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# Record No. 5432

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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RUBY H. ODEN

v.

SOUTH NORFOLK REDEVELOPMENT  
AND HOUSING AUTHORITY

---

FROM THE CORPORATION COURT OF THE CITY OF SOUTH NORFOLK

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## RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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**Record No. 5432**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 22nd day of November, 1961.

RUBY H. ODEN,

Plaintiff in Error,

*against*

SOUTH NORFOLK REDEVELOPMENT AND HOUSING  
AUTHORITY,

Defendant in Error.

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From the Corporation Court of the City of South Norfolk

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Upon the petition of Ruby H. Oden a writ of error is awarded her to a judgment rendered by the Corporation Court of the City of South Norfolk on the 29th day of May, 1961, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and South Norfolk Redevelopment and Housing Authority was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of three hundred dollars, with condition as the law directs.

# RECORD

page 9 } Virginia:

In the Corporation Court for the City of South Norfolk on the 29th day of May, 1961.

This day came the above named parties, in person, and by counsel, and thereupon came also a jury, to-wit: Harry A. Beard, Vernon C. Grimes, John L. Roache, Surry Small, L. S. Spann, W. H. Stallings, Jr. and Fred Taylor, who were duly sworn the truth to speak upon the issue joined, and after having heard plaintiff's evidence, defendant, by counsel, moved the Court to strike plaintiff's evidence and enter summary judgment in favor of defendant, which motion the Court overruled, and to which ruling of the Court, the defendant, by counsel duly excepted. And after having fully heard the evidence, defendant, by counsel, again moved the Court to strike the plaintiff's evidence and enter summary judgment for defendant, which motion the Court granted, and entered summary judgment for the defendant, to which ruling of the Court, the plaintiff by counsel duly excepted.

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Virginia:

In the Clerk's Office, Corporation Court of South Norfolk  
Received and filed this the 22nd day of July, 1961.

Teste:

JULIAN R. RAPER, Clerk  
By MARION LIPE, Deputy Clerk.

NOTICE OF APPEAL.

Plaintiff Ruby H. Oden appeals from the final judgment entered on May 29, 1961 by the Corporation Court for the City of South Norfolk, Virginia, in a law action in which Ruby H. Oden was plaintiff and South Norfolk Redevelopment and Housing Authority was defendant.

ASSIGNMENTS OF ERROR.

Plaintiff hereby designates as her assignments of error, the following:

1. The Court erred in sustaining the motion of defendant, after both parties had rested, to strike the plaintiff's evidence and to enter summary judgment in favor of the defendant.

2. The Court erred in entering the final judgment in favor of the defendant.

3. The Court erred in refusing to permit Mrs. B. M. O'Neal to testify in the presence of the jury.

4. The Court erred in refusing to permit the witness Edward G. Payne to testify in the presence of the jury as to the correct manner to stop a leak around the shower, as to the actual repairs to the shower made by the defendant and as to the proper manner in which to correct the leaky condition around the shower.

5. The Court erred in sustaining the objection of the defendant to the question asked of the witness E. G. Payne, to-wit: "I hand you this picture, which is D-4. What would be the ordinary customary manner in which a leak of that kind would be stopped by an ordinary plumber?"

page 12 } 6. The Court erred in sustaining the objection of the defendant to the question asked of E. G. Payne, to-wit: "Now, irrespective of the fact that you have not used permatrix yourself, I want to ask you referring to a leak of this kind of shower, what would be the way someone would handle the situation of this kind if he was called upon to stop a leak?"

7. The Court erred in sustaining the objection of the defendant to the question asked of E. G. Payne, to-wit: "Mr. Payne, based upon the fact that there was a reported leak on February the 5th, 1960, and the records indicate it being a shower leak in the pipe up and down the conversion and nothing was done on that until March the 11th; but on February the 9th, again complaint was made that "Shower leaks in kitchen," and the record indicating that a maintenance man put permatrix around the shower, a new showerhead, and then

*B. M. O'Neal.*

again on March the 11th the disposition shows that it is marked 'Completed.' And the evidence showed under the facts in this case so far as the plaintiff is concerned that it has continued to leak until September the 6th, 1960 when someone came there on behalf of the Housing Authority and attempted to repair it, and that on September the 19th, 1960, it leaked again and came down from the ceiling down to the kitchen floor, I ask you under those facts and circumstances in the case whether or not that shower, if it was repaired on September the 6th, 1960, was repaired in the exercise of reasonable care—."

RUBY H. ODEN  
By HOWARD I. LEGUM  
Of Counsel.

\* \* \* \* \*

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page 23 } B. M. O'NEAL,  
called as a witness on behalf of the plaintiff, hav-  
ing been first duly sworn, was examined and testi-  
fied as follows:

# DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mr. B. M. O'Neal?

A. Yes, sir.

Q. And Mr. O'Neal, where do you live?

A. 1420 Anne Avenue, South Norfolk.

Q. What is your occupation?

A. I am first mate on the "MARY L. MCALLISTER,"  
McAllister Brothers.

Q. And that is towing?

A. Yes, sir.

Q. And in the local harbor?

A. Well, not only local, all over, anywhere, any place.

Q. Now, Mr. O'Neal, are you related to this lady Mrs.  
Ruby Oden?

A. She is my aunt.

*B. M. O'Neal.*

Q. And did she or not live in the apartment with you and your—with who else?

A. She lived in an apartment with me.

Q. I mean where did she live on September 19th?  
page 24 } A. She lived on Admiral Roads. I think it was Apartment 2. I don't remember what it was now.

Q. 265—

A. Somewhere, I don't remember.

Q. Building 11?

A. Building 11. I know that.

Q. And who else was with—in there with her?

A. My mother and daddy had an apartment and my kid brother lived right with them too.

Q. All right, that is what I am getting at. And did you pay this September rent or not?

A. I paid the rent two or three times. Now, I think. I mean I wouldn't quote that I paid September, but I paid the rent two or three times; and before this happened, I paid rent, I know.

Q. Before this time—before what time?

A. Before she hurt her leg and the lady that took her money at the desk, I told her that the shower leaked, and she said that they would have it fixed. I reported it.

Q. Now, was that in the month—

Mr. Ward: Now, I object. You ask him, don't tell him, please. That is leading.

By Mr. Fine:

Q. When was that with regard—

A. That was the month before she had her leg  
page 25 } hurt. But the month before that when the rent come due. It was between the first and the fifth, I paid them.

\* \* \* \* \*

page 26 }

\* \* \* \* \*

Q. And I ask you whether or not that is the first time that you made any complaint about the shower.

A. I have reported the shower twice.

Q. Sir?



## Supreme Court of Appeals of Virginia

*B. M. O'Neal.*

A. I reported the shower leaking to 'em twice.

Q. And when was the first time you reported it?

A. That was the first time when I paid the rent, then two or three days later I was back. I had gone under the house and they hadn't fixed it, so I went back over there and told the lady then and she said, "Well, we have got a man working on it."

Mr. Ward: Again, I object to that, your Honor.

The Court: The objection will be ruled on later.

By Mr. Fine:

Q. And were you familiar with the shower and how it operated?

A. Yes, I used to live in the same project myself. It was converted into apartments, and we lived in one for around 18 months in the same project, so I know how those  
page 27 } apartments are arranged and all.

\* \* \* \* \*

page 28 }

\* \* \* \* \*

Q. And you saw this particular shower. Now, when did you see it in that condition?

A. I had seen that shower in that condition for I'd—I'll say two months before the period of time.

Q. Two months before this accident occurred?

A. Before it happened.

Q. When you reported this to the lady and paid your rent, did the lady tell you that she wasn't going to fix it or did she say she was going to fix it?

A. She said she would have a man to go right to work on it.

Mr. Ward: Of course, I save my objection on that line of questioning.

The Court: All right, sir.

By Mr. Fine:

Q. And I ask you if you know Mr. Windley.

A. No, sir, personally I don't know him.

*B. M. O'Neal.*

Q. And you don't know the colored man that he was associated with?  
page 29 } A. No, sir, I don't know either one of them. I probably seen them, but I don't know them.

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page 30 }

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The Court: What did he observe with his eyes.

Mr. Ward: That is all right; that is perfectly all right.

The Witness: That is all I am going to do is tell what I seen of my own eyes. Like I say, I'm no plumber.

The Court: All right. When you take a shower in the shower the water comes into the bottom of the shower. We all know that.

A. (Continuing) And down there where the water runs out it was loose. Now, what was causing it to leak in the kitchen or run out, I don't know. Like I say, I'm no plumber. But when the water would come from the leak it would run down and leak into the kitchen.

