over to the White Tower to get a sandwich.

Q. Which side of Grace Street were you and your wife on to start with?

A. We was on the northwest corner right in front of People's.

*J. H. Durham.*

Q. Which way were you going?

A. I was getting ready to go across, to go south.

Q. How far had you gotten across?

A. Well, I hadn't started across the street; I was just on the curb.

Q. Did you see the bus?

A. No, sir.

Q. I mean did you see it at the time of the accident or immediately afterwards?

A. I saw it immediately afterwards. I heard the crash and heard my wife scream and just as I looked up the bus was in the drug store.

Q. Had it stopped then?

A. Yes, sir, it run into the drug store.

Q. Did you go there and look at it?

A. No, sir. From where my wife was laying I looked at the bus. She had her head laying on my knee.  
page 19 { Q. Where was she lying when you went there?

A. Well, when I run to her she was I would say was as far from here to the jury box from where she was hit or maybe a little bit farther.

Mr. Robertson: Can we agree that is approximately 12 feet?

Witness: I would say somewhere between 12 and 15 feet approximately. I won't be sure of it.

By Mr. Allen, Sr.:

Q. After you looked after your wife did you then turn your attention towards the bus?

A. No, sir, I stayed with my wife and the ambulance came and I went to the hospital with my wife. I never did go to the bus and look at it other than where I was at.

Q. How close to it were you when you looked at it?

A. I imagine from where we were at a little better than from here to the back end of the jury box.

Mr. Robertson: Would you estimate that distance?

By Mr. Allen, Sr.:

Q. Estimate that distance?

A. I should say somewhere around 20 feet maybe. I wouldn't be sure about it, I never measured it.

Q. What part of the bus could you see then?

*J. H. Durham.*

A. The front of the bus, the left-hand side of it.  
page 20 } Q. I hand you what purports to be a photograph  
of the front end of this bus with the figure six  
seven on it and will ask you if you can identify that as an  
accurate representation of the front end of the bus when you  
looked at it?

A. When I saw it I saw this side of it. This side was against  
the column, but I recognized this bus as a Mack bus.

Q. You said this side was against the column. What do  
you mean by this side?

A. It hit the column and I could see—

Q. Turn the picture around to the jury.

A. From where I was at I was at the walkway and the big-  
gest portion of the bus run into the column there. It is a  
V-shaped column and it run into it and that is what put the  
crimp in the side of the bus and I could see this side of the  
bus.

By the Court:

Q. Where was that column?

A. In front of People's drug store there is a big concrete  
column.

Q. In other words, a corner column?

A. Yes, right in the front of People's drug store. It sup-  
ports the front of the building there.

Q. Does the drug store open towards the corner or towards  
the street?

page 21 } A. It opens towards the corner. It has two doors.

Q. And this column is right in the apex of that  
corner?

A. That is right.

Mr. Allen, Sr.: I offer this as Exhibit No. 1.

Note: Filed and marked Exhibit No. 1.

Q. What has been the general condition of your wife since  
the accident with reference to her ability to do her house  
work?

A. Well, she just can't do it; she can't stay on her foot long  
at a time and she has been awful nervous and at night she  
has been subject to nightmares and been quite nervous and  
hasn't been able to do her work. I help her with it, and my  
daughter also. I do the mopping and cleaning, the biggest  
portion of the work.

*J. H. Durham.*

Q. Was she nervous before this accident?

A. No, sir.

Q. Who did her house work before the accident?

A. She did. She did all of her house work.

Q. Did she have any help?

A. No, not any other than I give her. Sometimes I pitched in and help her mop, but other than that she did it all herself.

Q. Can you tell us anything about whether she has suffered since the accident?

page 22 } A. Very much so with her nerves and her back and her foot. She constantly complains about her foot.

Q. Did she have any trouble sleeping before the accident?

A. No, sir.

Q. How about her sleeping now?

A. She doesn't sleep good at all. Last night she didn't sleep; he was awful nervous all night last night.

Q. What position was your wife in when you looked immediately after hearing the crash?

A. She was dragging up the walk on her hands and knees like that.

Q. The sidewalk you mean?

A. Yes, right up the sidewalk.

#### CROSS EXAMINATION.

By Mr. Robertson:

Q. What kind of work do you do?

A. I am a truck driver.

Q. For what concern?

A. Kenneth L. Black.

Q. Where were you and Mrs. Durham living at the time?

A. 112 South Third Street.

Q. You were within two blocks of home?

A. One, two, three—about 3 blocks from home.

page 23 } Witness stood aside.

WILLIAM V. CHAPMAN,  
called on behalf of the plaintiff, being first duly sworn, testified  
as follows:

DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Will you state your name, please?

A. William V. Chapman.

Q. Where were you when the accident here under investigation happened?

A. I was on the south side of Grace Street.

Q. How close to where the accident happened?

A. I was right at it, I might say.

Q. Did you see the bus either before or immediately after the accident?

A. I seen it afterwards, I believe.

Q. How soon afterwards?

A. As soon as I come to.

Q. Where was the bus when you saw it?

A. Up against the pillar or post.

Q. What post?

A. The column that goes into the drug store.

Q. People's drug store on the corner?

A. Yes, sir.

page 24 } A. At Third and Grace?

A. Yes, sir.

By the Court:

Q. You were on which side of Grace street?

A. On the south side next to Grace.

Q. The south side?

A. I think that is what you call it.

Q. You were on the south side of Grace street on the south sidewalk?

A. South sidewalk, yes, what I meant to say.

By Mr. Allen, Sr.:

Q. I hand you what purports to be a photograph of the corner of Third and Grace where the People's drug store is and will ask you if you can identify that as the corner where the accident happened?

Mr. Robertson: I have no objection to it.

*William V. Chapman.*

By Mr. Allen, Sr.:

Q. Do you understand the question?

A. Yes, sir. That is the post all right.

Q. Now point out to His Honor and the jury the post that was struck by the bus.

A. This post here. I was on this side.

Q. When you say this side you mean you were here where that lady is?

page 25 } A. Where the lady is standing. I think that would be the left side going in.

Q. That is where you were?

A. Yes, sir.

Mr. Allen, Sr.: We offer that in evidence.

Note: Filed and marked Exhibit No. 2.

By the Court:

Q. You say you were standing near that post?

A. I came out on that side and met the bus.

Q. Is that drug store on the north side or south side of Grace street?

A. I think it would be on the north side.

Q. And you were standing next to the drug store?

A. I came out of the drug store. It is a swinging door, two ways.

Q. How far did you get on the south side of Grace street?

A. South side?

Q. Yes.

A. I mean—not the south side; on the other side, on this side. I mean the side next to the drug store. I was on that side. I reckon you call it on the right-hand side.

Q. Going which way?

A. Going down Grace.

page 26 } Q. Going which direction?

A. I reckon you call it east, coming back down east. In other words, facing Fourth street, which I think would be east.

Q. Going east, without regard to the drug store, which side of the street were you on? Were you on the right-hand side or the left-hand side going east?

A. Coming out the drug store I was on the right-hand side.

Q. The right-hand side of what?

A. Of the drug store.

*Mrs. Jeannine Pearson.*

Q. I am not asking you about the drug store. I am talking about the street. If you were on the opposite side of the street from the drug store, you would be on the south side, wouldn't you?

A. Yes, sir, on the other side.

Q. Were you on that side?

A. No, sir, I was on the drug store side.

### CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Chapman, were you hurt in the accident?

A. Yes, sir.

Q. You are now making claim against the Virginia Transit Company, aren't you?

page 27 } A. Yes, sir.

Q. And threatening to sue them?

A. Yes, sir.

Witness stood aside.

MRS. JEANNINE PEARSON,  
called on behalf of the plaintiff, being first duly sworn, testified as follows:

### DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Will you state your name?

A. Jeannine Pearson.

Q. What relation are you to Mrs. Durham, the plaintiff here?

A. I am her daughter.

Q. Where were you when this accident happened?

A. I was home taking care of my brother.

Q. How soon did you see your mother after the accident?

A. Well, within twenty minutes of the time she was hit. She was taken by ambulance to the Medical College and my father called me from there and I immediately went.

Q. You know how long she stayed in Medical College?

A. Yes, I do. We picked her up at 11 o'clock at night and it was around 3:30 in the afternoon. She was there  
page 28 } approximately seven hours.

Q. Did you stay there with her?



*Mrs. Jeannine Pearson.*

A. No, sir, I didn't. I was there alternately. They kept telling me she was to be released and I had to go back several times because they weren't through with her.

Q. Can you tell us the extent, if any, that she suffered?

A. Yes, sir, I think she suffered a great deal because I never heard my mother cry about anything and when I saw her that night in the hospital she was shaking all over and just scared absolutely to death and she was crying.

Q. Did you see her often?

A. Yes, sir. I quit my job that Saturday afternoon, I called that evening and told Mr. Judd I wouldn't be in and I haven't been back since.

Q. How long did you wait on her at home?

A. She was in bed constantly five weeks, couldn't get out of bed. I had to bathe her, feed her, and give her her medicine and everything.

Q. Can you tell us about her suffering?

A. Yes, sir, she was extremely nervous, couldn't stand to hear the baby cry and even if the room was silent the least little noise tore her all to pieces.

Q. How about her pain and suffering?

A. The lower part of her back and up her spine  
page 29 } was a complete bruise and she had one dark spot  
about as big as the ball of your hand on her back  
and that caused her quite a bit of pain and, of course, her ankle  
was quite serious because she was hurt on Saturday and I  
had to call Dr. Cherry on Sunday and Monday to come back.

Q. Did you see her ankle when it wasn't bandaged so you could tell about the scar?

A. Yes, sir.

Q. Tell us about that.

A. I dressed her foot on and off when Dr. Cherry couldn't come to the house and until I got another doctor I had to change the dressing and I could see it and in between the stitches it was a lot of pus and matter like that and all blue and swollen quite badly.

Q. How long was it before she was able to walk at all?

A. Well, with my help and the crutch it was about six weeks. She could get out of bed and walk about the length of the hall, about 15 feet to the bathroom.

Q. After that to what extent could she walk?

A. Well, I would say around twenty minutes to half an hour; she more or less hobbled than walked.

*Dr. Kenneth J. Cherry.*

Q. Before this injury do you know whether she did all of her housework?

A. Yes, sir, I do.

Q. Do you know whether she has been able to do page 30 } it since?

A. I know perfectly well she hasn't been able to do hardly any of it because I go there around 1 o'clock in the afternoon and stay there until my father comes in from work at night.

Q. You mean you still go there?

A. Yes, sir, every afternoon.

Q. Do you know whether or not your mother was nervous before this accident?

A. No, sir, I have never known her to be nervous a day in her life. She drove to Richmond Air Base all by herself and we used to live in a house trailer and she drove that, but right now she can't stand to ride in a car.

Q. Do you know whether she lost any time from her housework?

A. She never lost any time because of illness to my knowledge.

### CROSS EXAMINATION.

By Mr. Robertson:

Q. She never went to any hospital after that first seven hours which she was in the Medical College, did she?

A. That is right.

Witness stood aside.

page 31 } DR. KENNETH J. CHERRY,  
called on behalf of the plaintiff, being first duly  
sworn, testified as follows:

### DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Doctor, what is your profession?

A. The medical profession.

Q. Are you a general practitioner?

A. No, I am a surgeon.

Q. How long have you been following your profession?

A. About ten years.

*Dr. Kenneth J. Cherry.*

Q. From what institution did you graduate?

A. I graduated from the Medical College of Virginia?

Q. Where have you had your experience?

A. I went through a residency in surgery at Medical College, was in the army and have been in private practice.

Q. Were you called to see Mrs. Durham or have occasion to see her following the injury which she sustained in the bus accident?

A. I was called to see Mrs. Durham by Dr. Van Slyke,

Q. Could you tell us the date you saw her first

A. I saw her on the 6th day of June, 1948, at the page 32 } home.

Q. What condition did you find her in then?

A. Well, she was very much shaken up, quite nervous, and had multiple contusions about her body, both knees and lumbar region or low back region and had an extensive laceration of the left foot, which I did not dress at that time because she had just been operated on the day before.

Q. How long was that laceration?

A. I never actually measured it; my estimate was six inches at that time.

Q. How deep was it?

A. It didn't cut any tendons, but had gone through the skin, and cut the subcutaneous tissues down to deep tissues over the foot.

Q. What effect did that cut have on her foot and ability to use it?

A. Well, of course, the foot was painful for a considerable period until healing was complete and in healing, of course, frequently a scar will have a tendency to bind the foot or any portion of the body. She has completely healed. I saw it again—I will give you the dates I saw her; First on the 6th and on the 8th of June I dressed her foot and then again she was seen on the 15th. At that time she had completely healed as far as the surface healing goes. Of course, the stiffness and soreness produced had not completely  
page 33 } recovered. In other words, she has a considerable period of rehabilitation.

Q. Was the injury of a nature to cause pain and suffering?

A. Yes, sir.

Q. With reference to her foot, sir?

A. Yes, sir.

Q. And with reference to her back?

A. Yes, sir.

*Dr. Kenneth J. Cherry.*

Q. Could you tell us whether she had any bruise on her back?

A. She had a large bruise over the lumbo-sacral area.

Q. What effect did the blow that caused that bruise have upon her back?

A. Well, it would, of course, produce what we call a hematoma or leaking of blood from the ruptured small vessels into the area and by so doing could produce swelling and induration or thickening of the tissues and soreness of the whole area.

Q. When did you see her last?

A. I saw her yesterday as a preliminary to the final check-up, but I saw her last at her home on the 15th of June.

Q. The 15th of June last year?

A. Yes, sir, and I turned her over to a family doctor at that time.

Q. Who was her family doctor?

page 34 } A. I don't think she had one, but I think she had Dr. Perlin after that.

Q. When you saw her I believe yesterday or a day or two ago did you make any thorough examination then?

A. Yes, sir, I checked her foot then.

Q. What have you to say now with reference to the foot?

A. She was seen yesterday, January 30th, 1949, at the Medical College emergency room. She complained of pain in the left foot, having a limp and frequent swelling of the foot which makes it difficult at times to wear a shoe. She also complained of backache in the lumbar-sacral area. Her knees are symptom free. Examination of that foot reveals a 6 inch scar which is dense and adherent to the top structure so the skin does not move freely over the foot. There is an area of induration along the lateral side of the foot on the dorsum.

Q. What is the dorsum?

A. That is the top of the foot. The lacerations on Mrs. Durham's foot extended in this manner on the lateral border from the heel towards the toe. She has limitation of motion of the ankle in inversion and eversion of the foot—that is this movement—to a slight degree and also in elevation and depression of the foot—that motion—and she  
page 35 } walks with a slight limp.

Q. Could the injury you have described cause any disability of that foot?

A. Yes, sir, the disability I would estimate between 15 and 20 per cent loss of function of the left foot.

*Dr. Kenneth J. Cherry.*

Q. Can you tell us and give us any opinion whether it is temporary or permanent?

A. I can't answer that completely. I think it might be permanent. It certainly is going to be prolonged, if not permanent.

Q. What have you to say at this time about the back injury?

A. I didn't examine her back. I understand she has recently been examined and X-rays of her back have been made.

Q. If you didn't examine her back I won't ask you that. Can you tell us what effect it would have upon her if she should undertake to stand on the foot continuously doing her regular housework as a housewife?

A. She can, of course, have pain and swelling in the foot, making it difficult to wear a shoe, of course, being uncomfortable.

Q. Do you know whether or not it would cause her after a few hours of standing to stop and sit down and rest.

A. I should imagine so. I couldn't answer that.

page 36 } CROSS EXAMINATION.

By Mr. Robertson:

Q. Now, Doctor, I believe you are associated with Dr. Benjamin A. Rawles, Jr., in the practice of your profession?

A. Yes.

Q. And you said this lady was referred to you by Dr. Van Slyke?

A. Yes.

Q. Is he one of the staff—

A. He is one of the assistant resident surgeons at the Medical College.

Q. How many times did you see her altogether?

A. Three times at her home and then yesterday at the Medical College.

Q. So four times altogether?

A. Yes.

Q. Including the June 15th visit?

A. Yes.

Q. I believe there were no bones broken?

A. X-rays showed no fractures.

Q. And no tendons cut?

*Dr. Kenneth J. Cherry.*

A. No tendons cut. That was a verbal report from Dr. Van Slyke, who repaired the wound.

Q. During the time you treated her did you consider her permanently injured?

page 37 } A. I couldn't say because the disability from scars and then complications might set in. I couldn't predict.

Q. Did you consider her dangerously injured?

A. I thought she had a serious injury to her foot and she had a general shaking up and bad bruises over her body.

Q. I mean did you ever consider her life in danger?

A. Well, after progress and the development of no serious infection I thought she was getting on reasonably well and would eventually be rehabilitated.

Q. Let me see if I understand you correctly. What I understand your testimony to be is that this cut on her foot was sufficiently deep to make an amount of scar tissue there that keeps the skin and whatever is around that tissue from being flexible the way it would be if there was no scar tissue there?

A. That is correct.

Q. Is there anything that can be done to relieve that situation?

A. I would not contemplate anything myself.

Q. Wouldn't the tendency be as time passes and the foot was used for it gradually to limber up?

Q. Usually they improve with time and use.

Q. During the time you had general supervision of this lady you did whatever you considered necessary for her case, of course?

page 38 } A. Yes, sir.

Q. What was the entire amount of your bill?

A. I just charged her for house calls, I didn't charge for the operation. Three house calls at \$5.00 each.

Q. So your total bill was \$15.00?

A. Yes. I haven't the bill for yesterday's visit.

Witness stood aside.

DR. JAMES T. TUCKER,  
called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Dr. Tucker, I believe you are an orthopedic surgeon?

A. Yes, sir.

Q. Practicing in this city.

A. Yes, sir.

Q. How long have you been practicing your specialty?

A. Twenty-two years.

Q. Where did you get your education?

A. Do you want me to start from the beginning?

Mr. Robertson: We will admit his qualifications. We will admit he is as good as anybody in this territory. He has even worked on me.

page 39 } Mr. Allen: Thank you, and me.

Mr. Robertson: I hope he did you more good than he did me.

The Court: Do you want to file yourself as an Exhibit?

Mr. Robertson: No, sir.

By Mr. Allen, Sr.:

Q. Doctor, I believe you practice your specialty with Dr. William Tate Graham?

A. Yes, sir.

Q. Did you have occasion to see Mrs. Durham, the plaintiff here, and if so at whose instance? In other words, who sent her to you?

A. The Virginia Transit Company asked me to see her and make a survey of her on January 21, 1949.

Q. Did you make an examination of her?

A. Yes, sir.

Q. Will you give us the results of your examination?

A. She had a 7 inch scar over the outer portion of the left foot. The scar she says was sensitive and it was adherent to the underlying structures of the foot. The skin over it was immovable; I mean she couldn't move it to do as normal, and she complained of an area of anesthesia; that is without feeling, over the outer portion of the foot along the border of the outer toes, the fourth and fifth toes. She  
page 40 } said the foot was painful when she walked and I tried to get her to walk and she walked with some

*Dr. James T. Tucker.*

limp. I looked up her record at Medical College and found out that she had been X-rayed there, but there was no fracture of any bones of the foot, and she had been X-rayed elsewhere and no fractures reported by the other X-ray technicians or doctors, so I didn't see any reason to X-ray her foot again. There was some limitation of motion in all directions, which should be equal as you turn your foot in or out, up or down.

She said she had some injury to her back and on examining her back she had some limitation of motion in her back in all directions; that is, forward and back and lateral bending, and revealed some muscle spasm or the muscle kind of went into a contracted state when these motions were attempted. She was X-rayed; I had her X-rayed by one of the X-ray men and he reported there was some arthritic change in the upper portion of the back and also down at the mid area known as the waist, which we term the third and fourth lumbar segments of the spine.

Q. What have you to say with reference to the nature of this injury, whether temporary or permanent?

A. Well, since it has been eight months since the date of the accident or approximately eight months, I think what she has now is about the net result. She may loosen up some more

but I don't believe she will loosen up very much  
page 41 } more. I think she has got perhaps some trouble  
with her lower back.

Q. What about the nature of that, whether temporary or permanent?

A. Well, I think that can be cleared up in time if she is treated with some adequate support to her back. Certainly it should be taken into consideration. She gave a history she did not have anything wrong with her back before the accident and now she complains considerably of it. I presume with some type of support it would be greatly comforted and perhaps greatly benefitted.

Q. You spoke of some arthritic changes. Have they any connection with the accident?

A. No, sir, I think they were there before the accident.

Q. What effect did the accident have upon the arthritic condition?

A. Well, most of us concede that where a person has this and it is quiescent and meets with an accident it aggravates the condition which was quiescent before.