By Mr. Fine:

Q. Would it come from the ceiling?

A. It come right from the ceiling. You can see where it come through the ceiling, because I have been previous times when she had a pan in her kitchen.

Q. You have been there when she had a pan in  
page 31 } the kitchen?

A. She had a pan catching the water coming down. It looked like where there used to be the other shower, it looked like they had a nipple that someone screwed up in there.

Q. Now, you were not present on September the 19th—

A. No, sir, I was not.

Q. —when this lady was caused to fall?

A. No, sir.

Q. Now, how long did that condition persist?

A. Two more times.

Q. How long did that—

The Court: Wait until the siren stops blowing.  
Go ahead.



*Nancy M. Kincaid.*

By Mr. Fine:

Q. When was the time that you saw that last dripping before September the 19th?

A. I wasn't sure. I would say to my knowledge probably two or three weeks before.

Q. All right, sir. And then before two or three weeks before you saw it dripping like that, when did you see it in that condition?

A. That's about it. I know it was leaking but that was the first time I had seen it, because we don't go around page 32 } everyday.

page 34 }

NANCY M. KINCAID,  
called as a witness, having been first duly sworn, was examined  
and testified as follows:

#### DIRECT EXAMINATION.

By Mr. Fine:

page 35 }

Q. You live in Portsmouth. And how long have you been connected with the South Norfolk Redevelopment?

A. Since January of 1954.

Q. And I believe under the attention and care and management and operation and control of the Admiral Apartments, is that correct?

A. That is correct.

Q. And how long have they been under the operation and control and management of the South Norfolk Redevelopment?

A. I did not understand your question.

Q. How long have you had them under your management?

A. Since January—no, November of '58.

Q. November, '58?

A. Yes.

*Nancy M. Kincaid.*

Q. And where is the rent paid?

A. At the rental office.

Q. And who is in charge of the rental office?

A. Mrs. Forbes is the assistant manager.

Q. And what is your occupation?

A. Supervisor of management.

Q. Is her job superior to yours?

A. No, sir—

page 36 } Q. You are the—

A. —she is under me.

Q. You are her superior?

A. That's right.

Q. And with regard to matters in connection with shower—  
or complaints, would that have to be made to you or would it  
have to be made to the young lady that they pay the rent to?

A. It is made to the young lady at the window at the rental  
office where the rent is paid.

Q. Where the rent is paid?

A. Yes.

Q. And she usually accepts the complaints for the Admiral  
Roads Apartments?

A. Yes, sir.

Q. And after those complaints are made, and if they are  
reasonable and proper, you try to have them adjusted, don't  
you?

A. That's right.

Q. No question about that?

A. No.

Q. So if any objection is made by counsel that that person  
is not authorized to do that, that is the proper place for it,  
isn't it? That is true, isn't it?

A. Would you—?

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# CROSS EXAMINATION.

By Mr. Ward:

\* \* \* \* \*

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\* \* \* \* \*

*Nancy M. Kincaid.*

Q. And after the order has been filled or the repairs made, what does maintenance do with that order?

A. Well, the disposition of the work, of course, is placed on the work order and it is returned to the rental office for recording in the family permanent file.

Q. Now, for the period during 1960 do you have a work order for every time any repairs were made to the premises occupied by Miss Oden. I think it was in the name of the O'Neals.

A. Yes.

Q. Do you have them there?

A. Yes.

Q. Will you take the first one in order starting with the beginning of 1960, and tell us what that was.

A. On the 9th of February, 1960, there was complaint on a shower leaking.

Mr. Fine: May I see it, please?

(Document shown to opposing counsel for examination.)

Mr. Ward: I will be delighted for you to look at them.

Mr. Fine: Thank you, sir.

page 40 } By Mr. Ward:

Q. All right, beginning with the 9th of February, what work was done—what's that, 265?

A. 265 Bataan. The report was made that the shower leaked in the kitchen and the commode runs. Then the work was done on the same day as was the—repaired on the same day. You want me to read that, the disposition?

Q. What did they do on February 9th, 1961?

A. "Put permatex around shower. Installed new shower-head, guide holder and rod and tank ball in commode."

Q. That is on February 9th?

A. Yes.

Mr. Ward: Your Honor, I offer this as Defendant's Exhibit 1.

The Court: It will be received and marked D-1. Gentlemen, there is no question that 265 is the apartment?

Mr. Fine: It is, that is correct.

Mr. Ward: That is correct.

The Court: It has not been directly put in evidence, as I recall, but I don't want any confusion.

*Nancy M. Kincaid.*

Mr. Fine: We can save time. If you want I have no objection to you introducing them.

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By Mr. Ward:

Q. First now, what was the situation?

A. The order was placed on the fifth and the repairmen went over and couldn't get in.

Q. And then on the 9th is when the work was—

A. It was done on the 9th. They went back on the 9th. They had to change the lock on the door.

Q. I see. And we have the fifth and the ninth there. Now, what is the next time that a complaint was made of the work that was done to that apartment?

A. On February the 16th of 1960, request was to check the commode. The disposition stated "Repaired commode."

Mr. Ward: Do you wish to see this again?

Mr. Fine: I have seen that, thank you, sir.

page 43 } Mr. Ward: We offer this, your Honor.

The Court: It will be received and marked

D-3.

(Received and marked in evidence by the Court as Defendant's Exhibit D-3.)

By Mr. Ward:

Q. And the next complaint?

A. June 16th, 1960: "Commode runs." *Disposition* "Fixed commode. One tank trip level was used."

Mr. Ward: And we offer this as an exhibit.

The Court: It will be received and marked D-4.

(Received and marked in evidence by the Court as Defendant's Exhibit D-4.)

By Mr. Ward:

Q. And the next complaint?

A. On July the 5th, the complaint: "The commode is

*Nancy M. Kincaid.*

sluggish," and authorization was given to use the pass key to enter. The *disposition*: "Ran snake down vent pipe. Commode is flushing. Took up commode, got beer can  
page 44 } lid out of it. Used one flush valve and repaired the valve."

Q. That was on July 5th.

A. Yes.

The Court: It will be received and marked in evidence as D-5.

(Received and marked in evidence by the Court as Defendant's Exhibit D-5.)

By Mr. Ward:

Q. And when was the next time there was a complaint and any work done?

A. November the 4th, 1960. The complaint: "Commode runs all the time; shower leaks; no light in the bedroom." "Fixed commode, put light in the bedroom, fixed shower."

Q. That was November 4th. Was there any—

The Court: It will be received and marked Exhibit 6.

(Received and marked in evidence by the Court as Defendant's Exhibit D-6.)

Mr. Ward: Excuse me, your Honor.

\* \* \* \* \*

page 48 } By Mr. Ward:

Q. I am asking you, Mrs. Kincaid, personally working in the office, did you receive any notice of any accident on the premises 265, Building 11, until the letter was received from Mr. Fine's office in January of 1961?

A. No.

The Court: Just a moment.

Mr. Fine: That is all right, if your Honor please, we withdraw that.

The Court: All right, what is your answer?

The Witness: No.

*Nancy M. Kincaid.*

By Mr. Ward:

Q. Did you?

A. I did not.

Q. Do you have the letter that came from Mr. Fine's office which, you say, is the first notice?

A. That letter is in that insurance folder right there. (Indicating)

Q. Would you try to find it?

(Handed to the witness.)

A. This is the first letter (producing document).

Q. Do you know—do you have the envelope there?

A. Yes.

page 49 } Q. Do you recall when you received this?

A. The letter was received in the office of the Housing Authority on January 3rd.

Q. This envelope, the postmark is December 31.

I wish to offer this letter. The letter is undated on the stationery of Fine, Fine, Legum, Weinberg and Schwan. It is purportedly signed by Jerrold G. Weinberg. It is addressed to Admiral Roads Apartments, 10 Admiral Road, South Norfolk, Virginia, re: *Ruby Hyacinth Oden v. Admiral Roads Apartments*, together with the envelope bearing the name of the same law firm and postmarked December 31, 1960.

The Court: It will be received and marked D-7.

(Received and marked in evidence by the Court as Defendant's Exhibit D-7.)

Mr. Ward: That is all the questions I have. Do you wish to inquire?

RE-DIRECT EXAMINATION.

By Mr. Fine:

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page 52 } The Court: Yes, all right.

It will be admitted as Plaintiff's Exhibit P-3.

*Nancy M. Kincaid.*

(Received and marked in evidence by the Court as Plaintiff's Exhibit P-3.)

By Mr. Fine:

Q. As I understand it, the housing manager—is that you?

A. Yes, sir.

Q. And when you say that notify the housing manager, your assistant is the lady that has it that collects the rent?

A. That's right.

Q. And she is the one proper person to notify about the repairs?

A. That's right.

Q. And there is no question about the fact that under this lease you were going to make any repairs that were necessary?

A. That's right.

Mr. Fine: I would like to bring that to your Honor's attention.

(Exhibit shown to the Court.)

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Q. And how many repair orders would you say that you would have to handle during the period of thirty days?

A. (Pause) I would say between—

Q. Approximately?

A. —thirty to fifty. They vary.

Q. Yes, ma'm. And they vary from some serious items to some not serious?

A. Yes.

Q. And do you have a man by the name of Windley in your employ?

A. Yes.

Q. And how long has he been in your employ?

A. Mr. Windley has been there three years, I believe. I couldn't say definitely.

Q. All right. And was he in your employ in the year 1960?

A. Yes.



*Mrs. B. M. O'Neal.*

Q. And did he or not attempt to fix this shower pursuant to those work orders in February?

A. Yes.

Q. He was the gentleman in charge?

A. Yes, sir.

page 58 } Q. And did he or not have with him as his helper a colored man?

A. Yes.

Q. And what is Mr. Windley's occupation?

A. General maintenance.

Q. He is not a first class plumber, is he?

A. I am not in position to answer that.

Q. Ma'm?

A. I don't know. I couldn't say, sir.

Q. Did you hire him?

A. No, I did not.

Q. And you don't know what his qualifications are with regard plumbing work?

A. Other than general maintenance.

Q. I understand, I'm not critical; I'm just trying to get the information. And this colored man was—what is his name?

A. Baxter.

Q. Baxter. And is Baxter a plumber?

A. He is in general maintenance.

Q. But he is not a plumber?

A. I couldn't say.

Q. He hasn't passed the plumbing laws—?

Mr. Ward: Now, the lady said she didn't know, why argue with her?

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MRS. B. M. O'NEAL,  
called as a witness on behalf of the plaintiff, having been first  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 67 } By Mr. Fine:

Q. Mrs. O'Neal, did you or not tell me for the

*Mrs. B. M. O'Neal.*

first time while you were in this courtroom that you and your husband had gone to the office following the injury?

A. The next day.

Q. I beg your pardon?

A. The next day after the night that she was hurt. When they opened the next day.

Q. What do you know about it; tell the Court.

A. Well, I had myself a couple of times reported it—I don't know the dates—that it was leaking. I don't know anything about that. But the next day my husband and I went over to the rental office and I sat in the car and my husband went in and reported it to—

The Court: Wait just a minute. You sat in the car?

The Witness: Yes, I did.

The Court: And your husband went in?

The Witness: Yes, sir.

The Court: You don't know what happened when he went in?

The Witness: No, I don't.

. . . . .

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. . . . .

Q. Did you give—this is as to the injury—I will ask you did you personally give notice to the rental office about the shower leaking?

A. Yes, I did. I gave it to Mrs. Baines, and Mrs. Forbes was standing beside her, and she wrote it on a scrap of paper.

Q. When was that?

A. That was about—I don't know—about a month and a half before the accident.

Q. You gave it to her personally?

A. Yes, I did.

Q. And what was the lady's name that you gave it to?

A. Mrs. Baines.

Q. Mrs. Baines?

A. Yes.

Q. Spell that for me.

A. I'm not sure—"B-A-I-N-E-S," I think.

Q. And she is the one the rent is paid to?

*Doris O'Neal.*

A. That was the one that was there when I went there and Mrs. Forbes, and I told the lady what I was there for.

page 70 } Mr. Fine: Now, if your Honor please, it is true, sir, that she was present in the courtroom but, if your Honor please, it is a discretionary matter with the Court, and I assure you there was no idea on my part to try to, sir, circumvent the ruling. As a matter of fact I have not interviewed her. I mean I have not talked with her. We did investigate this matter and got any number of statements in my file, sir, but I don't have this lady's.

The Court: Mr. Fine, you are in a position to protect any interest of the plaintiff so far as a non-suit is concerned. The Court, however, would not be in position to protect the defendant if this testimony came in under the circumstances and in view of the ruling of the Court on the exclusion of witnesses.

Mr. Fine: I respectfully except, if your Honor please. I think maybe it maybe cumulative, so I don't think I would like to take a non-suit at this point, sir.

If your Honor please—

The Court: I understand, all right.

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MRS. DORIS O'NEAL,  
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

\* \* \* \* \*

page 72 } Q. And Mrs. O'Neal, are—you lived at Admiral Roads Apartments?

A. Yes, I did.

Q. And you live at what apartment now?

A. I can't think of the number now.

Q. Is it 265—266?

A. 265, I believe.

Q. Anyhow, it is at No. 11 Bataan Drive, is that correct?

A. That's right.

*Doris O'Neal.*

Q. And you are the sister of Miss Ruby?

A. That's right.

Q. And last September, 1960, was your sister there in the apartment with you?

A. She was. I was down home at the time.

Q. Where were you; what do you mean "down home?"

A. Hatteras.

Q. I will get over here so you can talk to me. At Hatteras?

A. That's right.

Q. Now, want to refer you to the shower. What was the condition of the shower prior to September the 19th, 1960?

A. Well, it leaked. It leaked down in the kitchen floor.

\* \* \* \* \*

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\* \* \* \* \*

Q. I ask you whether or not to your knowledge anyone had been around to repair the shower.

A. Yes, they had.

Q. And when?

A. Well, I don't know just when, or I don't remember the dates, because I didn't pay any mind to it; but I do know they went to do it, to repair it.

Q. Well, now, can you give us the month?

A. Well, I just don't remember because I did not think there would be anything about it.

Q. Do you remember the season of the year?

A. Yes, the summer.

Q. It was in the summer. Was it last year?

A. Yes.

Q. And who came there to fix it?

A. Well, there was a colored man and another man. I don't—

Q. And were those two people connected with the South Norfolk Revelopment and Housing Authority?

A. Well, I imagine so, I don't—

Q. Have they been there before for the South Norfolk—

A. I had seen them around the project working.

Q. Ma'm.?

page 76 } A. I had seen them around the project working.

Q. And how many times have they come to your house to repair—

*George R. O'Neal.*

A. Well, I was there a couple or three times when they come to repair it and went upstairs.

Q. And I ask you when they came to repair the showers was it repaired; did it stop leaking or did not stop leaking?

A. It never stopped leaking that I know anything about.

Q. Well, now, when did you go to Hatteras—you said "home."

A. Well, I went down there the last of August.

Q. The last of August?

A. Yes.

Q. And when you went there the last of August had the shower been leaking at that time, or not?

A. Yes, it had been leaking at that time.

Q. And when it leaked how did the water come down; where did the water come from and what did it do?

A. Well, it come from overhead and run down on the kitchen floor. We had to take a pot or pans underneath to catch it.

Mr. Fine: Answer this gentleman.

The Witness: All right.

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GEORGE R. O'NEAL,

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

#### DIRECT EXAMINATION.

By Mr. Fine:

• • • • •

Q. I don't mean about using it. Did you see the condition with regard whether or not it leaked, whether—

Mr. Ward: Now, that is a leading question, and  
page 84 } this gentleman said he never paid any attention to  
it. Now he wants to know if he observed it, did it  
leak and so forth. I object to that. The witness has said  
that he does not know; he did not pay any attention to the  
shower notwithstanding Mr. Fine's statement.

Mr. Fine: I am not asking him about the shower, I am asking if he saw it after—the effect—after the shower had been used.

*George R. O'Neal.*

A. Yes, I was there the night it had leaked and the water had all run down.

By Mr. Fine:

Q. You had been there. When was that?

A. That was the night that she was hurt.

Q. Were you there then?

A. Yes, I was there.

Q. And saw the water there?

A. Yes, sir, I saw her fall.

Q. When you saw her fall?

A. Yes, sir.

Q. And where did the water come from?

A. It come—it had to come from the shower. It was the only running water in the building at the time, in that apartment.

page 85 }

\* \* \* \* \*

CROSS EXAMINATION.

By Mr. Ward:

\* \* \* \* \*

page 87 } Q. Would you tell us about how much it did cover? You can estimate it. I'm not holding you to the exact quantity.

A. I wouldn't know what to say; but I would say maybe a foot or two foot.

Q. Was it as much as that top of the table there in front of the jury?

A. No, sir, I don't believe it was that much.

Q. Well, can you use that table top and show us how much?

A. Like I say, I wouldn't know because I never paid attention to it. After she fell I went around to the other people visiting to help get her up and we got her up on the couch. I never paid much attention to it, but I knew there was water there.