Q. What do you mean by limitation of motion in the foot?

A. That means restricted motion; it is limited.



*Dr. James T. Tucker.*

Q. How about her back; was there any limitation of motion in that?

A. Yes, that was limited, too.

Q. Was the nature of these injuries such as to page 42 } cause pain in your opinion and suffering?

A. Yes, sir, I think she has discomfort.

Q. Do you think she still has it?

A. Yes, sir.

Q. Can you give us any opinion how long she will probably have it?

A. Well, as I stated, I think her foot has just about rehabilitated itself. It may get a little bit better. We usually wait perhaps twelve months before we put a permanent rating on a foot or any disability, but after a twelve months period I think that is perhaps the maximum of improvement we anticipate. It has been eight months or approximately eight months.

Q. In your profession can you tell us what is the situation with reference to most people between 35 and 40 so far as quiescent arthritis is concerned?

Mr. Robertson: I object to that if Your Honor please. He has examined this particular doctor and he testified what this lady's condition is. So what other people's situation is is immaterial.

The Court: I think the objection is well taken.

#### CROSS EXAMINATION.

By Mr. Robertson:

page 43 } Q. Doctor, when you speak of this lady wearing a support you mean a reinforced corset, don't you?

A. Yes, sir, something of that nature.

Q. With whale bones in it like when you and I were young and we would take them out and flick flies with them?

A. Yes, sir, a reinforced corset.

Q. Do you think it will be advisable to do anything to try and get rid of enough of that scar to make her foot more flexible?

A. I don't think so. I think if you resect it, you would probably get a larger scar.

Q. You think it is just a question of using the foot and gradually limbering it up to what extent nature will do?

A. Yes, sir.

Witness stood aside.

DR. LOUIS PERLIN,  
called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Will you state your name?

A. Dr. Louis Perlin.

Q. Are you a general practitioner or specialist?

A. A General practitioner.

page 44 } Q. How long have you practicing your profession?

A. Twenty-five years.

Q. Do you know the plaintiff here, Mrs. Durham?

A. I do.

Q. Are you her family physician or were you?

A. Yes.

Q. Were you her family physician a year ago?

A. Yes.

Q. About when did you first see her?

A. You mean with reference to this condition?

Q. Yes.

A. The first time I saw her was on June 25, 1925.

By the Court:

Q. What year?

A. 1948; I beg your pardon.

By Mr. Allen, Sr.:

Q. June 25, 1948?

A. Yes.

Q. Where did you see her?

A. I saw her at home then.

Q. How did you happen to go there?

A. I was called.

Q. Called to see her?

A. Yes.

page 45 } Q. What condition did you find her in?

A. I will just have to read it off, it has been such a long time. She states she was in an automobile accident on June 5th at Third and Grace streets. She was taken to the Medical College of Virginia where the left ankle on the outer side was sutured and she had a marked laceration; that is, a marked tearing. I also found abrasions of both knees and contusions. The right calf of the leg and back

*Dr. Louis Perlin.*

were also involved. At that particular time she was very nervous.

Q. That was the 8th of June?

A. June 5th.

By the Court:

Q. June 5th?

A. I don't know why I have got it the 25th here--no, that is the history she gave me. She was hurt on June 5th, but I didn't see her until June 25th.

Q. What was the condition on the 25th?

A. As I understand the sutures were—

By Mr. Allen, Sr.:

Q. What do you mean by sutures?

A. The things you sew up with. They were removed. What I am giving you now is the history she gave me at the time I saw her on June 25th.

The Court: And what you found yourself.

page 46 } A. (continued) Well, that is the things I found that I am stating. By request I had X-rays taken. Of course, at that time it didn't show any fractures and from then on I continued—I dressed her wounds, although the stitches had been removed, and I continued to dress her wound up to July 17th—July 16th, 1948, at which time I began to give her diathermy treatment; that is heat treatments—electric light treatment.

Q. Of the foot?

A. Yes, sir. Efforts were on the foot because the others seemed to get along very nicely.

Q. When you first treated her, how long was this scar on her foot?

A. She stated since the accident—

Q. I mean you saw her foot and saw the scar?

A. Yes.

Q. Tell me how long the scar was.

A. Well, I would say off hand it was about 4 inches or about this long (indicating).

Q. How deep was it?

A. Well, of course, it was inverted; I mean the scar went this way and naturally after it healed you couldn't tell how deep it was. I would say approximately the scar surface without the skin would be about a quarter of an inch.

*Wray Selden.*

Q. What treatment did you give her?  
page 47 } A. I just gave her a general supportive treatment, medicine for pain and nerves in addition to the diathermy treatment. Of course, she took that at my office. After she came to my office I continued to give her the diathermy treatment.

Q. Was she able to walk when you saw her?

A. With very much difficulty, she did not come to my office for diathermy treatments until July 15th. I treated her at home from June 25th to July 14th is the last time I saw her at home and from the 16th of July to August 16th she came to my office for treatments.

Q. Where the injuries of a nature to cause suffering?

A. Absolutely.

Q. With reference to her back and foot both?

A. Yes. I mean you would have other symptoms about the bruises about the various parts of her body. After they subsided she still had pain in her leg.

Q. When did you last see her?

A. August 6th, 1948.

Q. Now what about her nervous condition, the extent of that?

A. As time went on her condition improved.

Mr. Robertson: No questions.

Witness stood aside.

page 48 } WRAY SELDEN,  
called on behalf of the plaintiff, being first duly sworn, testified as follows:

## DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Mr. Selden, what is your occupation?

A. I am a professional photographer.

Q. A commercial photographer as we call them?

A. Professional, I would say.

Q. Did you take this picture marked Plaintiff's Exhibit No. 2?

A. Yes, sir I did.

Note: A group of photographs handed to counsel for the defendant.

*Wray Selden.*

Mr. Robertson: No objection to any of them.

Mr. Allen, Sr.: We offer these photographs in evidence.

The Court: Ask the witness if he took them.

Mr. Allen, Sr.: Mr. Robertson says he admits them without proof.

Note: Filed and marked Exhibits Nos. 3 through 8.

Q. Mr. Selden, did you make any measurements at the time you took these photographs?

A. The photographs were made over a space of page 49 } several days. I did make the measurements, however, all at one time.

Q. When did you make the measurements?

A. On the 26th of January of this year.

Q. How wide is Grace street at Third and Grace?

A. Grace street is approximately 41 feet 4 inches. I say approximately because sometimes the tape measure will stretch slightly.

Q. How wide is Third street?

A. Approximately 40 feet 10 inches wide.

Q. Did you measure a safety zone there?

A. Yes, sir, from the line of the curb to the post which is the Bus Stop is 86 feet.

Q. Where is that safety zone you are talking about?

A. That safety zone is on the northeast corner of Grace and Third.

Q. How far did you say it was from the east end of the safety zone?

A. We measured 86 feet from the east end of the safety zone and found that it came to the end of the Charles L. Finke store—the east end.

Q. How wide is the sidewalk there on Third street?

A. The sidewalk on Third street is approximately 7 feet 8 inches wide.

Q. And the sidewalk on Grace street?

page 50 } A. The sidewalk on Grace is approximately 11 feet 10 inches wide.

Q. How far is it from the apex of the sidewalk to the People's drug store?

Mr. Robertson: I don't know what you mean by the apex.

Mr. Allen, Sr.: Let me show you.

Q. I can show you on the photograph. From the diagonal

*M. M. Mallory.*

point of this curve to the diagonal of this post was 15 feet 2 inches.

Mr. Allen, Jr.: It may be best to put Mr. Mallory on first, if Mr. Selden will step aside.

Mr. Robertson: I may admit the pictures if you let me look at them. We don't object to any of these pictures.

The Court: They are admitted without proof?

Mr. Robertson: I would like to state the lady standing there has nothing to do with the case.

Mr. Allen, Sr.: So far as we know she has nothing to do with the case. I don't know who she is. She looked like she wanted to have her picture taken.

page 51 } Note: Filed and marked Exhibits Nos. 9 through  
14.

Witness stood aside.

M. M. MALLORY,

called on behalf of the plaintiff, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Allen, Jr.:

Q. State your full name.

A. Marvin Marcellus Mallory, Jr.

Q. What is your occupation?

A. Student, Thomas Jefferson High School.

Q. How old are you?

A. Eighteen.

Q. Do you have a hobby?

A. I take pictures.

Q. I hand you some pictures identified by the stenographer as Numbers 1, 9, 10, 11 and 12 and ask you if you took those pictures with a camera?

A. Yes, sir, I did.

Q. When did you take those pictures?

A. I would say, the pictures were taken within fifteen minutes after the accident first occurred. You see  
page 52 } the ambulance is still there on the scene.

Q. What did you see and hear about this accident?

*P. P. Allen.*

A. I was working—

Mr. Robertson: I object, if Your Honor please. That has nothing to do with it. We have admitted the pictures.

Mr. Allen, Jr.: That is sufficient.

### CROSS EXAMINATION.

By Mr. Robertson:

Q. What was the weather when you got there?

A. Well, the street was damp and wet, as I recall it, a little rainy.

Q. Sort of misty?

A. Just a little misty.

Q. Was the street slick?

A. It was wet; I don't know whether slick.

Q. You don't know if it was a slick street or just wet?

A. No, sir.

Witness stood aside.

JOHN T. HANNA,

called on behalf of the plaintiff, being first duly sworn, testified as follows:

page 53 §

### DIRECT EXAMINATION.

By Mr. Allen, Jr.:

Q. State your full name, please, sir.

A. John Tyler Hanna.

Q. What is your occupation?

A. Acting director of the Bureau of Traffic Engineering for the Department of Public Safety, City of Richmond.

Q. How long have you been doing that?

A. My appointment was June 1st, at which time I worked for the Bureau of Police for one month. Since then I have been acting head of the Bureau of Traffic Engineering.

Q. Have you made any measurements at my request of the length of the bus safety zone at Third and Grace streets?

A. Yes, sir, I did this morning.

Q. What is that length?

A. The sidewalk width at that point is 12.5, the actual bus zone is 75 feet approximately according to a tape measurement. This would give the total length 87.5 feet from the

*P. P. Allen.*

east side of the curb facing on Third street to the bus stop sign; 87.5 feet.

Q. Have you searched your records to find out whether that safety zone or that bus zone was that length on June 5, 1948?

A. According to my records no change has been made and according to the records of the paint shop no page 54 } change has been made. In September the Transit Company took over the function of maintaining the stops.

Q. Have they made any change?

A. According to Mr. W. K. Fleming, General Manager, no change has been made at that stop subsequent to their taking over.

Witness stood aside.

Mr. Allen, Jr.: If Your Honor please, the only other witness we would like to put on is Dr. Butterworth. Dr. Butterworth has just come in from out of town over the week-end and he had a bunch of operations set for this morning and wouldn't be able to get here until twelve or twelve thirty. Is it agreeable to put him on out of order?

Mr. Robertson: We will go ahead.

The Court: You can put him on when he gets here.

P. P. ALLEN,

called on behalf of the defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Robertson:

Q. What is your full name?

page 55 } A. Patrick Pharoah Allen.

Q. Where do you live?

A. 313 South Cherry Street.

Q. How long have you lived in Richmond?

A. I have been here going on six years.

Q. Are you employed as a bus operator by the Virginia Transit Company?

A. Yes, sir, I am.

Q. How long have you been a bus operator for the company?



*P. P. Allen.*

A. Well, I have been employed by the company the 9th of May it will be five years.

Q. Were you the bus operator in charge of westbound bus No. 67 that was involved in the accident that resulted in the trial today?

A. Yes, sir.

Q. Do you remember what day of the week it was?

A. It was on Saturday.

Q. And I think there is no dispute it was on June 5, 1948. About what time of the day was it?

A. It was about 3:06.

Q. And what was the condition of the weather, if you recall?

A. It was a little showery. It had been raining page 56 } and had slackened up and had started back again after the accident.

Q. At that time was Grace street between Third and Fourth streets a one-way street or two-way street?

A. One-way.

Q. For traffic bound in which direction?

A. West.

Q. Now as you came westwardly immediately before this accident happened do you remember whether or not you stopped at Fourth street?

A. Yes, sir, I did.

Q. Why did you stop there?

A. I stopped there to pick up and discharge passengers.

Q. How was your bus operating?

A. Perfect, good.

Q. Did you have any difficulty with anything at Fourth street?

A. No, sir, I didn't.

Q. Had you had any difficulty with anything wrong with the bus before you reached Fourth street?

A. No, sir.

Q. Did you come to a full stop at Fourth street when those passengers got on and off?

A. Yes, sir.

Q. Now when you started from a standstill with that particular bus, No. 67, how many changes of gear are page 57 } there to go into to get full speed?

A. Well, low, second and high.

Q. Now what kind of brakes did your bus have on it? I mean what controls the brakes?

*P. P. Allen.*

A. It is controlled by air.

Q. Is there also a hand brake on that bus?

A. Yes, sir, there is.

Q. Now if anything happens to your air is it possible to shift the gears or is the gearshift dependent upon having air?

A. You can't shift gears if you don't have any air. It is an air clutch and it don't shift without air.

Q. Now when you left Fourth street going towards Third street what did you do so far as shifting any gears was concerned?

A. Well, after I loaded and unloaded I pulled into low gear, pulled on across into the intersection, into second and then on into high as I had speed for it.

Q. Did you have any difficulty shifting those gears?

A. No, sir, I didn't.

Q. Was anything wrong with the bus at that time?

A. No, sir, not that I know of.

Q. Now do you recall whether or not you got a buzzer signal to stop at Third street?

A. Yes, I had a bell for Third street.

page 58 } Q. How far through the block were you when you got that signal?

A. Oh, I guess about middle way of the block. They generally ring them about the middle of the block. Some ring right—

Q. What you have to tell is what happened this day.

A. I don't know exactly where the bell was rung at, but it was approaching Third street—for Third street.

Q. What was the volume of traffic there on Grace street that afternoon say between Fourth and Third streets, if you remember.

A. Well, there was some traffic on there, I don't know how much it was, but it is generally a good deal of traffic on Saturday evening on Grace street.

Q. Was the street open to the north curb so you could travel in the lane next to the curb or was that lane blocked by parked vehicles?

A. There was some parked vehicles there.

Q. So westbound which lane were you in?

A. I was following the lane of the automobiles out of the bus lane. In other words, the bus lane was blocked and I was in the lane with the traffic.

Q. You mean there were cars parked at the curb and you were in the lane next left of that?

*P. P. Allen.*

page 59 { A. That is right, sir

Q. Now did you undertake to stop in response to that signal at Third street?

A. Yes, sir, I did.

Q. Now tell the jury what happened.

A. Well, when I applied my brakes I didn't have any. I first mashed the accelerator—I mean the brake pedal and it didn't take and I mashed it on down and it still didn't take. Automobiles were stopped ahead of me for the traffic light and I had to whirl around from behind them to go into the bus stop safety zone and keep on going.

Q. Now from the time you discovered you had no air had you heard any sound of anything breaking or any other sound?

A. I heard something but I don't recall what it was, whether it was a backfire or air lines busted or what. I heard something pop, but I didn't notice it.

Q. Now did you run out into the intersection?

A. Yes, sir, I did.

Q. When you ran out into the intersection did you have the green light or ran against the red light?

A. The red light was against me.

Q. Do you recall whether or not there was any northbound automobile crossing that intersection at that time?

page 60 { A. Yes, there was one approaching my lane after I went in the safety zone to keep from hitting these cars in the back. This automobile was going north on Third street. Well, he was coming and I was, too. We collided and when we collided it knocked me off balance and into the drug store.

Q. Did you try to duck away from him?

A. Yes, sir, I did.

Q. Did he try to duck away from you?

A. Well, I couldn't say whether he did or not.

Q. Were you operating the steering wheel with one hand or two hands?

A. Both hands.

Q. Were you hurt in the accident?

A. Yes, sir, I was; my knees.

Q. Were you hurt enough to lose any time from work?

A. Yes, sir, I lost four weeks.

Q. Did you try to stop that bus with the hand brake?

A. Yes, sir, I did.

Q. How did it happen you didn't stop it?

*P. P. Allen.*

A. Well, I was too close on him to stop it.

Q. I hand you a picture showing the inside of bus No. 67 facing forward and ask you if that is the bus that is involved in this accident? I call your attention to the 67 page 61 } written up there.

A. Yes, sir, that is the bus.

Q. I am going to ask you to step over here where the jury can see it and point out to them where the hand brake is?

A. The hand brake is over here on this side and this side right here is the switch and the hand brake is between the switch and the seat for your left hand. This is the door here. Here is the pedal—the brake pedal and the gas pedal. The hand brake sits right over here. Here is the transfer rack and here are your switches.

Mr. Robertson: I offer that in evidence.

Note: Filed and marked Exhibit A.

Q. Now I hand you a photograph which is marked Exhibit No. 1 and ask you if that is the way the outside of the front of the bus looked after the accident, if you know?

A. Yes, sir.

Q. Then I hand you a photograph marked Exhibit No. 12, which shows the inside of the front of the bus looking in the door and ask you if that is about the way it looked after the collision, if you know?

A. Yes, sir, this looks something like it.

Mr. Robertson: I call the attention of the jury to the fact that has got that lady in it that I said the picture would speak for itself.

Q. Did you say you hit the northbound automo-  
page 62 } bile?

A. Yes, sir, we collided together. I can't say definitely whether he hit me or I hit him. In other words, we collided in the intersection.

Q. Did that collision knock you out of your seat and throw you off balance?

A. Yes, sir, it did.

Q. What happened to you when the two hit?

A. Well, I don't know. I was trying to stop the bus. I don't know what all did happen, everything was happening so fast. I can't say definitely what I was doing.

*P. P. Allen.*

Q. Do you know whether the bus went away under its own power or had to be taken away?

A. No, sir, I was gone. I wasn't there when the bus was moved.

Q. What happened to you?

A. I was taken to the hospital.

Q. Were you taken to the hospital in the ambulance?

A. No, sir, I was taken in the patrol car.

### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. Mr. Allen, did you ever try to stop that bus with the hand brake any time before the accident during the years you have been operating it?

page 63 } A. Yes, sir.

Q. Would it work?

A. Yes, sir. You have to try that before you leave the barn.

Q. Did you try it that day before it left the barn?

A. Yes, sir.

Q. Did it work all right?

A. Yes, sir.

Q. Now what is called your service brake is the air brake, is that right?

A. That is right.

Q. You use that from your foot pedal?

A. Yes, sir.

Q. Your hand brake, of course, or emergency brake as you call it is in no way connected with the air brake?

A. No, sir.

Q. Two separate and distinct systems of brakes?

A. Yes, sir.

Q. Now you said you applied your foot brake, which is your service brake, and that did not work?

A. That is right.

Q. Did you then undertake to apply your hand or emergency brake before colliding with the automobile?

X A. I don't know. You see, I pulled away from these automobiles, the automobiles in front of me, and then  
page 64 } I was in the intersection and I collided with the automobile. I applied the hand brake, but when—

Q. You don't know whether—

Mr. Robertson: Let him finish.

*P. P. Allen.*

A. (continued) But when I applied this hand brake I don't know, after I hit the automobile or before I don't know, but I know I applied it.

Q. Now you said you tried the hand brake before you left the barn that day and it was all right and would stop the bus. When did you leave the barn?

A. I left the barn at—the best I can recall I believe I was supposed to relieve a man at 2:58—1 something.

Q. That day?

A. Yes, sir, but exactly what time, it has been a long time, I don't know what time.

Q. The accident happened at 3:06?

A. Yes, sir.

Q. That same afternoon?

A. Yes, sir. I had just been to Church Hill and was going back to Byrd Park.

Q. About how fast were you traveling at the time you said you undertook to apply your service brake and found it wouldn't work?

A. I would say 10 or 12 miles an hour?

Q. Proceeding at that rate of speed if you had  
page 65 } applied your hand or emergency brake, within what  
distance can you stop?

A. Traveling at that speed?

Q. Yes, 10 or 12 miles an hour?

A. Oh, I wouldn't say because the street was slick and everything.

Q. Could you stop within the length of the bus, you think?

A. I wouldn't say.

Q. How long is that bus?

A. I don't know that.

Q. Tell me another thing; when you approached Third and Grace at what distance were you from the intersection when the light changed from green to red?

A. Well, there was an automobile ahead of me, I don't know just what distance it was—in other words I was in the—far enough behind the automobiles parked that I could get in the safety zone. In other words, I left this right lane and went over in the bus lane up to the curbing to keep from going into the back of him.

Q. Did you see the light change?

A. Yes, sir, I saw the light change.

Q. Was it changing?

A. Yes, sir.

*P. P. Allen.*

Q. How close were you to the intersection when page 66 { you saw it changing?

A. Well, I was maybe—I would say a couple of bus lengths from the intersection.

Q. Did you think you could slip through before it completely changed?

A. No, sir.

Q. You didn't think so?

A. Yes, sir.

Q. Where you supposed to stop at that intersection anyway to pick up passengers?

A. Yes, sir, I was supposed to let someone off there.

Q. Do you know who that passenger was?

A. No, sir, I don't.

By the Court:

Q. Which side of Third street did you stop on to let off passengers?

A. On the east side.

By Mr. Allen, Sr.:

Q. I show you Plaintiff's Exhibit No. 1. I believe you testified you recognize that as the front part of your bus immediately after the accident.

A. Yes, sir.

Q. Do any of the hose or lines or anything connected with the air system come up towards the front part of the bus, around the front?

A. What do you mean?

page 67 { Q. Around the front part of the bus, either behind or on the side of the place where the bus was struck?

Mr. Robertson: This man is an operator and not a mechanical expert. We will have mechanical experts here to testify.

The Witness: I couldn't testify to that.

The Court: You can ask him if he knows.

The Witness: I don't know.

By Mr. Allen, Sr.:

Q. All you know is when you press your foot pedal down your air brake is supposed to work?

A. That is right.

*P. P. Allen.*

Q. Do you recall testifying in the Police Court in this case?

A. Yes, sir.

Q. Didn't you say in the Police Court that when you undertook to apply your service brake upon approaching this intersection that you guess you were about twice the length of the safety zone, something like that from the intersection?

The Court: What he is trying to do now is to refresh your memory as to what you testified to in the Police Court, if you recall testifying to that in the Police Court page 68 } or if you deny that you testified to that.

A. I wouldn't deny it and wouldn't confirm it. I don't remember anything about it, nothing about any two safety zones. I think I used it as a bus length is the way I put it because I wouldn't know how far the safety zone is.

Q. What you say is bus lengths?

A. What I would say I was two bus lengths from the intersection.

Q. You don't deny that you said in the Police Court "I guess I was about twice the length of the safety zone, something like that from the intersection" when you attempted to apply your service brake? I say you don't deny you said that?

A. If it is in there, I must have said it.

Q. Did you stop at Fifth and Grace that day?

A. I don't recall whether I did or not.

#### RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Allen, speaking under oath to the best of your recollection, how far were you away from going into the crossing when you used your air brake and found you didn't have any air? What is your present recollection, the best you can testify under oath?

page 69 } A. Well, I would say I was just about a bus length. In other words, I was approaching the safety zone and that would put me about a bus length from it.

Q. And was it at that time that you cut out to your right from the thing in front of you?

A. Yes, sir, because it was cars parked on the right side and I had a very little hole to get in there and get around it.



*Milton Bebout.*

RE-CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. You referred to the safety zone. Is that the safety zone where people stand to get on the bus?

A. Yes, sir.

Q. Were you going to stop there to pick up passengers?

A. Yes, sir. I was to stop to let off passengers. I had a bell to stop there to let off passengers.

Q. Don't you apply your brake to begin to stop or at least start to make the application of your brake before you reach the safety zone?

A. Naturally.

Q. So in this instance that is what you did according to your recollection?

A. Yes, sir.

Witness stood aside.

page 70 } MILTON BEBOUT,  
called on behalf of the defendant, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Bebout, do you live in Richmond?

A. Yes.

Q. What is your business?

A. I am a cab driver, Yellow Cab Company.

Q. Were you driving for the Yellow Cab Company on the 5th of last June?

A. Yes, sir.

Q. Do you remember an accident on a Saturday afternoon, June 5th, a little bit after 3 o'clock when a westbound bus ran up on the curbing and into the People's drug store there at Third and Grace streets?

A. Yes, sir.

Q. Where were you when that happened?

A. I was parked on the southeast corner of Third and Grace over by Reynolds' Metals building.

Q. Which way were you heading?

A. Heading west.

Q. Were you parked there permanently or waiting for the light?

*Milton Bebout.*

page 71 } A. Waiting for the light to change.  
Q. Did you have anybody in your cab?  
A. Yes, sir, I had a passenger in the cab.

Q. Where were you going?

A. Mulberry and Cary to the Safeway Store.

Q. Did you see what happened there?

A. Well, I was waiting for the light to change and as the light turned to caution a car proceeding north on Third coming toward Broad and the bus come west on Grace and I didn't see that. I heard the crash and I looked as the bus swerved to the right and the car did this way (indicating) and the next thing I know the bus was up on the sidewalk.

Q. Did you get enough of a look at that northbound automobile to estimate its speed?

A. No, sir, I couldn't say how fast it was driving.

Q. Did you get enough of a look at the bus to estimate its speed?

A. No, sir, I couldn't.

Q. Do you know who entered the crossing first?

A. Well, at the time of the accident they were both—the bus must have gone through on the caution. Just about the time the bus hit the corner and the car hit the corner it turned to caution and then the light went green and I heard the noise.

Q. You didn't actually see them come together?

A. No, sir.

page 72 } Q. When you heard the crash did you look?

A. Yes, sir, I looked. I was getting ready to start and heard the crash and looked and seen the car spinning in the middle of the street and the bus up on the sidewalk.

Q. By the time it took you to look had the bus come to a stop or was it still moving?

A. When I saw the bus it was just about stopped right up on the curbing, looked like right up against People's drug store.

Q. Whereabouts in the crossing did they actually come together, if you know?

A. Well, I would say the car was a little over half-way of the intersection of Third street and it seemed the car and the bus—I don't know if the bus hit the car or the car hit the bus, but the car was sitting a little over half-way in the intersection of Third street and it seemed the bus swerved to the right.

*Milton Bebout.*

Q. As they were headed north on Third street were cars parked on the right-hand side south of Grace street?

A. On the right-hand side of me? I was by the sidewalk lane and it was cars on the other side of me on the right-hand side.

Q. You mean there weren't any cars parked between you and the curb?

A. No, sir, it wasn't.

page 73 } Q. This northbound automobile was it proceeding in the lane next to the curb going north or out in the lane?

A. It seemed to me out from the curb and a little over half-way from the curbing.

Q. You mean half of the north driveway if you take the center line of the street—what I am trying to get is how close was that northbound automobile to the right-hand curb as it went north?

A. I would say he was at least 5 or 6 feet from the right-hand curb.

### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. You said both those vehicles went in the intersection on caution?

A. The light was changed to caution when it occurred. The northbound car started through, the light changed to caution—it don't take that light but a few seconds to change from red to caution to green. The bus came through after the car started through. The car had started through and then the bus came through. I didn't see the accident, but heard the noise. When I got up there the car was sitting in the intersection of the street and the bus was up on the sidewalk at People's. I didn't actually see the car and bus go together.

page 74 } By the Court:

Q. When the light changed to caution which way did it then change?

A. It was changing from red to green for westbound traffic on Grace street.

By Mr. Allen, Sr.:

Q. And this other man had entered from the south?

A. He had entered, coming from south to north on Third.

*Milton Bebout.*

Q. It had entered the intersection on Third street?

A. Yes, sir.

Q. And the bus, of course, was going west on Grace?

A. Yes, sir.

Q. And the man had gotten over half-way across the street before he was hit?

A. Yes, sir.

Q. And you were headed in which direction while you were parked?

A. I was heading north on Grace. I was going to Mulberry and Cary.

Q. Were you on the right side of Grace or the left side going west?

A. I was on the southeast side of Grace street, on the left-hand side.

Q. On the left-hand side?

page 75 } A. Yes, sir.

Q. Then the bus was just over to your right?

A. The bus would be over on the right side.

Q. On your right-hand side?

A. Yes, sir.

Q. Now did you start across the intersection ahead of the bus or after the bus?

A. No, I started when the light changed to green and started off.

Q. Had the bus started?

A. Just as I started that is when I heard the noise of the two cars or the car and the bus.

Q. You waited for this light to turn green?

A. Yes, sir.

Q. And when the light turned green you started?

A. Yes, sir.

Q. In the meantime the bus had already started?

A. I didn't see the bus come through. I was watching the car going across; I wasn't paying attention to the bus until after he had gotten out.

Q. Then you did start across yourself?

A. After the light turned green.

Q. When the collision took place was the collision ahead of you or behind you?

A. On the right-hand side of me.

page 76 } Q. Farther east or west of you?

A. No, sir, farther north on the right side of me.

Q. Both of you were going west?

A. Yes, sir.

*Mrs. Harold Lawrence.*

Q. When the collision took place had you gotten up opposite the point of the collision or not?

A. When the collision took place I was starting off west on Grace street.

#### RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. When you stopped there waiting for the light were there any other automobiles stopped along to your right?

A. Yes, sir.

Q. Did the bus when it went by there go north of those automobiles on their right?

A. Yes, sir.

Witness stood aside.

Mr. Robertson: Is your doctor here?

Mr. Allen, Jr.: He hasn't come. I called his office and told them if he hadn't already left the hospital to tell him not to come. I expect he won't show up.

page 77 } MRS. HAROLD LAWRENCE,  
called on behalf of the defendant, being first duly  
sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Robertson:

Q. Your name is Mrs. Harold Lawrence?

A. Yes, sir.

Q. And where do you live?

A. 2115 Idlewood.

Q. Are you employed anywhere?

A. Housewife.

Q. Do you recall an accident on Saturday afternoon about 3 o'clock on the 5th of last June when a westbound bus went up on the sidewalk at the corner of Third and Grace streets?

A. Yes, sir.

Q. Where were you when that accident happened?

A. I was sitting on the front seat, the long seat up near the front.

The Court: Can't you talk a little louder?

*Mrs. Harold Lawrence.*

A. (continued) It was a long seat up at the front of the bus and I was sitting up at the front, about the second passenger on the seat facing the side. I wasn't facing the front, I was facing the side. I was on the right side of the bus.  
page 78 } Q. You were on the right side of the bus?

A. Yes, the second passenger.

Q. So you were facing south then?

A. That is right.

Q. I believe you got a summons from both sides, didn't you?

A. Yes, sir, I did.

Q. And you have talked to either one or both of these gentlemen about the accident?

A. I talked to—what is his name; Merrill, Ferrell?

Q. That is this gentleman here?

A. Yes, sir.

Q. Did you talk to anybody else?

A. To the other gentleman for the plaintiff who came to see me.

Q. One of these gentleman here?

A. Yes, sir. I didn't understand why I would get it from both sides, but I suppose just to tell the truth as I saw it.

Q. Where had you gotten on that bus?

A. I got on at Loew's corner, Sixth and Grace.

Q. And where were you going?

A. I was going home. I live at 2115 Idlewood and I was headed for the West End.

Q. Do you recall whether or not the bus stopped  
page 79 } at Fourth that end of the corner before the accident?

A. Yes, sir, I think it took on a passenger at Fourth and I think one got off; I am not positive.

Q. What is the first time that you knew anything was wrong?

A. Well, the only thing the way I remember it we were going along and I could see this car coming north and in my mind I wondered why the car didn't stop. I was so busy watching the car that I got confused and I said "What is going to keep something from happening when we are both going" and I didn't see the light. I just didn't think about the light, I was thinking about that car headed north and couldn't understand why the man didn't stop when he saw the bus was coming.

Q. How close was the bus to this northbound automobile when you first noticed it?

*Mrs. Harold Lawrence.*

A. We had left the corner when I saw this—the bus was almost at the intersection and I wondered why he didn't stop, just what was in my mind, the way I remember it, and I said something was going to happen and I saw the bus driver trying to get out of the way of it. I saw he was really trying to and then the crash came and struck the building and there we were.

Q. How close would you say the bus was to the automobile when you first noticed it?

page 80 } A. Well, I think we were just leaving the corner on the east—the east corner.

Q. The east corner of which street?

A. We had gotten started across, you know.

Q. You mean the corner—

A. Where the zone is where you get on the bus. We were headed to the west.

By the Court:

Q. Are you speaking of the corner of Third and Grace?

A. Third and Grace.

Q. Are you speaking of that corner?

A. Yes.

Q. Where this accident occurred?

A. Yes.

Q. And you say the bus was leaving the corner when you first saw it—first saw the other car?

A. When I saw this car coming the fellow was driving north and I got confused looking at that car.

Q. You all were leaving the safety zone at that corner when you saw it?

A. Yes, sir, and I think the driver saw it, but he couldn't stop.

The Court: Don't tell us what you think.

The Witness: That is the way I thought it was.

page 81 } By Mr. Robertson:

Q. Had you heard any buzzer signal for the bus to stop at Third street?

A. Heard any signal for the bus to stop?

Q. Yes.

A. No, I don't think so.

Q. Now did you see the bus driver do anything when you said he was trying to stop?

*Mrs. Harold Lawrence.*

A. Well, I saw that he was working on the steering gear trying to swerve the bus. He may have worked on the brake and it didn't work and I could see he was trying to swerve the car around because things happened so quickly that is the way I remember it in my mind, but all I could see was that car speeding coming and not stopping. That is what confused me.

Q. Did you hear any noise there, or anything about the bus?

A. Well, it sounded like a blowing noise, something of that type.

Q. Where was the bus when you heard that noise?

A. Well, I couldn't honestly say because I didn't really notice about the noise. It just seemed like at the time, as I say, something was happening you could hear a terrific noise.

Q. Did you hear any noise before—

page 82 } A. It sounded like a heavy blowing noise, some sort of noise like that.

Q. Was that before the two vehicles hit or afterwards?

A. I don't remember hearing the noise at the corner before.  
I don't remember hearing any noise.

Q. So the only noise you heard—

A. Was at the time.

Q. What was at the time?

A. Just at the time we were trying to cross the street.

The Court: We can't hear you.

A. (continued) As we were trying to cross the street it seems I heard the noise.

Q. Did you hear this noise before the collision with the other car or afterwards?

A. Well, it seems when the man was trying to stop if there was a noise. I mean when he was swerving around. Of course, I didn't know what it was.

Q. When the bus was swerving around?

A. Yes, sir.

Q. That was before the collision?

A. Yes, sir.



*Mrs. Harold Lawrence.*

CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. Mrs. Lawrence, you said you saw the car come  
page 83 } ing north?

A. Yes, sir.

Q. On Third street?

A. Yes, sir.

Q. Did you see it after it got in the intersection?

A. I think it—the way I remember it, it had gotten about  
the center.

Q. About the center?

A. Yes; coming towards the center, I would say; not exactly  
in the center because we were going too, you see, but I  
thought it had time to stop. Of course, I could have been  
mistaken.

Q. Do you know whether the man going north had the green  
light when he entered—

The Court: She said she didn't see the light.

The Witness: No, I didn't see the light. I never did see  
the light.

By Mr. Allen, Sr.:

Q. So you don't know which one had the green light?

A. No, sir, I don't.

Q. Then when you saw the car going north somewhere near  
the middle of the intersection where was the bus then?

A. Well, we had started.

page 84 } Q. Started from where?

A. Started across from the east side.

Q. From the east side?

A. Going to the west and the bus driver was trying to stop  
his bus and when he swerved—

Q. Could you tell us about how close the bus was to the  
intersection when you saw the automobile in the middle of the  
street?

A. To the intersection between the street—you mean—

Q. I want to know about how far the bus on which you were  
riding was from Third street when you saw this man going  
north on Third street near the middle.

A. Well, I think we had just started to go across when I  
saw his car coming.

*Dr. R. D. Butterworth.*

By the Court:

Q. Had he stopped at Third street?

A. This man?

Q. Had the bus ever stopped at Third street?

A. That is the only thing I don't remember, but I think we did. I think we had a car in front of us.

Witness stood aside.

DR. R. D. BUTTERWORTH,  
a witness called on behalf of the plaintiff, being  
page 85 } first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Allen, Jr.:

Q. You are Dr. R. D. Butterworth?

A. Yes, sir.

Mr. Allen, Jr.: Do you waive the doctor's qualifications?

Mr. Robertson: Yes, sir.

By Mr. Allen, Jr.:

Q. Did you have occasion to examine the plaintiff, if so, state when you examined her and who for?

A. Mrs. Doris Durham?

Q. Yes.

A. Yes, I saw her on August 24, 1948, at the request of Mr. Allen.

Q. Will you tell the gentlemen of the jury what your examination revealed of the nature of her injury and whether or not it is permanent?

By the Court:

Q. Doctor, you are an orthopedic surgeon, are you not?

A. Yes, sir. As I understand your question, you did not ask for any history at all, just what were the findings?

By Mr. Allen:

Q. Yes, sir, I want the history also.

A. She gave me a history of having been in an  
page 86 } accident approximately two and a half months previously. At that time she was complaining of both shoulders being quite painful, highly nervous, having some

*Dr. R. D. Butterworth.*

pain in her back, her left foot had been injured leaving a scar and she was having some pain and discomfort in this foot and ankle. Now I examined her left foot and she had a scar there approximately 5 or 6 inches long and that went on the outside of her foot across the ankle and that scar was stuck down and that limited the motion of the foot and somewhat the ankle. There is also a second scar over the ankle on the inside about the size of a quarter but that didn't seem to be bothering her a great deal; that wasn't stuck down.

Now her back examination showed nothing more than some tenderness in the angle of the spine with the pelvis plus the fact her X-ray showed considerable arthritic changes and I was of the opinion after this examination that she had this adherent scar over her foot which would certainly be permanent. It might improve some but, of course, the scar would be permanent and I think it would always give her some discomfort by being stuck to the underlying tissues. A person of her build with some arthritic changes who has an injury to the back usually takes a long time to get over the pain and discomfort and some of them do not recover. I thought that  
 page 87 { the pain and discomfort she had about her shoulders and in her knee would clear up in time. I do not recall seeing her but the once—I don't have any record of it.

Q. What is your opinion about the back and foot injury, whether they will ever clear up?

A. I think definitely that the foot will be permanent, the scar and discomfort there, and some of these backs never clear up and some do. It is hard to state on that.

### CROSS EXAMINATION.

By Mr. Robertson:

Q. There were no fractures, were there?

A. In her back?

Q. Anywhere.

A. I don't have any record of there having been any fractures.

Q. There were no tendons severed, were there?

A. Not completely.

Q. Were they severed at all?

A. It is hard to tell, sir. When you have a overlying scar, a partially torn tendon which sticks to the—

*Miss Jean Merkle.*

Q. I asked you whether you know there were any severed tendons?

A. I am answering it that all I know—

Q. I am asking you whether you know or not  
page 88 } there were any severed tendons, either totally or  
partially? I ask you if you do know or you don't  
know.

A. I don't know; could only prove that by surgery.

Q. You did not send her back to the hospital, did you?

A. No, sir.

Q. Did you recommend any surgery?

A. No, sir.

Q. You saw her once?

A. I saw her once.

Q. When was that?

A. August 24th.

Q. Did you ask her to come back for any further treatment  
by you?

A. I only saw her for examination; she was under someone  
else's care.

Witness stood aside.

**MISS JEAN MERKLE,**

called on behalf of the defendant, being first duly sworn, testified as follows:

**DIRECT EXAMINATION.**

By Mr. Robertson:

Q. Your name is Miss Jean Merkle?

A. Yes, sir.

Q. Are you employed anywhere?  
page 89 } A. No, sir.

Q. Where do you live?

A. 313 South Laurel street.

Q. How old are you?

A. Sixteen.

Q. You are at school?

A. Yes, sir.

Q. Whereabouts?

A. John Marshall.

Q. Do you remember an accident shortly after 3 o'clock on

*Miss Jean Merkle,*

Saturday afternoon, the 5th of last June, when a westbound bus ran up on the sidewalk at Third and Grace streets?

A. Yes, sir.

Q. Where were you when that accident happened?

A. I was on the right-hand side of the bus on the long seat.

Q. On the right-hand side?

A. Yes, sir.

Q. Where had you gotten on the bus?

A. I got on at Ninth and Broad.

Q. And where were you going?

A. I was on my way home.

Q. Now as the bus went westwardly there on Grace street do you remember whether it stopped for passengers at Fourth street?

page 90 } A. Yes, sir, it did.

Q. When it left Fourth street did it go away in a normal manner so far as you could tell?

A. Yes, sir.

Q. Then what was the first time you knew anything was wrong?

A. When he was middle way of the block I heard a noise from the back.

Q. What kind of noise?

A. Kind of backfire of some sort or explosion.

Q. And after that what happened?

A. Well, he just kept on and someone rang the bell to get off but he didn't stop, couldn't stop.

Q. Then what happened when he got to Third street? Did he stop or keep going?

A. Well, it kept going and I just remember looking up and seeing a column coming towards me. That is all I remember.

A. Did you notice what the color of the light was when he started out in the crossing?

A. No, sir, I didn't see the light.

Q. Did you see the northbound automobile that the bus had a collision with?

A. No, sir.

page 91 } Q. What was the first you knew of it?