Q. And at that time didn't you see any water dripping?

A. No, sir, because I didn't look right then. After she was hurt we got her up and got her over to the couch.

*Mrs. George O'Neal.*

Q. And it is just your guess that the water came from the shower?

A. Well, yes, sir. It had done the same thing before.

Q. Well, this time, I mean you did not see it so you are just guessing that it came from the shower?  
page 88 } A. Yes, sir, I imagine.

Q. Then you are doing that because at sometime before the water had dripped through?

A. Well, it had leaked before. It leaked two or three times before.

Q. And so you are guessing now that is what happened this time?

A. The baseboard was all wet overhead.

Q. And you don't know whether that came from the commode or from the shower, do you?

A. No, sir, I don't.

Mr. Ward: Thank you, Mr. O'Neal.

Mr. Fine: Mrs. O'Neal.

MRS. GEORGE O'NEAL,

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

page 89 } DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mrs. George R. O'Neal?

A. Yes, sir.

Q. And as a matter of fact your husband has just preceded you?

A. Yes, sir.

Q. And you live at 1408 Anne Avenue?

A. Yes, sir.

Q. And were you with your husband last September the 19th when Miss Ruby fell?

A. Yes, I was.

Q. And did you observe any water in the kitchen?

A. Not until she fell.

Q. And then tell us—describe just what you saw there.

A. Well, we had just came in and she was getting ready to go to the refrigerator to get the ice, and she walked around the corner of the table near the refrigerator, and she slipped right there by the table and fell, and she couldn't hardly get up. We had to help her up.



*Mrs. George O'Neal.*

Q. And did you look up above the place where page 90 } she fell?

A. After she fell you could see a drip from up overhead right over by the table.

Q. Yes. And would you tell, please, whether or not you have ever been upstairs there where that water came from?

A. Yes, I have been up in her bathroom.

Q. And have you looked at the shower up there?

A. Well, I noticed—

Mr. Ward: Excuse me, Mrs. O'Neal. I think that we ought to pinpoint this sometime that would be near the time that we are interested in. He asked her if she has ever been upstairs in the shower.

Mr. Fine: I asked her if she had looked at the shower.

Mr. Ward: Well, it may have been three Christmases ago, I can't tell.

The Court: Well, the only difficulty, Mr. Ward, is if he nails it down too tight the first time it would be leading, you see?

Mr. Ward: All right, sir, I agree.

The Court: He has to creep in on it.

Mr. Ward: I agree, sir.

By Mr. Fine:

page 91 } Q. You say you looked at the shower?

A. Yes, I did.

Q. And would you tell his Honor and the gentlemen of the jury the times that you looked at the shower. What days were they approximately?

A. Well, now, that I don't know, because it was just when I would visit them, I mean. And that is all that I can say—I just went there on a visit. I couldn't say exactly when it was.

Q. Well, now, let's see if I can't ask you this. Had you see the shower anytime that you went, say thirty days before September 19th, 1960, between that time and the time that Miss Ruby got hurt?

A. Yes, I have.

Q. All right, how many times have you seen it?

A. Well, I averaged about once a week going visiting anyway.

Q. All right. What was the condition of the shower when you saw it once a week for a period of thirty days before September 19th, 1960?

*Mrs. George O'Neal.*

A. Well, it didn't look very good. All around the edges it looked like it was loose where, I guess, it was putty, it looked like around the edges it looked all broken and loose.

Q. Now, when you say all the edges were loose page 92 } where do you mean—of what?

A. Around the edges of it inside the shower.

Q. And when you say that the edges were loose around the edges of the shower you mean on the inside of it?

A. On the inside of it, yes, sir.

(Photograph shown to opposing counsel for examination.)

By Mr. Fine:

Q. And I ask you when you say about the edges on the inside of the shower, are you referring to that picture?

(Shown to the witness for examination.)

A. Yes, all around up in here. (Indicating)

Mr. Fine: I would like to introduce that, may it please the Court.

Mr. Ward: I have no objection, your Honor.

The Court: It will be received and marked as Plaintiff's Exhibit P-4 and admitted as such.

(Received and marked in evidence by the Court as Plaintiff's Exhibit P-4.)

(Photographs shown to opposing counsel for examination.)

page 93 } By Mr. Fine:

Q. Now, I ask you if this is not the faucet of the shower and ask you if this is not the ceiling below it, and ask you if that is not the floor, and if that isn't an enlargement of the icebox.

(Showing photographs to the witness for examination.)

A. Yes, sir.

Mr. Fine: I introduce these, if your Honor please.

The Court: All right, P-5, 6 7 and 8. There is some writing on the back of these.

Mr. Ward: I didn't notice those.

*Mrs. George O'Neal.*

Mr. Fine: If your Honor please, they were put there for a reason.

The Court: I understand that, but if counsel has not seen them, I think everybody should know. We don't want to hear about it later.

Mr. Fine: All right.

(Shown to opposing counsel for examination.)

Mr. Ward: I have no objection to that.

The Court: I will mark them.

\* \* \* \* \*

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By Mr. Fine:

Q. Now, how long would you say that was loose like that to your knowledge, over what period of time, a day, two days, a week or months?

A. No, I guess it was two or three months that I know of that it was loose like that.

Q. State whether or not to your knowledge it had ever been reported for repair and—

Mr. Ward: Now, just a minute. Did she report it or did somebody else report it? Otherwise I must object to it.

By the Court:

Q. Were you ever present at a time when report was made to the Housing Authority?

A. No, I wasn't present.

The Court: All right.

By Mr. Fine:

Q. Were you ever present when anyone came there to repair it?

page 97 } A. No, I wasn't.

\* \* \* \* \*

page 98 }

\* \* \* \* \*

*Mrs. George O'Neal.*

CROSS EXAMINATION.

By Mr. Ward:

Q. Mrs. O'Neal, I understood you to say in answer to Mr. Fine's question that on the night that Miss Oden fell when you and your husband were there that you saw the water dripping from the ceiling to the floor?

A. That was after we noticed it, after she had fallen. We didn't see it until she had fallen.

Q. But you did see it was dripping at that time?

A. Just a little drip after she fell. We noticed it was dripping.

Q. And dripping down onto the floor?

A. But we hadn't noticed it until she fell.

Q. But when she did fall then you saw that the water was dripping from the ceiling down onto the floor?

A. That's right.

Q. Where she fell?

A. Yes, sir.

page 99 } Q. And you are certain that you saw it dripping at that time?

A. Yes, sir.

Q. It wasn't just wet?

A. No, sir, it was dripping.

Q. Dripping?

A. Yes, sir.

Q. Right on down to the floor? How much water was on the floor, Mrs. O'Neal?

A. Well, now—

Q. Would you show me in just some space using anything that you want here to describe how big the puddle of water was?

A. Well, now, that I can't say to be exact because she slipped in it and it scattered it before we even know it was there. She had slipped and it scattered.

Q. After you scattered it was there right much water?

A. Well, there wasn't too much, but there was just enough left, you know, it wet the floor all around where she slid.

Q. Let's see—you are not related except by marriage?

A. No, sir.

Q. You are related by marriage?  
page 100 } A. Yes, sir.

\* \* \* \* \*

W. B. HAIRR,  
called as a witness on behalf of the plaintiff, having been first  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 101 } By Mr. Fine:

Q. You are Mr. W. B. Hairr?

A. Yes, sir.

Q. And Mr. Hairr, you live at the Admiral Roads Apartments?

A. Yes, sir.

Q. And on September the 19th, 1960, were you visiting Mrs. Ruby Oden with your wife, Mrs. Hairr?

A. Yes.

The Court: Now, Mr. Hairr, see those gentlemen over there? They need to hear what you're saying. Could you speak up so they can hear?

Mr. Fine: I will get over here too.

By Mr. Fine:

Q. You say you were present?

A. Yes, I was present.

Q. And who was with you?

A. My wife.

Q. And who else was there?

A. Well, some of her people was there.

Q. And anything unusual happen on September the 19th?

page 102 } A. The only thing I seed she was fixing supper  
on the table. She started around to the icebox and  
she didn't see that water and she fell, and I went  
there and helped pick her up.

Q. Did you observe the ceiling?

A. Yes, I looked at the ceiling up there and seed where it was coming from.

Q. What was coming from what now. I mean I know all about it but I want to ask you to tell his Honor and the gentlemen of the jury about it.

A. Well, the water was coming from the ceiling there. It looked like it was coming over the bathroom or shower or whatever you call it.

Q. All right.

A. Of course, I didn't go up to the shower and looked.

Q. Yes.

*W. B. Hairr.*

A. But from where the water was coming from it was under the shower.

Q. All right, sir.

A. It—

Mr. Fine: Answer this gentleman.

CROSS EXAMINATION.

page 103 } By Mr. Ward:

Q. Mr. Hairr, when you helped pick up Mrs. Oden after she had slipped in the kitchen floor, was the water then coming from the ceiling?

A. Yes, sir.

Q. It was dripping down into the floor?

A. Yes, sir.

Q. It wasn't just wet up there?

A. Well, there was a little place about like—(demonstrating)—wet there. There weren't no big place.

Q. But the water was coming down?

A. It was dripping like.

Q. And what part of the kitchen did it drip?

A. I would say between the icebox and—she had a little ole closet there between the kitchen and the dining room table, and it shaded the water just a little bit. You couldn't see the water without you looking for it.

Q. How do you know you couldn't see that water, Mr. Hairr? That wasn't suggested to you by Mr. Fine, was it, that the water couldn't be seen?

A. No, sir, it weren't suggested by him.

Q. Anybody else suggest to you that the water may have been in the shadow?

A. No.

\* \* \* \* \*

page 104 }

\* \* \* \* \*

Q. That is a blown up picture of the kitchen and you say you were there.

page 105 } A. The water was right along here. (Indicating)

Q. Was it on the linoleum?

*Mrs. W. B. Hairr.*

A. Yes, sir.

Q. Why don't you just punch a hole right where you say it was. You can get over here to this desk if you want, if it would be easier for you. You just decide for yourself and you put a hole right where it was.

A. There is the icebox.

Mr. Fine: Just put your pencil just as Mr. Ward asked you to do it, Mr. Hairr.

(Witness complied.)

By Mr. Ward:

Q. That that is the corner of the table right by the refrigerator?

A. Yes, she was going from the table to the refrigerator to get the ice.

Q. Well, let me ask you, and we will show the jury in just a minute, if the water was over there; isn't that the nozzle from the shower up here? (Indicating)

A. No, sir.

\* \* \* \* \*

page 108 } MRS. W. B. HAIRR,  
called as a witness on behalf of the plaintiff,  
having been first duly sworn, was examined and testified  
as follows:

#### DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mrs. W. B. Hairr?

A. I beg your pardon?

Q. You are Mrs. W. B. Hairr?

A. Yes, I am.

Q. And I believe your husband just preceded you on the stand?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. And were you or not visiting Mrs. Ruby Oden on September the 19th, 1960?

A. Yes, I was.



*Mrs. W. B. Hairr.*

Q. And will you tell us what happened to Mrs. Ruby Oden on that evening?

A. Well, the shower was leaking down on the kitchen floor.

Mr. Ward: Now, just a minute, ma'm. I think page 109 } that is a conclusion. I think that she should be qualified. She says the shower was leaking. Now, I want to know before we go too far whether that is an assumption on her part that it was coming from the ceiling or whether she saw it and went up and looked at the shower.

Mr. Fine: May it please the Court, that is matter for cross examination, I respectfully submit.

The Court: Let the witness testify as she saw it, then you may clarify it.

All right, proceed.

By Mr. Fine:

Q. Go right ahead.

The Court: Tell what happened.

A. Well, the water was leaking down on the floor and she walked across it and fell and broke her knee.

By Mr. Fine:

Q. Have you ever seen that shower before that time?

A. Yes.

Q. Have you been up there?

page 110 } A. Yes, sir.

Q. What was the condition of the shower before that that—

A. I didn't notice what the condition of the shower was.

Q. You did not?

A. No.

Mr. Fine: Answer this gentleman.

#### CROSS EXAMINATION.

By Mr. Ward:

Q. Mrs. Hairr, were the lights on in the kitchen at the time Mrs. Oden fell?

A. Yes, there was a light on but that was a little bit dark up there where the water was on the floor.

Q. Would you call it a "shadow?"

*Mrs. W. B. Hairr.*

A. (Pause) Yes, I think I would.

Q. How much was on the floor, Mrs. Hairr?

A. Well, I couldn't tell exactly. There was quite a bit of water on the floor because it leaked right much.

Q. More than this table that we are looking at here? (Indicating)

page 111 } A. (Pause) Well, I don't know exactly, but I believe it was bigger over the place, of water, than that table.

Mr. Ward: Mr. Clerk, how big is this table?

The Clerk: About  $2\frac{1}{2}$  feet by three.

Juror Number 2:  $2\frac{1}{2}$  by 2.

Mr. Fine: I think it is about  $2\frac{1}{2}$  by 2. I would be willing to take that.

By Mr. Ward:

Q. And you think that the water in which—

Mr. Ward: May the Clerk measure that for me, your Honor?

The Court: Yes.

The Clerk: 24 by 36.

Mr. Fine: Two by three.

By Mr. Ward:

Q. And you think that the water, the pool of water in which Mrs. Oden stepped in and slipped was somewhat larger than that?

A. Yes, I think so.

\* \* \* \* \*

page 113 }

\* \* \* \* \*

Q. Was it noticeably dripping; could you hear it when it hit the floor?

page 114 }

A. Oh, yes.

Q. So if you were there, if you were in the kitchen before this happened—

A. Well—

Q. —or at the time that it happened—

*B. D. O'Neal.*

A. I think I was in the kitchen maybe a couple of times before it started leaking.

Q. Were you well conscious of the fact that the water was dripping?

A. No, I didn't know it was dripping until I heard her scream, and I went in there and then I saw the water on the floor.

Q. And you could hear it dripping on the floor?

A. Yes.

Q. If you had been in the kitchen then you would have been able to hear it, wouldn't you?

A. Yes, if I had been in the kitchen. Well, I think it had just started dripping when she went in there and fell on the floor.

Q. But that much water had accumulated, hadn't it?

A. Yes.

Mr. Ward: Thank you.

A. (Continuing) Well, I was in the living room when it first started dripping.

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B. D. O'NEAL,  
called as a witness on behalf of the plaintiff, having been first  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mr. B. D. O'Neal?  
page 116 }

A. Yes, sir.

Q. And Mr. O'Neal, Mrs. Ruby is your aunt?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. And you were there on September the 19th taking a shower?

A. Yes, sir.

Q. What time did you come in to take the shower?

A. Well, I really couldn't say. It was late in the evening.

Q. And I ask you what the condition of the shower was and how did you use the shower and so forth.

*B. D. O'Neal.*

A. Yes, sir.

Q. Tell us about it.

A. Well, the shower—I didn't take too much attention to it. I know it had leaked. But I went upstairs that night to take a bath, and after I had finished taking my shower and I come on down, my aunt had fell and she said she had broken her leg.

Q. Now, when you used that shower did you use it in the ordinary way or any extraordinary way or not?

A. I used it as I always used it.

Mr. Ward: Your Honor, I don't know how to object to that because I don't know how you ordinarily use page 117 } a shower or I don't know what he is asking for. I don't think this witness can answer the question responsively.

Mr. Fine: He has.

Mr. Ward: How do you ordinarily use a shower?

The Court: Well, I think if you want to clarify that you can.

Mr. Fine: On cross-examination.

The Court: All right.

Mr. Ward: Very well.

The Court: What was your answer to that, whether it was used in the ordinary way?

The Witness: Well, usually I just went in as any person ordinarily takes a shower.

Mr. Fine: All right.

By Mr. Fine:

Q. Did you overflow the shower or do anything that would put water all over the floor, or did you use it in the ordinary way?

A. No, I used it in the ordinary way.

Q. All right. And I ask you, besides using the shower as you have indicated did you use the commode and have the commode overflow and damage anything, or not; page 118 } or was the commode working?

Mr. Ward: That is a leading question, your Honor.

Mr. Fine: Well, I am asking him—I think I am asking if he used the commode.

Mr. Ward: You tried to tell him. I object to it.

A. No, sir, I don't think I used it.

*Mildred Irene Bunn.*

By Mr. Fine:

Q. Was anything wrong with the commode that day to your knowledge?

A. Well, I couldn't remember about that day; but it had stopped up before. I don't know whether it was that day or not.

Q. Did you use it that day, that evening and anything overflow from the commode itself?

A. No, sir.

Q. Now, when you came downstairs did you immediately come down after you took the shower?

A. After I got dressed, yes, sir.

Q. All right. Now, I want you to describe the condition of the ceiling and the floor when you came downstairs.

A. Well, my aunt said they—they said my aunt  
page 119 } had slipped on the water, and I didn't notice it  
because I had other engagements that evening and  
I just stopped a little while. She said she had hurt her leg,  
and these other people were there and then I left.