A. Just glancing up and seeing the building.

Q. About how far away were you from it at that time?

A. It was pretty close, I couldn't say how far.

Q. What was the operator doing, if you noticed?

*Miss Mary Silvia.*

A. Well, he was trying to stop the bus and trying to keep it coming around.

Q. Which way was he going?

A. When I looked up he was going to the building.

Q. What was he doing himself?

A. Well, he was turning the steering wheel.

Q. Was he turning it like trying to go to the right or left or straight ahead or what?

A. I don't know; just turning it.

Mr. Allen, Sr.: No questions.

Witness stood aside.

MISS MARY SILVIA,

called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Your name is Miss Mary Silvia?

A. Yes, sir.

page 92 } Q. And where do you live?

A. 3032 Rosewood Avenue.

Q. Are you employed anywhere?

A. Du Pont.

Q. What kind of work do you do there?

A. Operator.

Q. Do you recall an accident shortly after 3 o'clock on the 5th of last June when a westbound bus ran up on the sidewalk at Third and Grace streets?

A. Yes, sir.

Q. Where were you when that accident happened?

A. I was on the bus.

Q. Whereabouts?

A. Sitting on the long seat directly behind the driver.

Q. And which way were you facing, if you recall?

A. Facing towards Broad Street.

By the Court:

Q. Facing what?

A. I was sitting on the long seat behind the driver facing Broad street.

*Miss Mary Silvia.*

Q. On the left-hand side of the bus?

A. Yes.

By Mr. Robertson:

Q. Where had you gotten on the bus?  
page 93 } A. Eighth and Grace.

Q. And where were you going?

A. Home.

Q. Do you recall whether or not the bus stopped for passengers at Fourth and Grace?

A. Yes, it did.

Q. Then when it left Fourth and Grace what was the first thing you knew there was anything wrong?

A. I heard an explosion about middle way of the block, sounded like a flat tire or something; it was something from the back of the bus.

Q. And after that what happened?

A. I don't know.

Q. Did you notice the traffic light before the bus started across Third street?

A. No, sir, I didn't see the traffic light.

Q. Did you see the automobile that was hit before the collision happened?

A. No, I didn't.

Q. Could you estimate the fastest speed of the bus through the block there from Fourth street towards Third street?

A. Well, I don't know. I imagine it would be about 10 or 12 miles an hour maybe. I don't know for sure.

Q. After you heard that explosion did you see the  
page 94 } bus driver do anything or were you noticing something else or what?

A. No. That scared me, the noise, whatever it was and I wasn't paying any attention to anything else.

Q. So you don't know what the bus driver did after that?

A. No.

### CROSS EXAMINATION.

By Mr. Allen, Jr.:

Q. Were you acquainted with the driver?

A. No, sir.

Q. You didn't know him before?

A. No, sir.

*Mrs. Nora Dempster.*

Q. You said something about noise. Do you know what the noise was?

A. Well, it sounded like a flat tire or something along that line to me.

Q. Did you hear the crash at the intersection?

A. Yes, I remember hearing that.

Q. Did you hear the flat tire and crash about the same time?

A. Not exactly the same time, no.

Q. You said the bus driver stopped and took on passengers or let off passengers at Fourth and Grace?

A. Yes.

page 95 } Q. Did he also stop at Fifth and Grace?

A. I don't remember about Fifth and Grace.

Q. You don't remember about Fifth, but you do remember about Fourth and Grace?

A. Yes.

#### RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. After you heard the explosion do you know whether or not the bus stopped at Third and Grace?

A. No, I don't.

Witness stood aside.

**MRS. NORA DEMPSTER,**

called on behalf of the defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mrs. Dempster, your name is Mrs. Nora Dempster?

A. That is right.

Q. And where do you live?

A. 2514 Idlewood Avenue.

Q. Are you employed anywhere?

A. Employed at Kingan & Company.

Q. What do you do there?

page 96 } A. Supply clerk.

Q. Do you remember an accident shortly after 3 o'clock on Saturday afternoon, the 5th of June, when a west-bound bus ran up on the sidewalk at Third and Grace?



*Mrs. Nora Dempster.*

A. Yes.

Q. Where were you at the time?

A. I was in the bus.

Q. Whereabouts in the bus?

A. I was on the left side next to the aisle, just about opposite the center inside door.

Q. Which way were you facing?

A. Well, I was facing the front because I was on one of the side seats.

Q. Where had you gotten on the bus?

A. Fourth street.

Q. You got on at Fourth street?

A. I did.

Q. You know whether or not anybody else got on there?

A. I don't remember. I was the first one to get on, showed him my pass and made my way back to the seat. Someone got up as I was going through the bus and I could see this seat and I had a bundle which was rather heavy and I had taken this seat.

Q. And do you recall hearing any buzzer signal  
page 97 } for the bus to stop at Third street?

A. Yes, I did.

Q. Did the bus stop at Third street?

A. No.

Q. What was the first time you knew anything was wrong?

A. Well, I had gotten about—just about the time I had sat down I heard this explosion like air came out of something all at once and a soldier jumped up, I don't know whether from behind me or where—jumped up and starting kicking the door and I knew evidently there was something wrong when he started to kicking that door after this noise. Then I just braced myself against the seat—against the front of the seat I was sitting in.

Q. Then did you see what the bus driver was doing?

A. Someone rang the bell and he tried to stop and he was working with his brakes with all he knew how, working something because I was far enough back to see that he was working with his brakes.

Q. Did you notice the traffic light when the bus started off?

A. As this noise happened I began to brace myself and I could see the green light, he had it. The thought ran through my mind—well, the soldier upset me; I didn't think so much about the noise until he started kicking the door.  
page 98 } I knew something must be wrong and I noticed the green light at that time, but before he got to the

*C. W. Galloway.*

corner it could have changed, but I didn't notice it any more.

Q. How fast would you say was the fastest speed of the bus from Fourth street on up until it ran into the column there and stopped?

A. Oh, I would say something like 12 or maybe 15 or under. I know it wasn't over 15 miles an hour because he was going very slow.

Q. Did you see the automobile that was involved in the accident at any time?

A. I didn't see it until it was just about to pile in on it and swerving then to the right.

Q. Who was swerving to the right?

A. The driver—the bus driver.

By the Court:

Q. How far had you gotten from Fourth street when you heard this noise?

A. About middle way of the block, I would say.

Mr. Allen, Sr.: No questions.

Witness stood aside.

C. W. GALLOWAY,

called on behalf of the defendant, being first duly sworn, testified as follows:

page 99 } DIRECT EXAMINATION.

By Mr. Robertson:

Q. Your name is C. W. Galloway?

A. That is right.

Q. And you are employed by Virginia Transit Company?

A. I am.

Q. How long have you been with the company and the Virginia Electric and Power Company altogether?

A. Since 1912.

Q. And what is your present position with the Virginia Transit Company?

A. Assistant Superintendent of Equipment.

Q. I believe you are familiar with the facts as reported to you of this accident at Third and Grace streets on the afternoon of June 5, 1948?

A. That is right.

*C. W. Galloway.*

Q. Did you see that bus come into the Transit Company shop?

A. I did.

Q. Did it come in under its own power or was it brought in?

A. It was brought in.

Q. Do you know who brought it in?

A. Coleman-Scales Wrecking Company, I am pretty sure.

Q. I show you a picture marked No. 10 and ask  
page 100 } you if that is about the way it was brought in?

A. That is right.

Q. After the bus was brought in did you make any examination of the air line or see the air line?

A. Not at the exact time it was brought in.

Q. About what time was it brought in that afternoon?

A. Oh, I should say possibly 5 o'clock or thereabouts.

Q. What was done with it when it was brought in?

A. It was put in the shop over a lift.

Q. So far as you know was anything done with it that afternoon or Sunday or did they wait until Monday?

A. They waited until Monday.

Q. When was the first time you took a look at it except in the way you have already indicated?

A. Monday morning.

Q. When you looked at it Monday morning did you notice anything about the air line that controls the brake?

A. I did. I noticed it was broken alose in the rear of the bus.

By the Court:

Q. Was the line broken or disconnected?

A. This particular line has a fitting soldered on the end or fitted on the end and it had come alose from the fitting.

Q. In other words, the solder had broken  
page 101 } alose?

A. That is right.

Q. Into the fitting?

A. Into the fitting. The fitting had come alose from the line itself.

Mr. Allen, Sr.: No questions.

Witness stood aside.

Note: At 12:45 o'clock P. M. the court recessed until 2 o'clock P. M. at which time the trial was resumed.

EDWARD A. FALWELL,  
called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Your name is Edward A. Falwell?

A. Edward Andrew Falwell.

Q. Are you employed by the Virginia Transit Company?

A. Yes, sir.

Q. What kind of work do you do?

A. Mechanic.

Q. How long have you been with the Virginia Transit Company and before that with the Virginia Electric  
page 102 } and Power Company?

A. Approximately twenty-five years.

Q. Have you ever run as a bus operator?

A. Yes, sir.

Q. How long?

A. Eleven years.

Q. And how long have you been a mechanic with the company?

A. About thirteen years.

Q. Do you remember the accident involved in this case where the bus went up on the sidewalk at Third and Grace streets on the 5th of last June and hurt a lady?

A. Yes, sir.

Q. Did you see that bus after it came into the shop?

A. Yes, sir.

Q. Do you remember when it was you first saw it after it came in?

A. I saw it on a Monday after the accident on Saturday.

Q. Did you examine the bus to find out what was the matter with it?

A. Yes, sir.

Q. Did you find anything wrong with the air line that controls the air brakes?

A. Yes, sir, the air line that controls the air brakes had pulled out of the fitting.

Q. Did you take that air line off?  
page 103 }

A. Yes, sir.

Q. Did you tag it when you did it or was it tagged when you did it?

A. I didn't quite understand you.

Q. Was any tag put on it when that was done?

*Edward A. Falwell.*

A. No, sir.

Q. I hand you a piece of air line which has this tag on it and it has this fitting and it says: "This air hose connection was taken off bus 67 by A. E. Falwell on June 7, 1948, in the presence of Lee F. Davis, R. A. Moore, A. G. Robertson, C. W. Galloway, K. A. Blanks, E. H. Flippen." Do you remember taking that off?

A. Yes, sir, I do.

Q. Is that the hose that you said that had pulled out of the fitting?

A. Yes, sir.

Q. Will you hold it up where the jury can see it and describe what happened?

A. This fitting here—

Q. You can take it off, if you want to.

A. When this fitting comes from the manufacturer it is made just like this end is here and it is put on the same way and that carries your air pressure from your compressor up to your storage tanks.

page 104 } Q. I notice this part right there from that little rim there out to the end. If that is in proper maintenance, is that from there down so it is up inside the fitting?

A. Yes, sir, all the way down here.

Q. Was the fitting loose or disconnected?

A. No, sir that was tight.

Q. Was this fitting screwed up into the thing that it was supposed to be in?

A. Yes, sir, real tight.

Q. How did you get it out?

A. I had to take two wrenches because it fits on another pipe and you have to do that in order not to break the other pipe. The other pipe is a copper line?

Q. Was this end connected up all right?

A. Yes, sir.

Q. And the end that had pulled out, was that sagging down or how?

A. It was sagging down. This end had dropped down from the fitting it was originally in.

Q. Did you put another piece of air line in there to replace this or do you remember?

A. As far as I remember I did put another one in there.

Q. Is this at the front or the back end of the bus?

A. At the back end.

*Edward A. Falwell.*

page 105 } By the Court:

Q. What is it that connects this thing with this?

A. It is a hard solder that holds this in here.

Q. You mean this piece is supposed to come down over this?

A. That is right.

Q. And that is soldered on?

A. That is right. That is done by the manufacturer that manufactured that piece of hose.

Q. It comes from the factory that way?

A. Yes, sir.

By Mr. Robertson:

Q. Mr. Falwell, when you were operating busses did you operate busses with air brakes controlled by a similar air line?

A. Yes, sir.

Q. In the entire time you operated them did you ever have a break-down of the line such as the one described here in this trial?

A. No, sir.

Q. During the time that you have been a mechanic there at the company have you had breaks in air line out in service of this sort?

A. No, sir.

Q. Is this one the first one of this kind you  
page 106 } have known?

A. The first one I have seen.

Q. Can you tell what caused that?

A. I don't have the least idea.

### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. How long had this been in use?

A. You mean how long since the company bought the bus?

Q. How long had the bus been in use?

A. That is what I mean. How many years?

Q. Yes.

A. I don't know. I think it was—

Mr. Robertson: We have that information.

A. (continued) It was 1940 I believe. I am not positive.

*Edward A. Falwell.*

Q. Now you tell the jury that this piece of hose or whatever you call it in my right hand—what do you call it?

A. I call it a flexible hose.

Q. That when you saw this bus after the accident, which I believe was the next day, wasn't it?

A. It was on Saturday and this was on Monday when I saw it.

Q. That the flexible hose—the soft piece of flexible hose which I hold in my hand had slipped out of the connection which I hold in my left hand?

page 107 } A. Correct.

Q. And that connection was screwed in securely?

A. Tight.

Q. Now what is there in that connection to hold this piece of flexible hose?

A. The same thing that you see around here, that hard solder where the manufacturer used to put that connection on there.

Q. Now in what part of the bus did you take this piece—from which you took this piece of flexible hose?

A. I took it off of a copper line—This particular piece?

Q. Yes.

A. Off a copper line running to the separator, which is a little bowl about that tall (indicating). That is where I took that piece.

Q. From which end of the bus?

A. It was at the back end of the bus, but this came off—I took this off separate. It is a distance about like this (indicating).

Q. I just want to know which part of the bus?

A. The back end.

Q. Was it rectangular with the bus or crossways the bus like it would be across the street?

A. You mean how does this hose hook?

page 108 } Q. Yes. Let's say this is the bus and it is going that way; was the hose along the side of the bus that way or crossways?

A. Oh, you mean going back like this or that way?

Q. Yes.

A. It goes something kind of on a little angle, but not so much, but it practically straight up and down the bus.

Q. On which side if it is practically up and down?

A. It is on the right-hand side of the bus.

Q. Right-hand side of the bus?

*Ray H. Moore.*

A. Yes, runs right up the frame.

Q. Have you any way of knowing that this came out when the bus collided with the automobile or when the bus collided with the column of the drug store or whether it came out before there was any collision with either?

A. I would say it came out before then.

Q. Do you know?

A. Well, I wouldn't swear to anything like that.

Q. You have no way of knowing, have you?

A. I couldn't swear to that, no.

Mr. Allen: I offer that air line in evidence.

Note: Filed and marked Exhibit B.

RE-DIRECT EXAMINATION.

By Robertson:

page 109 } Q. At the time you took this bus or this air  
line off the bus did you examine all the other air  
lines on the bus?

A. In the back, yes, sir.

Q. Were any of them broken or not?

A. No, sir.

Q. Were any of them up front broken?

A. I didn't examine the front of the bus.

Q. Were any of them clogged up with carbon or any other obstruction?

A. No, sir.

Witness stood aside.

RAY H. MOORE,

called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Moore, your name is Ray H. Moore?

A. Yes, sir.

Q. Do you live now in Richmond?

A. That is right.

Q. Are you employed by the Virginia Transit Company?

A. Yes, sir.



*Ray H. Moore.*

Q. What is your position with the company?  
 page 110 } A. General Superintendent of Equipment and Maintenance.

Q. In your position are you in general charge of the equipment and maintenance all over the system of the Virginia Transit Company?

A. Yes, sir.

Q. That would include what besides Richmond?

A. Norfolk and Portsmouth.

Q. Are you a graduate engineer of any school?

A. Yes.

Q. What school did you graduate from and when?

A. Rose Polytechnic Institute at Terre Haute, Indiana; 1925.

Q. Will you state your professional experience generally from that time to this time; for instance the different positions you have had and what the duties were and your experience in them.

A. Well, educationally it was an engineering education. During the time in school I was driving a bus, paid my way through school; then was with J. G. Brill Company of Philadelphia for many years on automotive work in the engineering service department; then with the Pennsylvania Lines, Norristown five or six years; Harrisburg Railways, Harrisburg, for seven years, all in similar activities as here.

Q. How long have you been in Richmond?  
 page 111 } A. One year.

Q. Where were you before you came to Richmond?

A. Harrisburg, Pennsylvania.

Q. Have you familiarized yourself with the bus that is involved in this case?

A. I have.

Q. What make bus is it?

A. It is a Mack—CO Mack.

Q. Do you know when the bus was purchased?

A. I believe you have the exact date on my statement. It was October 4, 1938, I believe.

Q. 1938?

A. Yes, October 4th.

Mr. Allen, Sr.: If you know the date, you can state it.

Mr. Robertson: I don't know it.

*Ray H. Moore.*

Q. Is this the memorandum to which you referred?

A. Yes.

Q. Will you refresh your memory from that? Is that made up from the records of the company?

A. Yes, it was.

Q. When was this bus purchased?

A. October 4, 1940.

Q. How many miles has it been run altogether?

A. 279,000.

page 112 } Q. Now does that mean that was a worn out, obsolete bus or what is the way of maintaining a bus that has that much mileage on it? Just explain that situation to the jury, please.

A. We don't consider a bus anyway near worn out at that mileage; in fact, in our average normal life around 400,000 or 500,000 miles—we just consider them in good shape because we maintain them on a certain schedule and keep them up to a first-class condition.

Q. Has the Virginia Transit Company got a system of inspection of its busses?

A. We do.

Q. Do you know whether that system that the company maintains now is the same system that was there before you came there or is it something new you put in?

A. No, sir, it is a similar system to what was there before I came.

Q. Will you state to the jury what your system of inspection of the busses is? Take bus No. 67.

A. Every bus that is in service during the day is inspected every night across the pit. That is what we call daily inspection. That bus is checked over for safety features such as brakes, leaking air lines, leaking water lines, anything that would interfere whatsoever with the operation of the bus in service. That is a rigid nightly inspection.

page 113 } Following that any repair work that has been reported will be taken care of.

In addition to that we have what we call a 6,000 mile inspection which takes approximately twelve to fourteen man-hours to complete. That is what we call preventive maintenance. We try not to ever let a bus get in a position it breaks down; we try to catch it before it breaks down by examination of parts. Busses during that time are put through for a tune-up such as you fellows have with your own car, have to take it in to tune it up. It goes through that same thing

*Ray H. Moore.*

at that time. All brakes and safety features are rigidly inspected; any part that looks worn is replaced.

Q. What is the system of the lubrication of a bus?

A. Lubrication is on a schedule of 3,000 miles and that gives one lubrication in between the 6,000—between each 6,000 mile inspection. So you have two lubrication inspections during the 6,000 mile period.

Q. Mr. Moore, is this Mack bus 67 with the mileage on it that you have stated standard, up to date equipment today in the motor bus business?

A. It is.

Q. What do you do, if anything, to keep yourself up with the evolution of the passenger motor bus equipment?

A. Well, we continually read our trade magazine 114 } zines we continually attend our own meetings of the transit industry where we have men in similar capacities who meet two or three times a year; also keep up with the mechanical developments, such as in other industries as the S. A. E.—Society of Automotive Engineers and anything in those automotive works we try to keep posted on.

Q. Do you know what the approximate cost of this bus 67 was to the company here in Richmond?

A. It was around \$11,000, as I recall; between \$11,000 and \$12,000.

Q. Now is this system of inspections and lubrications you have described the best known in the industry or do you know of any companies that have any better ones?

A. If I did we would accept them. We think we have the best or equal to what everybody else considers it.

Q. Are you familiar with the type of flexible air line hose that has been introduced in evidence here as the one that broke?

A. I am.

Q. How does that rank in the industry regarding its quality?

A. We know of no better hose.

Q. Have you examined the records to see when that piece of hose that failed there was put on bus 67?

A. I have.

Q. When was it put on?

page 115 } A. May 14, 1948.

Q. Do you know why it was put on at that time?

A. I understand the other one was leaking; which sometimes it is found on inspection.

*Ray H. Moore.*

Q. Is that what is known as a pinhead leak?

A. It could be.

Q. Describe what that is to the jury.

A. Usually a hose flexible like this it has to work or we wouldn't need a flexible hose. We mount it between a rigid mounting and a rubber mounting on the engine. Sometimes it gets against a piece and wears a hole and sometimes the wearing of this will cause this strand to break and get a slight leak, but never a leak at anytime to be big enough that you wouldn't find it before it is serious.

Q. And that hose had been put on for 67 on what date?

A. That hose was put on May 14th.

Q. Of what year?

A. 1948.

Q. Then have you any record of when bus 67 had last been inspected before June 5th?

A. Yes.

Q. When had it last been inspected?

A. The last night inspection was the night before.

Q. Have you any record of when the last previous 6,000 mile inspection had been?

page 116 } A. Yes.

Q. When was that?

A. That would be on January 12, 1948.

Q. You mean that bus had only run 6,000 miles in approximately six months?

A. No. That speedometer reading at that time was 271,000 at the time of the inspection. We were a little overdue on that degree of mileage. However, the night inspection was not let up on that particular job.