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page 120 }

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

DIRECT EXAMINATION.

By Mr. Fine:

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\* \* \* \* \*

Q. And are you living there with your own immediate family?

A. Yes, sir.

Q. You live there with your husband?

A. Yes.

*Mildred Irene Bunn.*

Q. And your children?

A. Yes, sir.

Q. And where did you live on September the 19th, 1960?

A. Building 11, Apartment 267 Bataan Drive.

Q. And with reference the apartment that Mrs. Oden, Miss Ruby occupied, how close were you at her apartment?

A. Across the hall.

Q. Right across the hall. And I ask you if you remember any men of the South Norfolk Redevelopment and Housing Authority going into the apartment of Miss Ruby before September the 19th, 1960 who were repairing—

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. I ask you if you will tell when approximately with reference September the 19th they did come there.

A. I couldn't say approximately when it was because I don't remember.

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Mr. Fine: I would like to ask that the City Sergeant ask Mr. Baxter and the other—Mr. Windley, to step in here.

Mr. Ward: I don't think that is necessary, your Honor. Whenever repairs were made at that place, whether it be a commode or whatever it was, it was done by Baxter and Windley.

Mr. Fine: Well, we would like to ask it as part of our case.

The Court: All right, bring them in.

(The witnesses were displayed before the witness.)

By Mr. Fine:

Q. I will show you these two gentlemen here and ask you if you can identify these gentlemen.

A. Yes, sir, but not by name.

Q. Where did you see them go?

A. In Mrs. Oden's apartment.

Q. And how many times?

A. Twice to my knowledge, that I can recall.

*Mildred Irene Bunn.*

Q. And during what period of time was that. You said the summer. Could you give us any idea about the months?

A. No, sir.

page 124 } Q. You could not?

A. I would be afraid to say.

Q. Be afraid to say.

(Whereupon the two witnesses were excluded from the courtroom.)

Q. Did you notice the shower, the basin of the shower on September 19th or before that time?

A. Yes, sir.

Q. You did?

A. Yes.

Q. Well, now, when you were asked the question September 19th or before that time, did you see it on the night that Miss Ruby fell?

A. Yes, sir.

Q. Tell us about it, please; describe it.

A. Well, I don't know exactly what you would call it. Anyway, the stuff that comes down from the shower, the water was leaking from there on the floor, and there was water on the floor in front of the icebox.

Q. And do you know whether that condition about that shower existed before that day?

A. Yes, sir, because she used my phone twice that I know of to call the report in.

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page 127 }

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#### CROSS EXAMINATION.

By Mr. Ward:

page 128 } Q. Mrs. Bunn, on the night that Miss Oden slipped did you go into the shower, or did you go downstairs in the kitchen and look up at the ceiling? Which did you do?

A. I went in the kitchen.

Q. You didn't go in the shower?

A. No, sir.

*Mildred Irene Bunn.*

Q. You don't know whether it—it is your guess that the water came from the shower?

A. Yes, sir.

Q. Was there much water on the floor?

A. Well, not an awful lot, but there was rather a large puddle.

Q. Would you say it was as much as this table top here? (Indicating)

A. I'd be afraid to say for sure, because I don't exactly recall.

Q. Does that look about right, this table?

A. About.

Q. And where was it located, in front of the refrigerator?

A. It was located in front of the refrigerator and run into the corner of the kitchen table.

Q. It wasn't any problem for you to see it?

A. Well, I couldn't see it unless you were actually looking for it.

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page 129 }

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### REDIRECT EXAMINATION.

By Mr. Fine:

\* \* \* \* \*

page 131 } Mr. Fine: I object to you interrupting my examination.

Mr. Ward: I am going to have to the way you conduct your examination. Your Honor, this lady has previously testified that on other occasions and also on the night of this occurrence that she was catching the water. Now he is attempting to make her deviate from that. That is what I object to. She has already to it.

Mr. Fine: I am asking her if she remembers it to be reasonably certain that it occurred on that evening, if your Honor please. That is what I am trying to ascertain. That is all I want to ask.

The Court: All right, you may answer.



*Edward G. Payne.*

A. That has been quite a while ago. To tell the truth I don't exactly remember seeing that that night because things were rather upset, but—

Mr. Fine: Thank you very much. That is all.

Mr. Ward: I think you have accomplished your purpose.

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page 133 }

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EDWARD G. PAYNE,  
called as a witness on behalf of the plaintiff, having been  
first duly sworn, was examined and testified as  
page 134 } follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. Mr. Payne, would you tell Judge Bray and the gentlemen of the jury your full name and your age, your residence and your occupation?

A. Edward G. Payne.

Q. And will you speak up to me so the gentlemen of the jury will hear you?

A. Edward G. Payne, sixty years of age; plumber.

Q. And Mr. Payne, how long have you been a plumber?

A. A little better than forty years.

Q. And where is your place of business?

A. 215 West 30th Street at the present time.

Mr. Ward: What was that?

Mr. Fine: 215 West 30th Street in Norfolk.

By Mr. Fine:

Q. And during the past forty years where have you done your plumbing work?

A. In and around the Tidewater area.

Q. All right, sir. I ask you if it is not a fact  
page 135 } that you went and inspected the shower facilities  
at Apartment 265 at Number 11 Bataan Road at  
Admiral Roads Apartments?

*Edward G. Payne.*

A. Yes, sir.

Q. Did you look and see them yourself?

A. Yes, sir.

Mr. Ward: Just one minute, your Honor. I think it is pertinent to inquire when.

The Court: The question was has he ever inspected it—yes. That is the end of it. Now he can ask the next question.

Mr. Ward: All right, sir, but I—all right, sir.

By Mr. Fine:

Q. Now, I refer you to Plaintiff's Exhibit P-4 and ask you if this is not—

Mr. Ward: Now, just a minute, your Honor. That is precisely my point.

The Court: Don't answer the question, Mr. Payne, until I have had an opportunity to decide whether you ought to or not.

The Witness: All right, sir.

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By Mr. Fine:

Q. And you said you are a duly licensed plumber, and have been of the City of Norfolk in the Commonwealth of Virginia?

A. Yes, sir.

Q. Now, assuming with your experience and—experience and education, that a shower is leaking and has been reported leaking of the type of shower that you saw, would you tell, please, what kind of a construction that shower is first?

A. It is a metal sidewall construction.

Q. And where it does leak, tell us the proper manner that it should be handled to stop the leak.

A. Well, in the first place, the proper manner to stop the leak would be to put in a new panel.

Q. And why would you put in a new panel?

A. To eliminate the corrosion and rust that has existed on the present shower.

*Edward G. Payne.*

\* \* \* \* \*

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Mr. Fine: And at which time the record shows they put permatrix around the shower. Now, if your Honor please, I want to prove by this witness, number one, that permatrix is not the proper way to have it corrected, and page 142 } secondly, if your Honor please, we will show by other evidence, and I will hold him back to ascertain anything we want to contradict, that this is not proper.

The Court: Assuming that it were not and assuming that this witness would testify that the way it was repaired in February was not the right way to repair it, you would understand that I could not let the jury consider that because you have stated what you were relying on, and if they did consider it, then I would not be certain they predicated a verdict upon the repair which you ruled out by your pleading or whether or not the one that you may subsequently prove, so you have hurt yourself if I allow it to come in.

Mr. Fine: Very well, sir.

The Court: Would you like for him to step down and get to him later?

Mr. Fine: Let me ask him this question for the purpose of the record only, Judge, while he is on the stand.

The Court: All right.

By Mr. Fine:

page 143 } Q. In connection with the stopping of a leak in the kitchen so far as the shower is concerned would just putting permatrix around the shower be the proper workmanship to stop the leak?

A. In the first place, to stop a leak of that nature, if you went there to do that, you have got to get the corrosion, the rust off, down to the metal to put anything on it, and then you have got to get a coat of paint or something on there to create adhesion for whatever you may put on there.

Q. All right, sir. Now, one other thing, sir.

Mr. Fine: Now, this is in conformity with the ruling of the Court in the absence of the jury, but I want it for the purpose of the record, and, if your Honor please, I do respectfully submit there are some modern authorities to the effect that

*Edward G. Payne.*

where repairs are made after an accident—I said “modern,” not the weight of authority—I want to be perfectly frank with the Court, that that is perfectly competent evidence. I don’t know whether the Court of Appeals would go along with it—

By Mr. Fine:

Q. You went there and observed the shower Saturday?

A. Yes, sir.

page 144 } Q. And I ask you what repairs were made to this specific shower that you saw was made that would make it correct at this time, and if the evidence shows, which we will show, that it was repaired since April the first but it was repaired within the last thirty days, how was it repaired?

A. It was repaired by replacing a piece of metal on three sides, as near as I recall, of the shower, using a roofing cement, in my opinion, from the way it acted and felt like. I am not an authority on cements, I can’t answer to the true facts, but judging from my experience in dealing with it, they used roofing cement around the edges to seal it.

Q. And what was replaced?

A. They put a piece of tin and used metal screws to fasten pieces of tin over the corroded part of the metal stall down to the base.

Q. Is that, in your opinion, the proper way to do it?

A. That is one way of patching up a bad situation, you might say.

Q. What is the reasonable workmanlike manner to correct that?

A. The only reasonable correct way to correct it, according to the picture I saw, would be to put up new panels and go clear down into the drain. Now, what is there possibly will hold but that roofing cement is not a permanent  
page 145 } situation. It is flexible and pliable, and a certain amount of it is going to come off.

The Court: Anything else you want to ask?

Mr. Fine: That is all, Judge. I don’t guess he does, unless you rule in his favor.

The Court: No, we might clear up anything now that will arise later, because I foresee that we might hear some more about this very point a little later.

Mr. Ward: I will reserve any questions.

*Ruby H. Oden.*

By The Court:

Q. Let me ask you this, Mr. Payne. What sort of base is this to that shower?

A. Sir?

Q. What sort of base is it to the shower?

A. It is cement terazzo. It is a terazzo base. All terazzo base and surface.

Q. Cement?

A. Yes, sir.

Q. And around the edge of the shower?

A. They are poured, your Honor, with a metal groove all the way around it, and your sidewall partition, sidewalls, or we call it sidewalls—somewhere else they might  
page 146 } call it partition walls—but the shower walls don't do anything in the world but sit down into this metal. They are not sealed, but they are kind'a slipped down that metal so that when you push them down tight they lock, and that is all that holds it. Then when deterioration or corrosion sets up it starts eating around there until it isn't long before something else is going to go through there.

\* \* \* \* \*

page 147 } RUBY H. ODEN,  
the plaintiff, called as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Miss Ruby H. Oden?

A. Yes, sir.

Q. And I believe that you are 57 years old and your birthday is today?

A. Right.

Q. And I believe you have been single all your life?

A. That's right.

Q. And your occupation is that of cook?

A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. And were you or not employed on the 19th day of Sep-

*Ruby H. Oden.*

tember, 1960 and were you not employed for sometime before that as a cook?

A. Yes, sir.

\* \* \* \* \*

page 149 } Q. Which is the subject matter of this litigation?

A. Yes, sir.

Q. And how long had you been living there?

A. I have lived there ever since she moved in; I think close to three years.

Q. All right. Now, referring specifically to the shower, state whether or not the shower had leaked before September, 1960.

A. Yes, sir, it had leaked before the 19th of September.

Q. All right. And is it or not a fact that report had been made from time to time about that?

A. Yes, sir, indeed.

Q. And state whether or not repairs had been made to correct it.

A. Yes, sir, there had been.

Q. All right. Now, I specifically want to refer you to the occasion of September the 19th, and within thirty days of that time—

Mr. Ward: Now, your Honor, that is leading.

Mr. Fine: I don't know how I can ask it another way.

Mr. Ward: He is suggesting to her a period of time that he wants her to respond to.

page 150 } The Court: He should state it over again and ask when after that date, if any, there was any leak or complaint, and it will have the same result.

Mr. Ward: I think it will.

The Court: It will just come about; but you may ask her to come in a different way.

Mr. Fine: Yes, sir.

By Mr. Fine:

Q. Before September the 19th, 1960, did you or not make some report?

A. Yes, I did.

Q. And who did you call and who did you tell. Tell us how you did it and about when it was, please?

A. It was around the sixth of September. I was home

*Ruby H. Oden.*

sick three days with pleurisy, and I found out it was leaking again, and I called—

Q. When you say it was leaking again, what was leaking again?

A. The shower was leaking.

Q. Now, I know what you mean but—

A. I went into the lady's apartment across the hall and called, and—

\* \* \* \* \*

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\* \* \* \* \*

Q. Now, when you were there, Miss Oden, when you were sick, state whether or not someone came there when you were there.

A. Yes, sir, they did.

Q. How many—you say "they." How many—who was it?

A. Two men.

Q. Did you see them here today?

A. Yes, sir.

Q. Would you state their names, please?

A. It was a white man and Baxter, whatever his name is.

Q. A white man and a colored man?

A. Yes.

Q. Were they the two gentlemen that were identified?

A. Yes, sir.

Q. And were you home sick when they came there?

A. Yes, sir.

Q. Did you see them do the work or did they make some statement?

A. I was home when they did the work in there.

Q. All right, what, if anything, did they say or do?

A. When they came down the white man said "You won't have any more trouble, I've got the leak stopped now."

Q. When did he say he got the leaked stopped?

A. That was the 6th of September.

Q. 6th of September?

A. It was after Labor Day. That's how I remember.

Q. After Labor Day of 1960?

A. That's right.

Q. Did you rely on that?

*Ruby H. Oden.*

A. Sure, I thought it was fixed.

Q. All right. Now, getting back to September the 19th, 1960, did anything unusual happen to you that day?

A. It certainly did.

Q. All right. Now, you tell his Honor and the gentlemen of the jury exactly what happened and so forth, please.

A. Well, I had prepared supper. I had it all ready but fixing my tea, and my nephew came home and I decided I'd wait until he took his shower and get my ice out and fix my tea.

Q. Talk to the gentlemen of the jury.

page 156 } A. And he went up and took a shower, and when—while he was taking the shower—I was in the living room; I had some guests and—

Q. Will you state the names of the guests, please?

A. Mr. and Mrs. O'Neal, my nephew and his wife, and Mr. and Mrs. Hairr—and that is all that was in my living room. Mildred was across the hall right then.

Q. And what were you all doing in the living room?

A. Well, we were watching television and talking just sitting, chatting, waiting for—

Q. And where was your nephew?

A. He was upstairs in the shower.

Q. Now, tell us what happened, please?

A. Well, I heard this shower cut off, the water, and so I went on in and started in the kitchen to get the ice out of the icebox, and before I reached the icebox I slipped on my knee and broke it; I fell flat on my face and broke my knee.

Q. Did you notice any water?

A. Yes, I noticed the water.

Q. Where was the water?

A. It was right by the corner of the table, between there and the icebox.

Q. Do you know where it came from?

A. Yes, sir.

page 157 } Q. Where?

A. It came from the shower.

Q. Now, I want to ask you this. After you were hurt and slipped down did you go upstairs?

A. Yes, sir, I had to go upstairs.

Q. I want to ask you whether there was anything wrong with the commode.

A. Not a thing.

Q. There was not?

A. No, sir.

Q. Where did the water come from?



*Ruby H. Oden.*

A. The water came from the shower.

Q. Did you see it yourself?

A. Yes, sir. The commode had never run over since I have been living there.

Q. All right.

A. Not to my knowledge.

Q. Let me ask you this, please, ma'm. After you were hurt and you had gone up to the bathroom—that is the only place you have a toilet in the apartment, is that right?

A. Yes, sir.

Q. You then went to the hospital. You then had Dr. Creef and then he referred you to Dr. Hollins?

A. Yes, sir.

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CROSS EXAMINATION.

By Mr. Ward:

page 164 } Mr. Fine: \$10.00 for the X-ray that shows,  
Mr. Ward, and \$6.50 for the emergency room—  
\$16.50.

Mr. Ward: Yes.

By Mr. Ward:

Q. \$10.00 to Dr. Hollins; that's right; and \$6.50 to the hospital?

A. Yes, sir.

Q. I believe Dr. Hollins had his bill for \$65.00?

A. Yes, sir.

Q. How large was the puddle of water?

A. Well, I didn't see the water till I was in it and down.

Q. Could you hear the water dripping?

A. I didn't hear it, no.

Q. It was dripping on the floor, wasn't it?

A. Yes, it was dripping on the floor but I am hard of hearing anyway. I didn't hear it.

Q. And it was there between the table and the refrigerator?

A. That's right.

Q. Now, you heard several times this morning that the pool of water was that big, as big as that table or a little bigger; does that sound about right to you?

*Ruby H. Oden.*

A. Well, between—I don't know but when I  
 page 165 } went to the floor I was hurt so bad I couldn't see  
 how big the puddle of water was. I didn't see the  
 water.