Q. At my request did you get a new piece of hose of similar sort as the one that failed that has been introduced in evidence?

A. I had one gotten out of the storeroom.

Q. Is this the one to which you refer?

A. That is right.

Mr. Robertson: We offer that in evidence.

Note: Filed and marked Exhibit C.

Q. Now taking the two for purposes of comparison and taking this fitting here which went along with the one that failed, will you step over to the jury and show what happened there when one of them failed as compared to the new one you have introduced for purposes of observation.

*Ray H. Moore.*

A. I don't quite understand. This hose is as we purchased it from the manufacturer, has both fittings on it. We did nothing to this hose except to bring our fittings page 117 } to here and to here; that was already on the bus.

This is the same hose that they are on—this end of this hose here is the same as the two ends here. We don't know what—from our angle what is underneath here except from seeing it here.

Q. Can you tell from looking at the hose that failed whether it blew out of the fitting or broke?

A. I can't. I can say it broke, but I can't say what happened.

Q. Can you tell what caused it to break?

A. No, sir.

Q. Why do you use a flexible hose instead of an all metal, rigid hose?

A. This is a connection between the air compressor which is mounted on the engine and the air tank which is mounted onto the body or chassis. We have movement in the engine and the chassis is rigid, so we have to have something to pick up the movement between the two objects.

Q. You mean that it is intended to absorb the vibration?

A. That is right.

Q. Who manufactured that hose?

A. We purchased it through the Mack Company who furnished us the bus. They in turn purchased it from Titeplex Metal Tubing Company.

Q. How do you spell that?

A. T-i-t-e-p-l-e-x.

page 118 } Q. Is the Titeplex Company considered a responsible, reliable, up to date manufacturer of that type of hose.

A. Yes, sir, considered very high in our own field.

Q. I believe you have heard the testimony here in the case today, have you not?

A. Yes, sir.

Q. And prior to that time at my request have you examined the occurrence of this accident?

A. Yes, sir.

Q. Is it a comparatively common or rare thing for an air line to fail as this one did or any other way?

A. I would say it is a rare thing.

Q. Have you made a personal investigation to try to find out what caused that air line to fail?

*Ray H. Moore.*

A. I feel that I have.

Q. Have you done everything you know how?

A. Everything I know how.

Q. Have you any opinion what made it do it?

A. I haven't.

Q. There has been something said here about the solder there that was used to put that fitting on the line. Do you know whether or not they used any particular kind of solder?

A. I understand they do.

Q. What is the difference between that and the page 119 } garden variety solder, if you know?

A. This is a high melting point solder.

Q. What do you mean by that?

A. This takes more heat to melt it than does the ordinary solder you buy.

Q. Do you know how much heat that will stand before it melts?

A. Not exactly.

Q. Are you familiar with the mechanism of this Mack bus 67 involved in this case?

A. Yes, sir.

Q. Changing the gears, is that controlled by air or otherwise?

A. Changing of the gears is controlled by rods, but you can't change until you release your clutch which is controlled by air.

Q. What I am getting at if the operator of that bus was driving up the street and that air line failed and the air blew out, could he change his gears?

A. He cannot.

Q. Why not?

A. Because his clutch will not release.

Q. Then if he was crossing Third street and the air line had blown out and he was in any gear that was pulling and the motor was still running, would it keep on pulling page 120 } ing or not?

A. It would.

Q. How would he make it stop pulling?

A. The only way to make it stop pulling is to have brakes to stop, and he could kill the engine.

Q. Would the hand brake do that?

A. I don't think so.

By the Court:

Q. Could he cut the gas off?

*Ray H. Moore.*

A. He could cut the ignition off, yes, sir. That would do the same thing.

Q. Let me understand you about that. Did you say that line broke or pulled out?

A. No, it didn't break from what you are thinking about. It really pulled out.

Q. Then it is not a break?

A. No, it is a pull out.

Q. A pull out from the socket?

A. Yes. You can't say you broke it in two. I think that is what you have in mind.

By Mr. Robertson:

Q. Was that failure due to a loose connection or to that pull out?

A. Failure due to the pull out.

page 121 } Q. Do you think that solder might have melted due to excessive heat and that caused it to pull loose?

A. I don't.

Q. Why do you don't think that happened?

A. If the solder had melted, this would show signs of running. This is still intact like it was finished off. If you look at any other joint, you can see the solder up around it. If that had melted, that little edge wouldn't have been around this pipe.

Q. Is there any type of inspection that you know of that would reveal the likelihood that thing would pull out?

A. There isn't I know of.

### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. So far as your investigation disclosed did you find there was any defect in the solder or any defect in the joint in any way that had anything to do with the thing coming out?

A. I can't answer that; I don't know.

Q. Did you look for any defects?

A. Yes, sir.

Q. Did you find any?

A. No, sir.

page 122 } Q. And you can't tell us what was the cause of this flexible pipe coming out of the connection?

A. I can't, not the way that looks there.

Q. You can't get it in the connection now, can you?

*Ray H. Moore.*

A. That is right.

Q. How do you account for that?

A. You can never get—when you have joints like this soldered and anything pulls apart it won't go in until you have the heat to get those edges down.

Q. Was that bus bought new?

A. Yes, sir.

Q. And you had run it 270,000 miles, I believe, or it had been run 270,000 miles up to the time of the accident?

A. That is right, 279,000.

Q. Those connections when they come from the factory that way what is supposed to be the life of them where there is no defect in them?

A. That will be unable to determine. We don't have that many failures with that type of tube to put a life expectancy on them.

Q. How long have you been in this kind of business?

A. Better than twenty years.

Q. They last almost indefinitely, don't they?

A. They sometimes do.

Q. You hardly ever have an accident of that kind?

A. No, sir.

page 123 } Q. Pulling out that way?

A. That is right. I explained, I think, the other type of where we do have the chaffing.

Q. Yes, I understood that. Now something was said to you about the hand brake and the ignition. If you apply your hand brake or emergency brake and cut off the ignition at approximately the same time, within what distance could that bus be stopped running a speed of 10 or 12 miles an hour?

Mr. Robertson: Wait one minute. When the air line is broken—if you are asking that as a hypothetical question, I ask that you ask it properly.

The Court: I rule his question is proper.

Mr. Robertson: Exception for the reasons stated, that it is an improper hypothetical question.

A. Will you state your question again?

Q. Now something was said to you about the hand brake and the ignition. If you apply your hand brake or your emergency brake and cut off the ignition at approximately the same time, within what distance could that bus be stopped running at a speed of 10 or 12 miles an hour?

A. I wouldn't want to say exactly.



*Ray H. Moore.*

Q. Do you know of a case in which the connection slipped alose like that except as a result of an accident?

Mr. Robertson: What was the question?

Mr. Allen: I asked him did he know of a case where it came alose?

A. Yes, sir, I do.

Q. When?

A. I can't tell you when; it has been years ago. It has not happened on the Virginia Transit Company property.

Q. That was made by a standard manufacturer, I understood you to say, and made with standard soldering material and everything else to make it last a long time?

A. That is right. They are built under rigid requirements.

Q. Would an accident knock that alose?

A. No, sir.

Q. Do you mean to say an accident could not possibly knock that alose?

A. It couldn't possibly knock that one alose in the position in which it was.

Q. You don't know, though, whether it came alose before the accident or during the accident or after the accident when the bus ran into the drug store, do you?

A. I have only seen what I have seen and what I heard I would say it came alose before. I don't want to say which way.

page 125 } Q. What?

A. It came alose before.

Q. Before what?

A. Before the accident.

Q. You weren't there?

A. No, sir. I said from what I heard here.

Q. And you didn't see it until after the accident?

A. I didn't see it until after the accident, so I can't quote that.

Q. But you found no defect with the connection and you said no one can tell.

A. That is right.

Witness stood aside.

RAYMOND S. CHALLENGOR,  
called on behalf of the defendant, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Challenor, you live in Richmond?

A. Yes, sir.

Q. Are you employed for the Virginia Transit Company?

A. Yes, sir.

Q. How long have you been with that company  
page 126 } and the Virginia Electric & Power Company?

A. I started with them in 1925.

Q. And have been with them ever since?

A. I only left one time.

Q. What is your present position with the Virginia Transit  
Company?

A. Night foreman.

Q. Did you occupy that same position on June 4, 1948?

A. Yes, sir.

Q. What are your duties as night foreman?

A. Well, I have charge of the cleaning, gassing and oil and  
inspection and repairing.

Q. That is done under your general supervision?

A. Yes, sir.

Q. Have you checked the records to see when bus 67 in-  
volved in this accident was last in for night inspection?

A. It was over the pit Friday night before it happened.

Q. How are you able to say that?

A. Well, we have the gas and oiling—we gas them up at  
the service station and oil them in the barn; then we have  
report cards made out when we find defects and when a bus  
is found defective and we can't make the repairs we send it  
to the shop.

Q. And is a record kept of that nightly work?

A. Yes, sir, the work done.

page 127 } Q. Have you checked the records to see whether  
or not this bus was over the pit on the night of  
June 4th?

A. Yes, sir.

Q. And was it or was it not?

A. It was over there.

Mr. Allen, Sr.: No questions.

Witness stood aside.

V. C. IACOPINELLI,

called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. You are a police officer of the City of Richmond?

A. Yes, sir.

Q. How long have you been on the force?

A. Ten years, sir.

Q. To what duty were you assigned in June, 1948?

A. With the accident squad.

Q. Did you get a call to the scene of an accident at Third and Grace streets on the afternoon of Saturday, June 5th, when a bus had run up on the sidewalk?

A. Yes, sir.

Q. Do you remember whether you made any inspection of the hand brake on the bus?

page 128 } A. Speaking of inspection what do you mean; just looking at it?

Q. Any thing you did there to try to find out the facts.

A. I entered the bus and looked at the hand brake and saw it was pulled.

By the Court:

Q. What?

A. Pulled; had been pulled for the emergency stop.

By Mr. Robertson:

Q. How soon after the accident would you say you got there?

A. Oh, it was a matter of minutes.

CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. Did anybody say anything up there to you about the air line breaking?

A. Yes, sir.

Q. I mean when you first went there?

A. At the scene of the accident, yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. What was said to you there about the air line having been broken?

*Cecil M. Rickert.*

page 129 } A. I was questioning the operator of the bus, usual routine questioning and investigation, and I asked him what caused the accident, what caused him to get in the situation he was in. He said upon applying his brakes to make a stop to pick up a passenger on the northeast corner of Third street he heard a snap snap as if a finger snapped (snapping fingers) and his foot brake gave away and at that time still moving he grabbed for his hand brake and then the impact with the automobile occurred and from there to the store.

Q. Did he say whether or not his foot brake would work?

A. He said he applied his foot brake. At the same time he applied his foot brake he heard this snap and then said he didn't have any brakes at all; that is referring to his foot brake, and he grabbed for his emergency brake.

Witness stood aside.

## CECIL M. RICKERT,

called on behalf of the defendant, being first duly sworn, testified as follows:

## DIRECT EXAMINATION.

By Mr. Robertson:

Q. Your name is Cecil M. Rickert?

A. Yes, sir.

Q. Where do you live?

A. Hampton, Virginia.

page 130 } Q. What is your business?

A. Transportation, city bus operation.

Q. With what company?

A. Citizens Rapid Transit.

Q. How long have you been with that company?

A. Over eight years.

Q. And what is your position with the company?

A. General superintendent.

Q. And what are your duties?

A. In charge of maintenance.

Q. Are you a graduate engineer or just a practical engineer?

A. A practical one, not a graduate.

Q. Are you in charge of transportation both in Hampton and Newport News?

A. Yes, sir, the lower peninsula.

Q. How many busses do you operate altogether?

*Cecil M. Rickert.*

A. 132.

Q. Are you familiar with the Mack type of bus that is involved in this accident?

A. Yes.

Q. Have you looked at this particular bus?

A. Yes, sir.

Q. In your opinion is this bus standard up to page 131 } date passenger motor bus equipment today?

A. The best.

Q. You have heard what has been said about the mileage the bus had been run?

A. Yes, sir.

Q. Do you think it can still run that mileage and be standard, up to date equipment?

A. Definitely.

Q. Why do you say that?

A. Well, the coach will usually operate, as Mr. Moore, said, 400,000 to 500,000 miles through the life of it for bus operation and trippers.

Q. Have you familiarized yourself with the methods of inspection employed by the Virginia Transit Company of Richmond?

A. Yes, sir.

Q. Would you say they are good, or bad or indifferent?

A. I would say they are good.

Q. How do they compare with the methods of inspection your company uses?

A. They compare favorably with or good with the inspection our company uses. In addition with which we are familiar, as Mr. Moore stated, we belong to these associations and so forth and we do get together two or three times a year

and go over procedures and methods, and it compares good with all the operations that I know of.

Q. Do you know of any better?

A. No, sir.

Q. Are you familiar with this Titeplex flexible air line hose that is involved in this case?

A. Yes, sir.

Q. Do you all use it on your busses?

A. Yes, sir.

Q. Do you know of any better equipment than that?

A. No, sir, I don't.

Q. What would you say about the relative number of failures of these air line hoses? Are they frequent or infrequent?

*Cecil M. Rickert.*

A. They are infrequent.

Q. Have you examined that piece of hose there to try and figure out what happened to it?

A. Yes, sir.

Q. What would you say did happen to it?

A. I don't know.

Q. Do you know of any type of inspection that could have revealed, anticipated and prevented that failure of that hose?

A. No, sir.

Q. Were you ever employed by the Mack Company?

A. Yes, sir, for fifteen years.

page 133 } Q. When did you leave the company?

A. I left then in 1940 and went with the present company I am with now.

# CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. In examining that hose did you find any defect in it to cause it to fail?

A. Not that I could see, no, sir.

Q. I understood you to say that these busses operate around or are good for something in the neighborhood of 400,000 or 500,000 miles. Do these connections usually last as long as that?

A. Yes, sir, I would say unless they have a similar type of friction break that Mr. Moore described which would be flexing the tube.

Q. In other words, if nothing unusual happens those things last almost or as long as the life of the bus.

A. That would be correct.

Q. They are manufactured by standard manufacturers?

A. A standard reputable manufacture.

Q. And they are connected all soldered good in there when they come to the users—to the company?

A. That is correct.

Q. As a matter of fact, there is no way you can inspect the connections, is it?

page 134 } A. No, there is no way you could because you certainly wouldn't take it apart and disturb the joint.

Q. That would put it out of service, wouldn't it?

A. That is correct.

Witness stood aside.

J. B. BLAICKLOCK,

called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Blaicklock, where do you live?

A. Washington, D. C.

Q. What is your business?

A. I am Superintendent of Equipment for the Capital Transit Company.

Q. How long have you been with that company?

A. Thirty years.

Q. Does that company operate many busses?

A. We operate over a thousand busses.

Q. Are any of those busses equipped with this Titeplex flexible air line hose?

A. Oh, yes.

Q. Does your company maintain any research department?

page 135 } A. We have an engineering department, yes.

Q. What does that department generally do?

A. They research into new methods and new materials or if new materials are offered we check them and prove their value.

Q. Are you familiar with the Mack bus No. 67 that is involved in the accident which has resulted in this trial?

A. I saw the bus yesterday. I am familiar with that type of bus.

Q. Is that standard equipment in the motor transport business today?

A. Yes, sir.

Q. Did you hear the testimony here regarding the mileage that bus has run?

A. Yes, sir.

Q. Would you say that had or had not made it obsolete?

A. Not by a long ways. I would expect at least half a million miles in a bus like that, possibly more.

Q. Why do you say that?

A. We have some busses that have run about that mileage and you can maintain a bus and keep it going forever if you keep changing parts in it.

Q. Now with reference to this Titeplex air line, in your opinion is that up to date, standard equipment throughout

*J. B. Blaiklock.*

the United States in the passenger motor bus business today?

page 136 } A. As far as I know it is; that is what we use.

Q. Do you know of anything better?

A. I do not.

Q. Why do you use that instead of a rigid metal line?

A. Because that connects from the compressor which is mounted on the engine—between it and the air tanks which are mounted on the body, and the engine naturally moves and so you have a flexible connection.

Q. Have you familiarized yourself with the methods of inspection employed by the Virginia Transit Company here in Richmond?

A. Yes, I have.

Q. From your knowledge of the industry would you say that those methods of inspection are good, bad or indifferent?

A. I would say they are very good.

Q. Do you know of any better methods of inspection?

A. No. It is almost the same as we are using and if there is anything better we change.

Q. Have you examined that air line that failed to try and figure out what made it fail?

A. Yes, sir, I have.

Q. Have you been able to figure it out?

A. I haven't any idea, sir.

Q. Is a failure in one of those lines relatively frequent or relatively infrequent?

page 137 } A. Such as this?

Q. Yes.

A. I don't know of any failure on our property such as that.

Q. Do you use that same type of air line on your street cars in Washington?

A. Yes, we do. We have 489 of the latest type street cars and we use that type of hose on the street cars.

Q. Why do you use that?

A. For the same purpose. The compressor is mounted on the motor which can move; therefore, you have to have a flexible connection to carry the air from the compressor to the tanks.



*J. B. Blaiklock.*

### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. Mr. Blaiklock, there is no way very well you can inspect the inside of those joints and the soldering to see whether it is in there good or not and holding tight, is it?

A. I wouldn't know of any.

Q. As a matter of fact, these joints come from the factory of the reputable manufacturer and they are all fixed up good and tight and are supposed to last for several hundred thousand miles at any rate?

A. I don't know about the several hundred  
page 138 } thousand miles. They are supposed to last some indefinite period.

Q. I believe you said the busses are good—somebody did—for half a million miles?

A. Certainly.

Q. Do those connections last that long?

A. Not usually because, as has been explained by other witnesses, this flexing of this hose after a while will probably cause little pinholes to form in the hose and that is one thing you can inspect for and we do inspect for and you can see them if there by feeling it or hearing the air escape.

Q. I am talking about the connection?

A. The connection you can't do anything with.

Q. And they are so manufactured they are supposed to last for an indefinite length of time unless something unusual happens to them?

A. Yes, I would say so.

Q. They could be knocked loose in an accident?

A. I rather doubt it.

Q. Did you find any defect in that one when you examined it?

A. All that I can see is that the fitting came off the end.

Q. Just came aloose?

A. Yes.

page 139 } Q. In your examination of it I understood you to say you couldn't find any cause for that failure.

A. I couldn't see any cause for it.

Q. No evidence of any hidden defect that could have caused it?

A. No, sir.

Q. It just simply came out?

*J. B. Blaiklock.*

A. It is a hidden defect that it came off for some reason, I don't know what it was.

Q. You say you never had one to come out in your experience in Washington?

A. Not to my knowledge.

Q. How long have you been with Capital Transit Company?

A. With the Capital Transit Company and the companies that were there before the merger for thirty years.

Q. You have been in that business for thirty years?

A. I have been in the business longer than that.

By the Court:

Q. Just hold up that pipe. What caused the air to give out on this bus was these two pieces coming apart?

A. That is right.

Q. And this piece was originally set inside of that valve?

A. Yes, set tightly in the fitting and then sweated on with solder.

page 140 } Q. It must have been caused if it came apart—  
it must have been caused by the failure of the  
solder to unite the two pieces in one of them.

A. I would say so.

Q. Or it might have been caused by some blow which knocked this thing out from the joint? Aren't those about the only two ways in which it could have occurred?

A. Your Honor, the way this thing is mounted I wouldn't say that any blow even if it happened on the bus would knock it loose.

Q. If it was a blow right on this flexible thing, wouldn't that be calculated to drive it out?

A. You couldn't hit a blow because it was mounted so tightly and cleated to the bus.

Q. If you hit anything flexible that is fixed into another piece, that piece—

Mr. Robertson: May I interrupt the Court a minute? We are going to ask for a view of the bus—

The Court: I may not grant it.

Mr. Robertson: No, but you are asking things that are impossible and don't make sense and just confusing the issues and I object to it.

The Court: You can object, but if they don't make sense it is because of your understanding and not the  
page 141 } Court's. Keep your seat.

Mr. Robertson: The defendant objects and ex-

*O. M. Thornton.*

cepts to these questions from the Court for the reasons stated and does not by failure to renew its objection and exception hereafter waive any of them.

By the Court:

Q. What I am asking you prior to the interruption was what could have caused these two pieces to come apart?

A. Well, Your Honor, I can't say that; I don't know, sir.

Q. But if this solder inside had united the flexible side of the hose with the fixed valve, that couldn't have come apart, could it?

A. Not if it was properly united, no.

Q. Would you then or not come to the conclusion that the reason that it did come apart was because the solder did not unite the flexible hose at the valve?

A. It would appear so, yes.

The Court: That is all I was after.

By Mr. Allen:

Q. But you don't know?

A. I don't know.

Witness stood aside.

page 142 }

O. M. THORNTON,

called on behalf of the defendant, being first duly sworn, testified as follows:

# DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Thornton, your name is O. M. Thornton?

A. Yes.

Q. Where do you live?

A. Mt. Holly, New Jersey.

Q. What is your business?

A. Assistant Manager for Titeplex Incorporated.

Q. When was that company organized?

A. Well, the early development was in 1916 and got going to introduce this product to industry in 1917.

Q. At that time did it make this Titeplex air line hose somewhat as used today?

A. There has been sort of a build-up from this type of tube different from anything that existed at that time. The

*O. M. Thornton.*

flexible air hose existing at that time was what we call an interlocked hose and that was a four-wall construction and packing in the joint and the joint soldered, and this particular type of hose was a pattern that Mr. Westinghouse picked up, thought it had possibilities for certain applications and from then on is the one that was developed.

Q. How does that differ from the other kind page 143 } you have described?

A. Well, this hose is made fundamentally from brass strips of predetermined width for the various sizes and it is helically wound, comes out in a convoluted shape as you can perhaps see from the inside of one of those; you can't see it very well here, but it is a fixed seam. There is a seam in this hose, but it is a soldered hose and the flexing of the hose is the bending of the metal wall. This particular hose is made of ten thousandths brass and a smaller size of five thousandths brass—thickness of the brass—and the larger size fifteen thousandths brass, and we get our flexing in this bending of the metal wall itself. In other words, it resembles a bellows.

Q. What is the advantage of that type of hose over just an ordinary piece of copper pipe?

A. Well, there are applications of metal hose where you are connecting up two components, one is a fixed and the other is a flexible component so that you have to take up some movement and this type of hose seems to be very acceptable to industry because we have been doing it since 1917.

Q. Is this less apt to break aloose than a rigid immovable hose?

A. Oh, absolutely.

Q. Why do you say that?

A. Because a copper tube if it is in vibration page 144 } will become crystallized and harden and it will break.

Q. Now you stated your company got in production in about 1917. Did the United States Government use any of its product in World War I?

A. Yes, sir, they accepted it in a big way. We had all of the ordnance vehicles using this as fuel oil lines, air lines and the Motor Transport Corps used it for general purposes on the heavier trucks.

Q. Does your company and has it continuously maintained a research department to determine the designing of this hose and the type and quality of material that goes into it?

*O. M. Thornton.*

A. Indeed, we do. I think every company has that problem; they either do that or just stagnate and fall apart. After World War I, of course, we had no commercial business because this was adopted at a time when we were ready to offer it to industry and we preferred to getting into war work. We had the equipment on all the combat vehicles during World War I, 40 ton tanks—and they had one of those then—and we had it on the Class B truck, which is a 5 ton truck and kindred vehicles.

Q. Now coming down to World War II, did the Government use any of that kind of air line on its automotive equipment in World War II?

A. Mr. Robertson, ever since World War I the  
page 145 } Government has used this type of tubing for fuel  
and oil and air lines on all combat vehicles up to  
and including the light tank manufactured by the American

Car & Foundry and Burwick and then perhaps  
page 146 } the reason we didn't get more of it was because  
we couldn't take on any more; we built up from  
250 to 6,500, and that was a great expansion. We couldn't  
take any more.

Q. Are you selling your product to the Mack Truck Company today?

A. Yes, sir.

Q. Are there any other automobile manufacturers that you know of that are using it on automobiles and busses?

A. Oh, yes, sir. The ACF use it—American Car Foundry, which is J. G. Brill, and some units of General Motors and, of course, we use it on commercial trucks. There is no pleasure car application at all—no manufacturer of pleasure cars.

Q. In your opinion is that standard, up to date air line hose in the industry today for passenger motor bus transportation?

A. It is accepted as such.

Q. Do you know of anything any better?

A. No, I don't know of anything better.

Q. Now will you tell me in the manufacture of that air line is it subjected to any kind of test in the course of manufacture?

A. Oh, indeed it is. Our business is not what you might term a production business; it is rather tailor-made business  
and every application goes through our plant for  
page 147 } that particular application. This comes out of  
the machines—off the braiders in reasonable

*O. M. Thornton.*

lengths up to 25 or 30 feet and then tested under water for leaks and then afterwards it is spot soldered, cut and the fittings soldered on and then put under a test far in excess of the requirements specified in the particular order.

Q. What is that underwater test that you have mentioned?

A. Well, they put an air line on the hose under water to handle anything—if it is for 5 pounds, they test it for 100 pounds because the 5 pounds under pressure will show a bubble, but we give it 100 pounds and we spot solder it, cut it and put on the fittings and then for this application—if it is for air line application it is tested to 800 pounds pressure at final assembly.

Q. Is it given any sort of flexibility test to show whether it will stand vibration?

A. Other than in our vibrator. We have these vibrating machines that vibrate it all of the time.

Q. How does that work?

A. We have an off center cam that puts it into vibration 800 r. p. m., which is quite a beating, and put it to exhaustion. In other words, it is an exhaustion test that we can determine by that test and that beating it gets in a short time.

Q. Can you show with that piece of hose, dem-  
page 148 } onstrate how that test works?

A. This hose can't take the torque very easily unless in longer lengths because of the fixed seam. It is fixed here and has a throw either that way or this way; it has a throw of 800 r. p. m. and in a small size tubing—we will say quarter inch tubing—that test will show this visually about that wide (indicating).

Q. Now what do you mean by spot soldering?

A. Well, visualize this as along random length of hose and we want to cut it up that size (indicating). Then the hose—the solder is poured on here and then you cut through the solder because if you didn't this braid would fray back, wouldn't stay put, and that is the reason for the spot soldering.

Q. How are those fittings put on the hose?

A. We have an aluminum plug that comes up in here and it is fastened on the hose when it is being assembled and the heat is applied to the fitting and the solder is run in there.

Q. What sort of solder do you use?

A. High melting point solder, the melting point at 475 or 500 degrees.

*O. M. Thornton.*

Q. Is that just the ordinary solder—

A. Oh, no. In fuel lines we use what is called a soft solder; that is 50-50 solder because there is no heat.

page 149 } Q. How did you come to use this kind of solder?

A. Well, because of the particular kind of application.

Q. As the automotive industry has developed would the increased efficiency power of the engine generate more heat than back in the Model T Ford days?

A. Well, I think the engines are getting larger and naturally there is a great heat element to contend with. The busses are getting larger, the vehicles are getting larger and there is more to contend with and in order to keep up with it you have to have research and development at all times.

Q. Have you examined the piece of air line—

A. I just saw it at a distance. I would like to see it.

Note: Exhibit B handed to witness.

Q. Do you know of any method of inspection whereby the failure of that air line could have been anticipated or prevented?

A. Well, as I say, we are very careful in our inspection of this application because it is a particular application and I don't know of anything. We do everything that is physically possible to inspect it before it leaves our plant and there is no way after the thing is soldered as to seeing it is good solder or bad solder unless it pulls off with the 5 or 800 pounds pressure that was subjected to.

Q. I think I failed to ask you this. Do you  
page 150 } mean that every piece of that flexible hose that comes out of your factory is tested before it leaves?

A. Oh, definitely.

Q. In your experience have you known failures similar to the failure that piece of hose shows?

A. No, none of these ever come to my attention. I handle the Mack, ACF, Brill, the Washington Transit Company and the automotive in the Philadelphia district; that is my district. The failures—the typical failures are chafing. That is the biggest failure we have, the chafing of the tube. Those are not serious leaks because they can be determined because they are only a small leak.

Q. Can you tell by looking at that piece of hose there is anything wrong with it except where it came apart?

*O. M. Thornton.*

A. No, I can't. I wouldn't know. Now I would assume that is a perfect soldering job. There is no way for me to tell. I doubt very much whether X-rays would tell whether it is a good soldering job. You have to—

Q. What in your opinion caused it to come apart?

A. I haven't the least idea.

Q. You heard the way the accident happened here?

A. Yes, sir.

Q. Do you think that caused it to come apart?

A. I wouldn't want to say; I don't know. I am simply in the hose business; I don't operate busses. I am  
page 151 } telling you there is no way for me or anybody else to tell other than from the pressure test whether the soldering is a good joint after it is done.

#### CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. And you do give those connections pressure tests and subject them to 5 to 800 pounds pressure before those connections leave the factory?

A. Yes, sir.

Q. Have you seen the particular bus from which that connection was taken?

A. No, sir.

Q. Do you know whether the thing that came aloose was fastened into a stationary object?

A. I don't know the hook-up of that at all.

Q. You don't know whether the other end was fastened to a stationary object or not?

A. I don't know how it is installed at all. All that we are concerned with, we manufacture the hose and put on the fittings under the specifications. Now on this particular bus I really don't know.

Q. You said you never knew of any failure such as this Exhibit here?

A. No, sir.

page 152 } Q. I believe you stated it is the intention of your company when these connections leave the factory to be subjected to every sort of a test and made perfect so they will stand up as far as possible.

A. Yes, sir.

Q. How long are they supposed to last?

A. Well, we have busses—that is, from what I can understand—we have busses that the tubing will last the life of



*C. A. Scharfenberg.*

the bus. We have armed vehicles—they will last the life of the vehicle. You just can't say how long things will last.

Q. I notice that each end of the hose has a nut on it made for use of a wrench?

A. Yes, sir.

Q. Then is the end of the hose screwed into some other connection or the other connection screwed on that?

A. This is a standard female fitting—perhaps the gentlemen can understand that—and this is what we call the male end. What goes on here is a loose nut; I don't know where it is hooked up in the bus.

Q. The end of the thing—on this end of the hose is not supposed to be screwed?

A. Oh, it has to go into something.

Q. But do you screw it in there by putting your wrench on this nut on the hose?

page 153 } A. Yes, sir.

Q. So then the whole piece turns?

A. Oh, yes, definitely. In other words, you attach that end before you attach this end. That is what you are trying to get at.

Q. Then the other object is screwed on to this?

A. Yes, sir.

Q. Well, when attaching the end I hold in my left hand you use the wrench on the nut that is on the hose?

A. Yes, indeed.

Q. What would happen if you attached the wrong end first?

A. You couldn't do that; it is physically impossible.

Q. What is the nature of the object that those two things are attached to? Are they stationary objects or any part of the hose—

A. I say I don't know the installation on that particular bus. I think perhaps there are engineers here that can tell you that.

Witness stood aside.

C. A. SCHARFFENBERG,

called on behalf of the defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Robertson:

page 154 } Q. Mr. Scharfenberg, your initials are C. A.?

A. That is correct, sir.

*C. A. Scharfenberg.*

Q. Where do you live?

A. Allentown, Pennsylvania.

Q. What is your business?

A. I work for the Mack Manufacturing Corporation. I am an executive engineer at the Allentown plant.

Q. Are you a graduate engineer of any engineering school?

A. Yes, I am.

Q. From what school?

A. Lehigh University in Bethlehem, Pennsylvania.

Q. In what year?

A. 1933.

Q. With what degree?

A. Bachelor of Science and Mechanical Engineering.

Q. Do you belong to any engineering societies?

A. Yes, I am a member of the Society of Automotive Engineers and a registered professional engineer in the State of Pennsylvania.

Q. How many plants does the Mack Company operate?

A. We operate four plants, the main plant being at Allentown where I am located; we have a plant in Plainville, New Jersey, one in New Brunswick, New Jersey, and one in Long Island City, New York.

page 155 } Q. What are your duties?

A. My duties are to have direct charge of the engineering activities at the Allentown plant.

Q. Are you familiar with bus No. 67 involved in this trial we are having here now?

A. I am familiar with the type of bus from the original work on the development of it and I have seen the bus.

Q. In your opinion is that type of bus standard, up to date equipment today in the motor bus transportation business in the United States?

A. Well, I would answer that by saying there are several hundred of that particular type in operation at the present time. I would say it is accepted as a standard bus.

Q. Did you hear the testimony here about the mileage that has been put on that bus?

A. Yes, I did.

Q. Do you think that that mileage would make it obsolete or would you think if properly maintained it will be up to date standard equipment?

A. I understand the life of the vehicle is up to 400,000 or 500,000 miles and I wouldn't judge that vehicle was worn out or anywhere near it.

*C. A. Scharfenberg.*

Q. Are you familiar with this Titeplex air line hose that is involved in this case?  
page 156 } A. Yes.

Q. Does the Mack Company use it on its passengers motor busses?

A. Yes, we have used that hose on our passenger motor vehicles from approximately 1920 up to the current time.

Q. Are you still using it?

A. Yes, we are using some of it.

Q. Why do you use it?

A. Well, we have had very good success with that particular hose. It had a very good record with us and has passed all of our engineering tests over a period of years and from my own experience with it it has been found to be entirely acceptable.

Q. Have you known of failures in it similar to this failure involved here?

A. That failure there with the end fitting removed there is the only one I myself have ever seen.

Q. Do you know anything about the kind of solder that is used there to apply that fitting to the hose?

A. Well, we specify a line to operate at a maximum temperature of 425 degrees Fahrenheit and the solder that is used must meet that maximum operating condition. I know from our work with the hose company it is what they call very high temperature solder.

Q. Have you familiarized yourself with the  
page 157 } methods of inspection used by the Virginia Transit Company here in Richmond?

A. I have to a certain extent, yes.

Q. Are you generally familiar with the types of inspection used by other passenger bus companies?

A. In general; not in minute detail.

Q. So far as you know would you say these methods employed here in Richmond conform to the best operating practice or not?

A. I would say they conform in general with the accepted practice from what I have seen at other operations.

Q. Have you examined that particular piece of hose or tried to figure out what made it fail?

A. I have looked at it and examined it and I would hesitate to voice an opinion as to the exact nature of the failure.

Q. Do you know of any way by which that particular failure could have been anticipated or discovered or prevented by any sort of inspection before it occurred?

*C. A. Scharfenberg.*

A. No, I don't. We are quite familiar with the methods used by the Titeplex Corporation, the pressure tests and so on, and I don't know of any way to determine this was going to fail. I wouldn't know how to do it in our own plant without a destructive test.

Q. You mean by destructive test you would  
page 158 } have to tear it to pieces and that would destroy  
it?

A. Yes.

Q. What happens to the efficiency of the brakes when the air line breaks?

A. That particular line is in the supply system of the air brake system and, as you understand, connected with the air compressor and the reservoir and the failure of that line would drop the air pressure from the main reservoir of the vehicle.

Q. You have heard the testimony here today, have you not?

A. I have.

Q. Suppose when that bus stopped at Fourth street that the air line failed at that point and that the operator undertook to start up and go on; could he do it?

A. No, the air operated clutch would be inoperative.

Q. Would it be possible for him to change gears or would they be locked?

A. If he was in the lowest gear before the failure occurred, the failure of that hose would drop the pressure on the clutch cylinder and cause the bus to lurch and stall the engine. If it happened after he would be in one of those gears, he would be stuck in one of those gears because it is impossible to disengage the main clutch by physical force.

Q. Suppose he left Fourth street and got him-  
page 159 } self into high gear and when he got to Third  
street or by the time he got to Third street the air  
line broke, would there be any way he could get himself out  
of high gear without turning off the ignition?

A. No, I wouldn't think so.

Q. Would the engine be still pulling the bus in high gear?

A. The engine would be still engaged to the driving parts of the bus, but the engine wouldn't be pulling unless he was feeding gasoline to it.

Q. Would he be able to apply his air brake after the air line broke?

A. No; the failure of that line would bleed the system down rapidly.

*C. A. Scharfenberg.*

Q. Why would that be?

A. Because it is connected to the main reservoir which feeds the air brake control and the power system.

CROSS EXAMINATION.

By Mr. Allen, Sr.:

Q. Will you help me pronounce your name?

A. Scharfenberg.

Q. You say that this line which broke was in the supply line, did you?

A. I did.

page 160 } Q. Supply line to what?

A. To the reserve system on the bus between the air compressor and the reservoir.

Q. Between what?

A. Air compressor and the reservoir system.

Q. How many tanks of air do you have on that bus?

A. I believe there are two.

Q. How do you supply the air to those tanks?

A. The air is supplied to the tanks from a Westinghouse motor-driven unit mounted on the engine, a direct driven three-cylinder air compressor supplying compressed air through this line to a separator and then into the first reservoir of the reservoir system.

Q. You have a reservoir tank then?

A. Two.

Q. And if you use the air out of one tank, you have the reserve?

A. I don't understand the question. A failure of this line would drop the air pressure in the reservoir system.

The Court: I think he said or intended to say—the impression he made was that he had two reservoir tanks, but he didn't have any other tank. Is that correct?

The Witness: That is my understanding.

page 161 } By Mr. Allen, Sr.:

Q. Two reservoir tanks. Where are they?

A. One mounted at the rear and one at the front.

Q. Now when this air line came aloose the indicator on the dashboard would show your air was going down rapidly, wouldn't it?

A. I would say so, yes, sir.

Q. Now if you upon hearing something happen to indicate

*C. A. Scharfenberg.*

the air line was broken or seeing the indicator and you undertook to apply your brakes immediately and your air was half-way down, would you get any pressure on your brakes?

A. I would say it might be a partial application, but it wouldn't be effective.

Q. How much of your air do you have to loose to loose all your braking power?

A. Well, we ordinarily carry 105 pounds pressure; that is the top maximum setting on the governor. It can vary between 85 and 105 and I would say it would be a very good brake application left down as low as 20 or 25 pounds.

Q. Down as low as 20 or 25 pounds?

A. Yes, sir.

Q. How many seconds does it take for the pressure to get say from 105 or 100 down to 20 pounds with the line broken like that?

page 162 } A. I wouldn't be prepared to say that; I don't have any information right at hand.

Q. If a man heard something snap and looked at his indicator, saw the arrow going down and applied the brake immediately, he would get some effect, wouldn't he?

A. At the instant he heard the escape of air it would depend upon the speed of it.

Q. If he were going 10 or 12 miles per hour?

A. Yes.

Q. And that pressure together with the use of the hand brake would help him to stop, wouldn't it?

A. I would say so.

Q. You spoke of bleeding the system rapidly. I would take it when you have this pinhole bleeding the system would bleed very slowly.

A. Yes.

Q. And would bleed much more rapidly with the loose connection?

A. Loose connection isn't what I said.

Q. As we have here?

A. Oh, yes.

Mr. Robertson: We didn't have a loose connection, we had a pull out.

Mr. Allen: I meant loose, apart.

Mr. Robertson: Separated.

page 163 } Mr. Allen: Yes.

*Louis A. Bode.*

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. If the bus was in operation and this piece of hose pulled out of the fitting and left a gap there in the end of that hose, would the air pressure collapse instantly or would it be a slow process?

A. I would say it would be rather rapid.

Q. How rapid?

A. I wouldn't want to make a guess at it; a matter of seconds or some such period as that.

Q. A matter of seconds?

A. That is right.

Witness stood aside.

LOUIS A. BODE,

called on behalf of the defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Bode, your name is Louis A. Bode?

A. That is right.

Q. Where do you live?

A. 3700 North Charles Street, Baltimore, Maryland.

Q. What is your business?

page 164 } A. Superintendent of Equipment for the Baltimore Transit Company.

Q. How long have you been with that company?

A. Three years.

Q. Are you an engineer, a graduate of an engineering school or a practical engineer?

A. No, sir, I am a practical man; started in this business in 1914, came out of school and came up through it the hard way, at they put it.

Q. Have you ever worked for the Mack Company?

A. Yes.

Q. When and where and how long?

A. I worked for the Mack Company from 1925 to 1942.

Q. And what were your different positions with them?

A. I went to work as a service man, a field representative on preventive maintenance and worked up to service engineer

*Louis A. Bode.*

in charge of all bus problems and troubles with the Mack Company.

Q. How did you happen to leave them in 1942?

A. I was requested by General Morland of the Quartermaster Corps, who was Chief of the Quartermasters to assist the army in teaching maintenance to the soldiers and I thought I was in an important job, but they managed to get me in the army; I left the Mack Company.

Q. Did you have any commission in the army?  
page 165 } A. Yes, sir, I was Lieutenant Colonel in the army.

Q. Mr. Bode, how many busses do you operate in your system in Baltimore?

A. 651 busses.

Q. Was your service in the army entirely in this country or was any of it overseas?

A. I spent nineteen months overseas in England, France, and Germany.

Q. What kind of work did you do there?

A. I was Assistant Ordnance Officer for the Chief of Ordnance of the ETO. We handled all of the technical matters and inspections for the Chief of Ordnance. We would go out and look over the trucks and vehicles that the combat troops were using to see they were taken care of properly. We would also inspect the facilities that Ordnance had to back up the fighting soldier and the combat troops. We had roughly in the ETO—it is no secret now—we had over 320,000 vehicles that were propelled by gasoline and Diesel engine. Many of them were tanks and combat fighting vehicles such as tanks and armed cars and so forth.

Q. Did any of them use Titeplex air line hose?

A. Yes, sir. The tanks have hydraulic systems on them and they use this particular type of line on ordnance vehicles wherever there is any high pressure and also use it for fuel and oil lines. Tanks and heavy trucks move over  
page 166 } uneven terrain and there is a great deal of stress set up and it requires connections that will not break. Solid connections break, so we must have flexible connections.

Q. Do you use this Titeplex air line hose on your passenger motor busses in Baltimore.

A. Yes, we have several applications of it. We have it on our busses, both on air and gas lines and oil lines and we have it on the street cars, which we have 275 cars, to connect up the reservoir to the air compressor.



*Louis A. Bode.*

Q. Have you looked at bus 67 that has been spoken of here in this trial?

A. Yes, sir, I have.

Q. Are you familiar generally with that type of bus?

A. Yes, sir. It so happens that bus had just been in I would put it for about a year when I left the Mack Company. That bus came out in 1940 and at the end of 1941 I left there—It was March 1942 I left there. So that bus had been in service only a little over a year in the field.

Q. Would you say that bus today is standard up to date motor bus equipment in general use in the passenger motor bus business in the United States today?

A. Yes, sir, I would say so.

Q. You have heard the testimony here about the number of miles that bus has run?

A. Yes, sir.

page 167 } Q. Do you think that would keep it from being standard up to date equipment?

A. No, sir.

Q. Why do you say that?

A. Well, in this business we figure—the vehicle is built for use to operate for ten years and we roughly operate about 100 miles a day, the average for a bus in the fleet. That means if you are operating 600 busses, you will run about 60,000 miles a day, just about 100 miles per bus. Some busses will run 200, some 50, some 55 but the average for this fleet was approximately 100 miles a day and over a ten-year period in my experience since 1925 on busses they do about 40,000 a year average. So you would get up around 400,000 miles before you have them fully depreciated. Uncle Sam won't let you depreciate them any faster than that.

Q. With reference to this Titeplex flexible air line hose, in your opinion is that standard up to date equipment for motor bus passenger transportation?

A. Yes, sir.

Q. Do you know of anything any better?

A. No, sir.

Q. Have you familiarized yourself with the system of inspection and maintenance that is carried on by the Virginia Transit Company here in Richmond?

page 168 } A. Yes, sir, I have looked into it since I have been here and inspected it and I feel it is a good system.

Q. Would you say it is up to date standard practice in the

*Louis A. Bode.*

passenger motor bus business throughout the United States today?

A. Yes, sir.

Q. Do you know of any better?

A. No, sir. We are striving to make all of them better, but I know of none better.

Q. Have you examined that hose that failed that is involved in this case?

A. Yes, sir, I have been looking at that hose and intended to look at it because I didn't know what happened to it. I know it pulled apart and I can't answer it because it puzzles me.

Q. Is that kind of failure relatively frequent or relatively rare?

A. It is very rare. I have seen it happen before where the end came off, but in that case the line was plugged up, which this line is not plugged up, you can look right through it.

Q. Plugged up with what?

A. Carbon.

Q. You mean it would just get stopped up completely? •

A. Yes, sir, stopped up completely and blow off  
page 169 } the end of it.

Q. Do you know of any system of inspection whereby the failure which occurred in this instance could have been anticipated and prevented?

A. No, sir, I do not.

Q. Did you look at bus 67 where that line that failed was on the bus when the bus was in operation?

A. Yes, sir, I looked at that bus on a lift on Saturday.

Q. Do you think any collision that bus was in could have caused that failure?

A. No, sir, the way it was mounted and it had the proper clamps in place and it was properly supported on the vehicle; that is, it couldn't do anything but move to take up vibration. It was properly supported when I looked at it on the vehicle.

Q. In your opinion would it be helpful to the jury if that bus was put up on a lift and they could look up under there?

The Court: You can't ask him that question.

Mr. Robertson: All right, sir.

Q. I believe I have already asked you this question. If I haven't I would ask you to answer it, and that is whether this particular bus 67 is not standard up to date equipment in the motor bus business in the United States?

*Louis A. Bode.*

page 170 { Yes, sir, I answered it.

### CROSS EXAMINATION

By Mr. Allen, Sr.:

Q. You said if that connection was properly maintained and had clamps and proper supports I believe you said you didn't see how it could possibly come aloose.

A. That is right.

Q. What did you mean by properly maintained?

A. Well, in explaining that to this end is attached a soldered copper pipe; it is a piece of pipe that comes down from the air compressor that is attached here with a nut to this coupling, and the same way here. Now just figure a couple of loose pieces of pipe bouncing up and down and unsupported, the weight of them it would break these things here vibrating up and down, and as I saw it on the job as it is installed on that bus it is properly supported and clamped and impossible to break of its own weight or any impact or vibration to cause that.

Q. Do you mean by that that each end is fastened into a solid object and the only way for vibration or movement to take place would be in that short distance there?

A. That is right. I will explain it this way. Assume this is the engine here and this is the chassis. This is attached on this end of the pipe and attached over there so that this part sits solid with it on this part, so that any relative motion between the two will be taken in the short space that  
page 171 { you see there. That hangs something like that so that it can do this (indicating).

Q. It is rather difficult to bend itself, isn't it? I mean it doesn't hang loosely like a piece of rubber?

A. No, it isn't too loose. When you take it out of there of its own weight it has a tendency to sag. The pipes that come up to it are covered with what we call circular loom that they use for putting electric wires through it. That is only as a precaution against chaffing.

Q. If one end is fastened into a solid stationery object; that is, an object that is not easily moved, and the other end into an object that is not easily movable, it would be extremely difficult for either end to pull out?

A. That is correct.

Q. Unless something would displace the object that it is fastened into by some blow or strain, is that right?

A. That is correct.

*Louis A. Bode.*

By the Court:

Q. What was your answer?

A. I said yes to what was said. I want to say this, that this had pressure behind it and nobody has said—this is not as we see it here; this line when it was on that bus had anywhere from 85 to 105 pounds of air inside of that line which was pushing this apart. There was air pressure in there.

This line was not only supported and hung there;  
page 172 } this line had air pressure in there.

### REDIRECT EXAMINATION

By Mr. Robertson:

Q. Does that air pressure generate any heat?

A. Yes, sir; in any compressing of air you can generate heat.

Q. Would it be enough heat to melt that solder and make it come apart?

A. I don't believe that happened where that is. If this was in the compressor it might have a tendency to heat.

Q. Can you offer any explanation of just why that particular coming apart happened?

A. No, sir. As I say, I have looked at this every time I have had a chance to look at it and am still trying to figure out what could have happened.

By the Court:

Q. Can't you answer his question whether you have any theory about the case?

A. No, sir, I don't have any theory.

By Mr. Robertson:

Q. Now I will ask you this. Suppose the piece of line was properly fitted and for some reason it separated and dropped down, in your opinion how quickly would the air  
page 173 } escape so that the air brakes wouldn't work?

The Court: He has answered that question.

Mr. Robertson: I don't think this witness has.

The Court: Maybe not.

A. I would say in a matter of seconds. I don't know, but it is a big hole and it comes out fast.

Q. And it comes out with 105 pounds pressure behind it?

A. Yes, sir.

*Louis A. Bode.*

Q. Now suppose that this bus stopped at Fourth street to let off passengers and the air line had broken and his air had all gone down then, could he then have changed his gears and gone on west?

A. Not on that particular type of vehicle. On that model the clutch is operated by an air cylinder or some such unit operated by air.

Q. Then if the air fails can he change the gears or not?

A. No, sir, he can't change the gears.

By the Court:

Q. How many pounds pressure will he have to have to change gears?

A. Approximately 65 pounds is the minimum amount of air he would require to shift gears.

By Mr. Robertson:

Q. Suppose he got himself into high gear and page 174 } was running along and the air failed and the motor kept running, would he still be going in high gear or slow down or what?

A. He would still be in high gear because if he wanted to come out he wouldn't have any air to disengage the clutch.

Q. How would he get it stopped?

A. Stop it with the cutting off of the ignition and applying the hand brake is about the only way.

Q. From your opinion from the evidence you have heard in this case and in view of your experience and your examination of the air line that failed would you say that failure was occasioned by some sort of hidden defect or imperfection or by a blow?

Mr. Allen, Sr.: If Your Honor please, I know that is a question for the jury. I don't feel he is the kind of expert allowed to answer that question.

The Court: I think he can state from his own experience. Looking at that piece of hose and knowing the type of accident he can answer that part of it based on his own knowledge and experience.

A. I stated before that I have looked at this many times and the thing that makes me feel as though—

The Court: Did you understand the question?

The Witness: Yes.

*Louis A. Bode.*

The Court: You have the choice of three an-  
page 175 } swers.

By Mr. Robertson:

Q. My question was based on your experience whether in your opinion that failure was caused by some hidden or latent defect or a blow and the Judge said you must answer that question, and you can answer the question and then give your reason for your answer.

A. I would say a hidden defect.

Q. And why do you say that?

A. Because this patch of solder that is around here is exactly what I see on the other end and has not been disturbed. The failure is inside of it. It is right at this point where she let go and she came off which nobody could possibly see.

#### RECROSS EXAMINATION

By Mr. Allen, Sr.:

Q. I thought you said a few moments ago that you didn't know what happened to cause the accident.

Mr. Robertson: He still says so.

The Court: One second, Mr. Robertson. You ought not to make that remark in the presence of the witness.

By Mr. Allen, Sr.:

Q. What do you say about that?

page 176 } A. That I said I didn't know what happened?

Q. Yes.

A. I still say I don't know what happened. As I said, I have been looking at that and it is inside of the fitting and I don't know—it had to separate, I can see that.

Q. You don't know what caused it to come apart?

A. No, sir.

Q. Now you referred to the air line, said something about if the air line were open, that there was nothing in the air line like carbon or anything to close it, the thing couldn't blow out by the air pressure—wouldn't blow out by the result of the air pressure. Is that right?

A. I said I saw a failure in which the line was clogged up in which this type of failure had occurred and that on this line that it was open and that there wasn't a similar condition existing.

Q. So this line wasn't clogged up?

A. That is correct.

*Louis A. Bode.*

By the Court:

Q. When did you see it?

A. This line here?

Q. Yes. When did you examine it on the bus?

A. Saturday.

page 177 } By Mr. Allen, Sr.:

Q. All you know is what you see there, the end of that hose is slipped out of its fitting?

A. That is correct.

Q. Now with reference to the air there is an indicator on the dashboard in front of the operator to show what air he has in the tanks?

A. Yes, sir.

Q. What is the amount of air that is usually carried?

A. 105 pounds is the maximum pressure and she cuts back. The compressor retains a pressure between 85 and 105 pounds.

Q. Now what is the lowest pressure at which you lose all of your power—braking power?

A. The lowest pressure?

Q. Yes, the lowest.

A. Well, it depends entirely—you can activate the brakes with 5 pounds of air.

Q. Did you hear some gentleman say something about 20 pounds a while ago?

A. Yes, but he is talking about making the brakes work. I said activate them, make them move, but no power.

Q. I am talking about making the brakes work. Would you say they would work some with as much as 20 pounds?

A. From my experience I would say a minimum page 178 } of 25 pounds or more.

Q. Now you said in the matter of seconds he would lose the air with a sudden break of that kind?

A. Yes.

Q. How many seconds would it take you to lose the air down to 20 pounds?

A. I couldn't answer that.

#### RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. After the break occurs is there anyway you can build up pressure?

A. No, sir.

*Ray H. Moore. Roland R. Williams.*

Q. Would you just be pumping it through the hole?

A. Just pumping it through the hole.

Witness stood aside.

RAY H. MOORE,  
being recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Moore, were you present when they took this piece of air line that came off of bus 67?

A. I was.

page 179 } Q. Did you examine it to see whether it was clogged?

A. I did.

Q. Was it clogged or not?

A. It wasn't.

Witness stood aside.

Mr. Robertson: We have a witness who has been sick in bed. I knew he was sick in bed this morning and didn't want to ask for a continuance on that ground. We have sent for him and he is on the way here in an automobile. I ask the Court's indulgence until he gets here.

The Court: Is there any other witness you can put on in the meantime?

Mr. Robertson: I think not.

The Court: I understand the defendant has closed its case with exception of the one witness that is coming. He will be put on when he comes here. In the meantime I will allow Mr. Allen to go on with his rebuttal.

ROLAND R. WILLIAMS,  
called in rebuttal on behalf of the plaintiff, being  
page 180 } first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Mr. Williams, will you state your name?

A. Roland R. Williams.

Q. Have you been sworn?



*H. C. Baker.*

A. Yes, sir.

Q. What is your occupation at the present time?

A. Salesman.

Q. For whom?

A. Hungerford, Incorporated.

Q. Hungerford Coal Company?

A. Yes, sir.

Q. Did you ever operate this bus involved in this accident?

A. I have, sir.

Q. When did you operate it?

A. I worked it off and on from 1941—1940 to 1942.

Mr. Robertson: This other gentleman is here.

The Court: Mr. Williams, you just stand aside a moment.

Note: The witness stood aside temporarily.

page 181 }

H. C. BAKER,

called on behalf of the defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Baker, your name is H. C. Baker?

A. Yes, sir.

Q. Are you employed by the Virginia Transit Company?

A. Yes, sir.

Q. In what capacity?

A. I am a mechanic in the shop.

Q. How long have you been working with the company and the Virginia Electric & Power Company?

A. Since 1942.

Q. I believe at my request you got up out of bed to come here this afternoon?

A. Yes, sir.

Q. Did you receive a call to go to the scene of the accident in which bus 67 was in on the afternoon of June 5th at Third and Grace streets?

A. Yes, sir.

Q. When you got there did you look at the bus to see what the trouble was?

A. Well, the first thing I looked over when I got there when

*Roland R. Williams.*

I saw what happened was to see if there was any-  
page 182 } thing that might catch on fire and it wasn't and  
then to try to get the people away from around it.

Q. Did you take a look at the air line that has been talked about in this case?

A. Yes, sir.

Q. What did you find to be the condition of that air line?

A. The air line had blown out.

Q. Was that air line on the back of the bus or the front end?

A. Yes, sir, the back of the bus.

## CROSS EXAMINATION.

By Mr. Allen:

Q. You didn't know whether that happened before the accident or in the accident, did you?

A. No, sir.

Witness stood aside.

The Court: That concludes your case?

Mr. Robertson: Yes.

## ROLAND R. WILLIAMS,

resuming the stand for further examination, testifies as follows:  
page 183 }

## DIRECT EXAMINATION.

By Mr. Allen, Sr.:

Q. Mr. Williams, how long did you say you operated this particular bus No. 67?

A. I operated it off and on during the years 1940 to 1942.

Q. 1940 to 1942?

A. Off and on during that time.

Q. During that time did you learn about the braking system?

A. Yes, sir. You have to learn that before you can take a bus out.

Q. What was the brake system on this truck?

A. Well, the gears operate—your clutch is operated by air and the brakes are operated by air with the exception of the hand brake, which is mechanically operated.

Q. Do you know whether or not the hand brake would stop

*Roland R. Williams.*

that bus going at a rate of speed of 10 to 12 or 15 miles an hour?

A. If it is in good working order, it will.

Q. The hand brake?

A. Yes, sir.

By the Court:

page 184 } Q. Stop it within what distance?

A. Running at what speed, you say?

By Mr. Allen, Sr.:

Q. Say 10 or 12 miles an hour?

A. If it is in good working order it will stop in two lengths of the bus.

Q. Suppose it was running 15 miles an hour?

A. It will stop within two lengths of the bus, 35 or 40 feet running 15 or 20 miles an hour.

Q. Has the hand brake any connection with the air brakes?

A. No, none whatsoever.

Q. Do you know whether or not there is any indicator on the inside of this bus to indicate the air pressure?

A. It is.

Q. Where is it?

A. On the dashboard. It is an instrument showing the amount of air pressure on it at all times.

Q. What air pressure does it usually carry?

A. It generally cuts out when it gets around 90 to 100 pounds pressure. It cuts off when it gets around to that depending how much you use your brakes or your doors, how much air will stay up there. It generally ranges from 90 to 100 pounds pressure.

Q. Do you know whether in the event of a  
page 185 } breakage of the air line the air goes out all of a sudden or still leaves enough air for one application of the brake.

A. I have never had an air line to break with me, sir.

Mr. Robertson: No questions.

Witness stood aside.

J. H. DURHAM,

being recalled in rebuttal on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

By Mr. Allen, Jr.:

Q. I believe you stated your occupation this morning. Are you familiar with the operation of these air line busses?

A. Yes—not with busses; I am with trucks.

Q. Give the jury some indication how long you have been driving trucks and who you have been driving for.

Mr. Robertson: If Your Honor please, I object to any testimony from this witness about the action of trucks.

The Court: Unless it has the same type of air line on it that is shown here.

Mr. Robertson: I would like for him to qualify him as an expert.

Mr. Allen, Jr.: That is what I am asking him page 186 } now.

Q. What kind of trucks?

A. It has the same as the bus has. I have worked for W. M. McIntosh for twenty years.

By the Court:

Q. What kind?

A. Mack trucks, Autocars, all kinds.

Q. Did you ever see one of these pieces of air line like that (indicating)?

A. I had one to burst, a short one to burst on me on an Autocar.

Q. My question was did you ever use a truck with an air line on it on which this type of hose was used?

A. Yes, sir.

The Court: All right, Mr. Allen.

By Mr. Allen, Jr.:

Q. Now you stated to the jury you had one of them burst on you one time?

A. I had one burst on me from the compressor, just at the compressor.

*J. H. Durham.*

Mr. Robertson: I understand that was an entirely different type of equipment.

By the Court:

Q. What kind of truck was it on?

A. An Autocar truck with an air compressor.  
page 187 } the same as on a Mack truck.

The Court: Objection sustained. That is different kind of equipment.

Mr. Allen, Jr.: Judge, if you will recall they brought in testimony about street cars operated on the same principle. This man operated trucks that worked with brakes operated by air. He has driven Mack trucks, but not busses.

The Court: What they used were experts to testify about it. This man is not an expert.

Mr. Allen, Jr.: This man had it to happen.

The Court: He has already testified one of the hose burst.

Mr. Allen, Sr.: We want to ask another question and if it is refused we want to make a record of it. We don't want to ask it in the presence of the jury, but want Your Honor to pass on it before we ask it.

The Court: Gentlemen of the jury, will you step outside for just a minute?

Note: The jury retired from the courtroom.

By Mr. Allen:

Q. Did those hose become disconnected all of a sudden and, if so, did you have enough time to apply your brakes and stop the equipment?

A. Yes, sir, I stopped it and parked it and pulled the emergency brake and called the Autocar Company out of Petersburg and they come up and fixed it?  
page 188 }

Q. How fast were you going at that time?

A. I would say I was going 10 or 15 miles an hour, not over that.

Q. How quickly did the air go out?

A. Well, the air goes down pretty fast. I would say it would take about three seconds for the air to go out.

Mr. Robertson: Same objection, Your Honor; entirely different equipment. This man is not an expert.

The Court: I think the objection is well taken.

Mr. Allen, Sr.: We save the point on the ground it shows

*J. H. Durham.*

when a hose with this type of air equipment—a truck with this type of air equipment and the hose becomes defective—

The Court: He didn't say it was defective; he said it burst.

Mr. Allen: The actions were all of a sudden just like here.

The Court: Then your point is that if on this different type of truck that it took three seconds for the air line to be so exhausted as not to afford a braking facility  
page 189 } on an entirely different type of equipment and so far as I know a different air system, except as to this piece of pipe—

Mr. Allen: No, sir, I understood him to say the truck he was driving, while it was an Autocar, had the same air brake equipment on it.

Mr. Robertson: He said the same principle. A railroad train would have the same principle.

The Court: All right, save the point.

Mr. Allen, Sr.: Let's see what he said.

A. I say it is all the same; Bendix Westinghouse.

Q. Do you know what kind of braking system was on this bus here?

A. No, I don't.

Q. What kind of air brakes were on the truck that you were driving at the time it burst?

A. Bendix Westinghouse.

Q. Do you know whether that is the same as used on the Mack truck?

A. Yes, sir.

Mr. Robertson: This was a bus.

By Mr. Allen, Sr.:

Q. Then did this hose come unconnected all of a sudden by the bursting?

page 190 } A. No, sir, it was bursted because of heat.

Q. I said did it happen all at once?

A. Yes, sir, all at once.

The Court: It is entirely different, Mr. Allen. You can save the point.

By Mr. Allen, Sr.:

Q. Did you hear any sound from the blowing of the hole in the hose?

*J. H. Durham.*

A. Yes, sir.

Q. Was the hose like this that I hold in my hand which is Exhibit B.

A. No, sir, it was smaller.

Mr. Allen, Sr.: We save the point.

Note: The jury returned into the courtroom.

Witness stood aside.

Mr. Allen: That is all, Your Honor.

Mr. Robertson: Well, if Your Honor please, we offer a view. We don't ask for it, but offer it if the Court or jury think it will be helpful.

The Court: If the jury wants to go and see that truck I will let them go, but if they don't want to go I will not require them to.

A Juror: I don't think it would be necessary page 191 } as far as I am concerned.

The Court: That is the answer. Does that conclude the evidence? I presume you gentlemen have some instructions.

Mr. Robertson: I have a motion that I would like to make.

The Court: We can do that after the jury is discharged.

Note: The jury was discharged until 9:30 o'clock A. M., February 1, 1949.

Mr. Robertson: The defendant moves the Court to strike from the record and exclude from the jury all testimony in the case upon the ground that no negligence of the defendant has been shown which would support a verdict for the plaintiff.

The Court: Overruled.

Mr. Robertson: Exception for the reason stated.

Objections and exceptions to instructions.

Mr. Robertson: The defendant objects and excepts to the granting of any instruction for the plaintiff upon the ground that no negligence has been shown on the part of the defendant which will support a verdict for the plaintiff and therefore there is no evidence in the case to support any instruction whatsoever for the plaintiff.

The defendant objects and excepts to the opening unnumbered paragraph of instruction No. 1 upon the further grounds that it informs the jury that it is the duty of all such persons to observe traffic signals and to keep their vehicles under reasonable and proper control, whereas the correct statement of the law is to observe traffic signals and to exercise ordinary care to keep their vehicles under reasonable and proper control. As presented by counsel for the plaintiff, the instruction makes the defendant an insurer to keep their vehicle under reasonable and proper control.

The defendant objects and excepts to Instruction No. 1 upon the further ground that paragraph number 1 in the instruction does not apply to the facts of this case since obviously the defendant is not held to any such duty where it involuntarily and helplessly runs through a red traffic light.

The defendant objects and excepts to paragraph number 2 of instruction No. 1 upon the ground it makes page 193 } the defendant an insurer to keep its brakes in good working order. The part of the instruction objected to should read: "Every motor vehicle operated upon a highway should be equipped with brakes adequate to control the movement of and to stop such vehicles and reasonable care must be exercised to maintain such brakes in good working order."

The defendant objects and excepts in paragraph number 1 regarding the foot brake upon the ground that as presented it makes the defendant an insurer to apply the hand brake and this part of the instruction objected to should read: "It is the duty of the operator to exercise reasonable care to apply the hand brake."

The defendant objects and excepts to the granting of Instruction No. 2 for the plaintiff on the ground that it requires the defendant to show how the accident occurred, which is not the law. It tells the jury that the jury may now infer from the injury that the injury was due to some negligence of the defendant upon the *res ipsa loquitur* theory when the fact is that the defendant has met the requirements of the *res ipsa loquitur* theory and the jury must now confine its verdict to the evidence and not base it upon any inference whatever. The defendant further objects to the instruction upon the ground that it tells the jury in effect that the defendant must satisfactorily show to the jury freedom from negligence and thereby puts the burden of proof page 194 } upon the defendant to show it was not negligent, which is not the law.

The defendant objects and excepts to the granting of In-



struction No. 3 for the plaintiff upon the same grounds urged in the objection and exception to Instruction No. 2. So far as the *res ipsa loquitur* doctrine is concerned the defendant has met the requirements of that doctrine in this case. The law is that the plaintiff must now prove negligence on the part of the defendant and the jury is confined to the evidence and must not indulge in inferences.

The defendant asks that the Instruction F be given as offered and objects and excepts to the modification of the instruction by the insertion in it by the Court of the words "on account of such undiscoverable defect". The basis of this objection and exception is that the instruction as offered is a correct statement of law since accidents happen which cannot be explained and since the defendant has shown in the exercises of due care under the law it should not be held down to the proposition that the break occurred through a hidden defect when it may have occurred from some other cause.

page 195 }

February 1, 1949.

The Court convened pursuant to adjournment.

Note: The Court read the instructions to the jury, counsel for both parties argued the case and the jury then retired to consider its verdict.

Mr. Robertson: The defendant further objects and excepts to the granting of Instruction No. 1 for the plaintiff upon the ground that the following statement in the second paragraph of subsection 2 of that instruction is an erroneous statement of the law, that sentence being as follows: "If the jury shall believe from the evidence that the defendant or its operator of the bus failed to exercise ordinary care in the performance of any one or more of the foregoing general duties or that he failed to exercise ordinary care in the performance of the specific duties with reference to obedience to the light signal or reference to the operation of the vehicle with inadequate brakes or with reference to the failure of the operator to apply his hand brake or emergency brake, then such operator was negligent, etc."

The defendant says there is no evidence to support the statement quoted and that the statement quoted is further erroneous to the prejudice of the defendant in that it singles

out and emphasizes specific items of purported page 196 } evidence to the prejudice of the defendant and in effect amounts to an argument to the jury against the defendant and without evidence to support it.

The Court: Make a note that objection was made after the jury retired.

Mr. Robertson: I would like the record to show I understood Mr. Allen and I agreed yesterday afternoon that would be stricken out and I thought it had been.

The Court: If so, it had not been called to the Court's attention.

Mr. Robertson: I would like the record to show further counsel for the defendant called it to the attention of the Court as the Court was reading the instruction to the jury.

The Court: You called it to the attention of the Court after the Court had read it to the jury, that part of it.

Mr. Robertson: The Court hadn't finished reading the instruction to the jury.

The Court: The Court states that is a very inopportune time to direct attention to objections. The Court would like to further state that all of the instructions were handed to counsel for the defendant, who undertook to review them and to make objections to them as a final check before they were taken into court and read to the jury.

page 197 } Mr. Robertson: That is correct.

Mr. Allen: All I have to say is that on my carbon copy of that instruction the only corrections I have are the words between the words "the" and "operator" the insertion of "defendant or bus", and in the third line the word "he" is stricken out and "they" inserted in lieu thereof, and in the fifth line from the bottom the words "or emergency" are stricken out of the instruction.

Mr. Robertson: On my carbon copy yesterday I struck out on the second page of Instruction No. 1 which was given me by counsel for the plaintiff the following words "one or more of" and substituted for them the word "any" and also struck out the following words "or that the failure to exercise ordinary care in the performance of the specific duties with reference to obedience to the light signal or with reference to the operation of the vehicle with inadequate brakes or with reference to the failure of the operator to apply his hand or emergency brake", and I had understood we had agreed that those words should be stricken out. It is true I failed to note that they had not been stricken out when I examined the instructions immediately before they were given to the jury.

The Court: Let the record show all of this took place after the jury retired.

page 198 } Note: The jury returned into the courtroom with the following verdict: "We the jury on the issue joined find for the plaintiff and assess damages at \$7,500," and thereupon the jury was discharged.

Mr. Robertson: If Your Honor please, the defendant moves the Court to set aside the verdict and enter up final judgment for the defendant upon the ground the verdict is contrary to the law and the evidence, without evidence to support it, for errors committed by the Court in the admission and exclusion of testimony, for errors committed by the Court in the granting and refusal and modification of instructions, and if for any reason the motion to set aside the verdict should be overruled the defendant moves the Court to set aside the verdict and grant the defendant a new trial on all the issues in the case upon the ground that the verdict is contrary to the evidence and without evidence to support it for all the reasons stated.

The Court: The motion will be overruled and judgment entered on the verdict.

Mr. Robertson: The defendant excepts for the reasons stated.

page 199 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company.

### INSTRUCTION NO. 1.

The Court instructs the jury that all persons operating motor vehicles upon public highways are required by law to operate their vehicles in a careful and prudent manner, exercising ordinary and reasonable care for the safety of others. It is the duty of all such persons to drive at a

careful and prudent rate of speed, not greater nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and other conditions then and there existing; to keep a proper lookout for other persons or vehicles using the highway; to observe traffic signals and to keep their vehicles under reasonable and proper control. In addition to these general duties, at the time and place of the accident here in question the following traffic laws governing the operation of motor vehicles were in full force and effect:

(1) Where signals, by lights, have been adopted to govern the movement of traffic, red indicates that traffic then moving shall stop and remain stopped as long as the red signal is shown.

(2) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movements of and to stop such vehicle, and such brakes shall be maintained in good working order. Such brakes shall consist of a service (foot brake) and a hand brake.

If the service brake (foot brake) for any reason not due to the negligence of the operator or owner of the vehicle becomes ineffective to stop the vehicle, it is the  
 page 200 } duty of the operator in the exercise of reasonable care to apply the hand brake. If the jury shall believe from the evidence that the defendant or its operator of the bus failed to exercise ordinary care in the performance of one or more of the foregoing general duties or that they failed to exercise ordinary care in the performance of the specific duties with reference to obedience to the light signal, or with reference to the operation of the vehicle with inadequate brakes, or with reference to the failure of the operator to apply his hand brake, then such violation was negligence, and if the jury shall further believe that such negligence was a proximate cause of the plaintiff's injuries, then the jury must find for the plaintiff and assess her damages in accordance with the instruction herein on damages.

page 201 } Virginia:

In the Law and Equity Court of the City of Richmond,  
 Part Two.

Doris Durham

v.

Virginia Transit Co.

## INSTRUCTION NO. 2.

The Court instructs the jury that where a person received injuries from some means or instrumentality in the control of the defendant which does not ordinarily occur where reasonable care is used by the defendant, and the injury occurs under such circumstances that the defendant should have the means of determining how it occurred, and the plaintiff does not have this information, then, the jury may infer that the injury was due to some negligence of the defendant. They are not obliged to draw such an inference but may do so. And, in the absence of evidence satisfactorily showing freedom from negligence, the jury may find a verdict for the plaintiff. But on the whole case the jury must believe from the preponderance of the evidence that the injury was due to the negligence of the defendant, before they can find a verdict for the plaintiff.

page 202 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Co.

## INSTRUCTION NO. 3.

The Court further instructs the jury that if they believe from the evidence that the bus ran upon the sidewalk and struck the plaintiff while she was on the sidewalk, these facts raise a *prima facie* presumption that the defendant was negligent, but they do not shift the burden of proof. When all the evidence is in the question of whether the defendant was negligent is for the jury to determine from all the evidence. If the jury shall believe from a preponderance of all the evidence that the defendant was negligent and that the defendant's negligence was a proximate cause of the plaintiff's injuries, the jury must find for the plaintiff.

page 203 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company.

#### INSTRUCTION NO. 4.

The Court instructs the jury that if you find for the plaintiff, you should award her damages in such an amount as will fairly and adequately compensate her for the injuries she has sustained, not exceeding the amount sued for. In *determining* the amount of damages, you may consider the evidence relating to bodily injury sustained by her, the nature and extent of the disability caused by such injuries; the effect of injury upon her health and nervous system, according to its degree and probable duration, and as likely to be temporary or permanent; the mental and physical pain and suffering which she has endured as a result of her injuries, and any such pain or suffering which may reasonably be expected in the future, and the amount which she has expended for medical treatment.

page 204 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Co.

#### INSTRUCTION NO. B.

The Court instructs the jury that the defendant was required to exercise ordinary care to avoid injury to the plaintiff in the operation of its bus; and what constitutes ordinary care depends upon the facts and circumstances of a particular case; ordinary care in this case being such care as

a person of ordinary prudence might have exercised to avoid injury to the plaintiff in the same or similar circumstances.

page 205 { Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham  
v.  
Virginia Transit Co.

INSTRUCTION NO. C.

The Court instructs the jury the burden is upon the plaintiff to prove by a preponderance of the evidence that she was injured by negligence of the defendant; and unless you believe from a preponderance of the evidence that the defendant was guilty of negligence and that such negligence was the sole proximate cause of injury to the plaintiff, you must find your verdict for the defendant.

page 206 { Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham  
v.  
Virginia Transit Company.

INSTRUCTION NO. D.

The Court instructs the jury if you are unable to determine from the evidence whether or not the injury to the plaintiff was caused by negligence on the part of Virginia Transit Company you must find your verdict for the defendant.

page 207 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company.

INSTRUCTION NO. E.

The Court instructs the jury the law does not undertake to hold someone liable for every accident; and in order for Virginia Transit Company to be held liable in this case the plaintiff must prove the defendant was guilty of negligence which proximately caused injury to her. If it appears from the evidence that neither the plaintiff nor the defendant was guilty of negligence, then the law considers the injury to the plaintiff an unavoidable accident; and Virginia Transit Company cannot be held liable for an unavoidable accident.

page 208 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company

INSTRUCTION NO. F.

The Court instructs the jury if you believe from the evidence that the air line in question was purchased from a reliable and reputable manufacturer, and was of a type and character in general use in motor bus passenger transportation business throughout the country and was received by defendant in such condition that an inspection conducted with reasonable care could not and did not disclose any defect in it, and that the air line was installed by the defendant in the passenger motor bus involved in this case in a reason-



ably safe manner, and was thereafter periodically inspected by the defendant with reasonable care and did not develop any defect which could have been discovered in the exercise of reasonable care, and that the air line nevertheless broke on account of such undiscoverable defect and as a sole proximate result thereof the plaintiff was injured, then you must find your verdict for the defendant.

page 209 } Virginia :

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company

#### INSTRUCTION NO. G.

The Court instructs the jury that the type of air line and the methods of installation, inspection and maintenance of its air line which were used by Virginia Transit Company on June 5, 1948, were those in general use by similar companies engaged in like business under substantially similar conditions, and experience has shown that such type of air line and such methods of installation, inspection and maintenance are reasonably adequate to afford protection, and there is nothing in the evidence to show that the type of air line and the methods of installation, inspection and maintenance which were used by the defendant do not afford as high protection as would have resulted from the use of any other known and practical type of air line and methods of installation, inspection and maintenance; and the fact that Virginia Transit Company used the type of air line and the methods of installation, inspection and maintenance which were in general use among similar companies similarly situated under substantially similar conditions at the time the accident occurred, is conclusive proof that Virginia Transit Company exercised the care required of it by law so far as its type of air line and its methods of installation, inspection and maintenance are concerned.

page 210 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company

INSTRUCTION NO. H.

The Court instructs the jury if you believe from the evidence that the operator of the bus was confronted with a sudden emergency without negligence on his part, then he was not required to exercise the same good judgment in such sudden emergency which would have been required of him in the absence of such sudden emergency, but he was required to exercise merely such judgment as an ordinarily prudent person might have exercised in the same or similar circumstances.

And if you believe from the evidence that the operator of the bus was confronted with a sudden emergency without negligence on his part, then the defendant cannot be held liable for any error of judgment on his part in such sudden emergency, if you believe from the evidence that the operator of the bus exercised such judgment as an ordinarily prudent person might have exercised in such sudden emergency.

page 211 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company

INSTRUCTION NO. I.

The Court instructs the jury you must consider this case solely upon the evidence before you and the law laid down in the instructions of the Court, and you must not allow any sympathy you may feel influence your verdict. A verdict must not be based in whole or in part upon conjecture, or

surmise, of sympathy, but must be based solely upon the evidence in the case and the instructions of the Court.

page 212 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham

v.

Virginia Transit Company

### INSTRUCTION NO. A.

The Court instructs the jury the defendant is not required to show by the evidence that it was not negligent; nor is the defendant required to explain how the accident involved in this case occurred, since accidents which cannot be explained sometimes occur.

Refused in this form.

H. H.

Feby. 1/49.

page 213 } Virginia:

In the Law and Equity Court of the City of Richmond,  
Part Two.

Doris Durham, Plaintiff

v.

Virginia Transit Company, Defendant.

### CERTIFICATE OF EXCEPTIONS.

I, Haskins Hobson, Judge of the Law and Equity Court of the City of Richmond, Part II, who presided over trial on January 31 and February 1, 1949, in said Court of action entitled Doris Durham, Plaintiff, v. Virginia Transit Company, Defendant, do certify that the foregoing Stenographer's Transcript, together with the seventeen original exhibits specified in said Stenographer's Transcript and the forego-

ing instructions which were given and refused at said trial, is a true and correct transcript and report of all the evidence, with accompanying exhibits, which was either offered or introduced at said trial; of all the instructions which were granted and refused by the Court at said trial; of all the incidents of said trial; of all the motions, objections and exceptions of the respective parties at said trial, and of the action of the Court with respect thereto; and said Stenographer's Transcript and seventeen original exhibits and instructions have been initialed by me for the purpose of identification.

I do further certify that the seventeen original exhibits which were introduced in evidence as shown by the foregoing Stenographer's Transcript and initialed by me for the purpose of identification are as follows:

Plaintiff's Ex. #1	Picture of bus.
Plaintiff's Ex. #2	Picture showing Peoples
page 214 } Drug Store at corner of Third and Grace	Streets.
Plaintiff's Ex. #3	Picture showing Grace Street.
Plaintiff's Ex. #4	Picture showing Grace Street.
Plaintiff's Ex. #5	Picture showing Grace Street.
Plaintiff's Ex. #6	Picture showing Grace Street.
Plaintiff's Ex. #7	Picture showing bus.
Plaintiff's Ex. #8	Picture showing bus.
Plaintiff's Ex. #9	Picture showing automobile.
Plaintiff's Ex. #10	Picture showing wrecking truck.
Plaintiff's Ex. #11	Picture showing automobile and bus.
Plaintiff's Ex. #12	Picture showing bus.
Plaintiff's Ex. #13	Picture showing bus.
Plaintiff's Ex. #14	Picture showing bus.

#### DEFENDANT'S EXHIBITS.

Defendant's Ex. A Picture showing bus.  
 Defendant's Ex. B Picture showing piece of broken air line.  
 Defendant's Ex. C Picture showing piece of new air line.

Said seventeen original exhibits may properly be transmitted to the Supreme Court of Appeals of Virginia as part of the record in this case in lieu of certifying copies of said Exhibits to said Court.

I do further certify that counsel for Doris Durham had reasonable notice in writing from counsel for Virginia Transit Company of the time and place when the aforesaid Stenog-

rapher's Transcript, Exhibits and instructions would be tendered to the undersigned for signature and authentication, and that the said Stenographer's Transcript, Exhibit page 215 } hibits and instructions were tendered to me on the 22nd day of March, 1949, within less than sixty days after entry of final judgment in the aforesaid action; and said Stenographer's Transcript of the evidence, together with said Exhibits and instructions, is hereby made a part of the record in this proceeding.

Given under my hand this 22nd day of March, 1949.

HASKINS HOBSON

Judge of the Law and Equity Court of  
the City of Richmond, Part II.

page 216 } I, Luther Libby, Jr., Clerk of the Law and Equity Court of the City of Richmond, Part Two, do hereby certify that the foregoing is a true transcript of the record in the case wherein Doris Durham is plaintiff and Virginia Transit Company defendant, with the exception of the original exhibits filed in evidence, and that the attorneys of record for the plaintiff had due notice of the intention of the defendant to apply for such transcript.

I further certify that the defendant has executed bond in the penalty of ten thousand dollars with all conditions of a *supersedeas* bond.

Witness my hand this 12th day of April, 1949.

LUTHER LIBBY, JR.,  
Clerk.

Fee for Record \$45.00.

M. B. WATTS, C. C.

## INDEX TO RECORD

	Page
Petition for Writ of Error and <i>Supersedeas</i> .....	1
Record .....	33
Notice of Motion for Judgment.....	33
Plea of Not Guilty.....	35
Grounds of Defense .....	36
Judgment, February 1, 1949—Complained of.....	37
Transcript of Testimony, &c.....	38
Mrs. Doris Durham.....	38
J. H. Durham.....	43, 141
William V. Chapman .....	47
Mrs. Jeannine Pearson .....	49
Dr. Kenneth J. Cherry.....	51
Dr. James T. Tucker .....	56
Dr. Louis Perlin .....	59
Wray Selden .....	61
M. M. Mallory .....	63
John T. Hanna .....	64
P. P. Allen .....	65
Milton Bebout .....	74
Mrs. Harold Lawrence .....	78
Dr. R. D. Butterworth.....	83
Miss Jean Merkle .....	85
Miss Mary Silvia .....	87
Mrs. Nora Dempster .....	89
C. W. Galloway .....	91
Edward A. Falwell .....	93
Ray H. Moore .....	97
Raymond S. Challenor .....	107
V. C. Iacopinelli .....	108
Cecil M. Rickert .....	109
J. B. Blaiklock .....	112
O. M. Thornton .....	116
C. A. Scharfenberg .....	122
Louis A. Bode .....	128
Ray H. Moore .....	137
Roland R. Williams .....	137, 139
H. C. Baker .....	138
Motion to Strike Evidence.....	144
Objections to Instructions .....	148
Instructions .....	148
Judge's Certificate .....	156
List of Exhibits .....	157
Clerk's Certificate .....	158