Q. Now, what makes you recall the sixth of September of 1960 as being the day that some workmen came there?

A. Well, I was off on Labor Day. I took a shower and it leaked. I went down in the kitchen and water was on the floor, and I had pleurisy and didn't go to work the next day. I called the man and told him I had pleurisy. I mean I called the office, and they said they would send somebody over there. That's how I know the day it happened.

Q. Well, did they come that day?

A. Yes, sir.

Q. You did not follow them upstairs and watch them do any work, did you?

A. Yes, I stood up there in the hall and watched them working on the shower.

Q. You watched?

A. I'll tell you what they did. They put a little black streaks or something on each corner and around the sides.

Q. Did they test the shower?

A. They put putty or something, I don't know what it was.

Q. Did they test the shower?

A. No, I didn't see them test the shower because—

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Q. But pneumonia kept you from work, didn't it? How long were you out with pneumonia?

A. I was out about seventeen days.

Q. And I suppose you were weak after that, weren't you?

A. Well, I was—weak, sure, when you have pneumonia; but I was all right to go to work as far as that goes. My leg was what kept me out of work.

Mr. Ward: All right, Miss Oden, I don't think I have any other questions.

Mr. Fine: One other question I will ask you.

*Edwin Baxton.*

REDIRECT EXAMINATION.

By Mr. Fine:

Q. Did you have any pan catching the water on September the 19th when your nephew was upstairs taking a shower?

A. No, I didn't.

Q. Tell us what happened.

A. Somebody could have put a pan there after I slipped but there wasn't any pan there before.

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

DIRECT EXAMINATION.

page 194 } By Mr. Ward:

Q. State your name, please?

A. Edwin Baxter.

Q. Where do you live?

A. 1106 Middlesex Street.

Q. Do you work for South Norfolk Redevelopment and Housing Authority?

A. Yes, sir.

Q. Are you a maintenance man?

A. Yes, sir.

Q. Have you ever done any repairs at 265, Building 11 Bataan Drive without having a work order to do it?

A. No, sir.

Q. That is the residence that was occupied by the O'Neals; have you ever done any repairs there without a work order?

A. No, sir.

Q. Will you look at this work order—and that is Exhibit D-1—would you look at that and tell us if you did that work at 265, Building 11 Bataan Drive?

(Exhibit handed to the witness for examination.)

*Edwin Baxton.*

A. Yes, sir.

Q. All right, what work did you do?

A. We had an order on the shower leaking, so  
page 195 } we goes up there but the lady was out and I goes  
over and gets Mr. Windley.

Q. Now, you just talk to me.

A. The lady was out the day I went over there, and I goes  
and gets Mr. Windley.

Q. Mr. Windley?

A. That's right. He was working over on another street.  
He and I goes in the apartment. I left him downstairs and  
I went upstairs and turned the shower on. We couldn't find  
the leak. I threw it on all four corners. I let it run for, I'd  
say approximately twenty, twenty-five minutes, and we  
couldn't find no leak.

I later then cut the shower off, goes back over the shop and  
tries my shower out to be for sure. I permatexed the shower  
all around.

Q. You put permatex on it?

A. Yes, sir.

Q. And that is the way you stop leaks, is it, with permatex?

A. Yes, sir.

Mr. Fine: I object to you leading him, Mr. Ward.

By Mr. Ward:

Q. From that time, February of 1960, until  
page 196 } November of 1960, did you do any work on the  
shower in those premises?

A. No, sir.

Q. Were you called there to do work on other plumbing  
appliances?

A. Yes, sir.

Q. What were they?

A. There was a commode stopped up. It wasn't flushing  
properly.

Q. Did you ever do any work there without having a work  
order and having an order from the office directing you to go  
there?

A. No, sir, we are not allowed to do that.

Mr. Ward: Answer Mr. Fine.

*Edwin Baxton.*

CROSS EXAMINATION.

By Mr. Fine:

Q. What is the lady's name that gives you these work orders?

A. Well, at times we have different ones. Some come from Mrs. Forbes and some come from Mrs. Kincaid.

Q. I can't hear you—some come from where?

A. It depends on who is at the work order window. As far as I am concerned when an order come from there they are put in our box and they come from them.

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Q. "New showerhead?"

A. Right.

Q. "Guide holder and rod?"

A. Yes, sir.

Q. Tank ball." Did you do that alone?

A. Yes, sir, I did the work alone.

Q. You did that work alone?

A. I did the work alone.

Q. How much time did you spend on that?

A. Well, going back to the shop, I couldn't exactly say.

Q. An hour?

A. Oh, it took me more than an hour.

Q. Two hours?

A. I—about an hour and a half or—

Mr. Ward: Let him answer you. I don't know how he can answer you if you keep talking.

By Mr. Fine:

Q. An hour or an hour and a half?

A. I would say more than that; about an hour and a half.

Q. How much time. That is what I am trying to get. You tell us how long it was.

*Edwin Baxton.*

A. Well, for that amount of work it should  
page 201 } have been around an hour or an hour and a half.

Q. All right. And what kind of test did you  
make of it?

A. Test of the shower itself?

Q. Yes.

A. I turned the hot and cold water on and let Mr. Windley  
stay downstairs and—

Q. Who stayed downstairs?

A. Windley.

Q. He stayed downstairs and you were upstairs?

A. Yes.

Q. And you put it on?

A. Yes, sir.

Q. And you did that for an hour?

A. No, sir.

Q. An hour and a half?

A. No, sir.

Q. Five minutes?

A. No, sir.

Q. How long did you do it?

A. Approximately twenty-five or thirty minutes.

Q. Twenty-five or thirty minutes. That is all you stayed  
there?

A. For the checking on that shower.

Q. To check that shower. And all you did was  
page 202 } put permatex around it?

A. After I tried it out.

Q. What was wrong with the panels?

A. The what?

Q. The panels—the tin around it, besides that?

A. Well, there was one little small place that wouldn't  
leak at all, but to be sure I permatexed all around the shower.

Q. You put it all around it?

A. Yes, sir.

Q. Did you do anything beside that?

A. I worked on the commode but at that time—

Q. But did you do anything to the shower except the per-  
matex?

A. That is all.

Q. And are you a plumber?

A. No, sir, not a licensed plumber, no, sir.

Q. You are not a plumber's helper?

A. No, sir.

*Edwin Baxton.*

Q. You are not. And when did you come to work for the South Norfolk Redevelopment and Housing Authority?

A. Oh, I've been over there almost five and a half years, something like that.

Q. At that time when you did this work in February 1960, had you had any experience working on this type  
page 203 { of work for the South Norfolk Redevelopment?

A. No, sir.

Q. The first job of showers?

A. Yes, sir.

Q. And how long had you been working for the South Norfolk Redevelopment at that time?

A. Oh, I'd say over three years.

Q. Over three years?

A. Sure.

Q. And these showers are old World War II babies, aren't they? They are old ones?

A. That's right, they are old.

Q. Had you had any instructions from anyone in connection with stopping leaks on showers?

A. Yes, sir.

Q. Who did you have instructions from?

A. Mr. Parker.

Q. Who?

A. Mr. Parker.

Q. Who is Mr. Parker?

A. My foreman.

Q. And is he a plumber?

A. Well, I don't know, sir.

Q. He was the manager, wasn't he?

A. He was there when I went there, so I  
page 204 { couldn't say—

page 205 {

Mr. Fine: The one dated February the 5th, 1960.

A. That is my name on there.

By Mr. Fine:

Q. And then you completed that on March the 11th, is that right?

*Edwin Baxton.*

A. There was two of us there on there.

Q. Well, I say you didn't do the work on that—

A. No.

Q. And the complaint on that was "Shower leaks in kitchen," and "Commode runs all the time," and you marked on there "Completed, March 11th," and signed your name "Baxter." Didn't you?

A. No, sir.

Q. Is that your signature?

A. I didn't write that, Mr. Houck wrote that.

Q. Mr. Houck?

A. Yes, sir.

Q. Where is Mr. Houck now?

A. He is not with us any more.

Q. He is not with you any more. But you put your name down there?

A. That's right.

page 206 } Q. Did you actually see him put that in there?

A. Anytime we go the other goes. Anytime one can handle a job himself one name goes on there. If it takes two to do it the two names goes on it. But you definitely got to have two in the house.

Q. But you did not do this then?

A. No, sir.

Q. And you did not tell the man to put your name down there, did you?

A. I didn't tell him to put it on there.

Q. What's that?

A. I didn't tell him to put it on there.

Q. And you did not do it?

A. No, I didn't do that.

Q. Do you know what work he did do then, or don't you?

A. Well, I was standing in the doorway.

Q. What kind of work did he do?

A. I wasn't paying attention to what he was doing, but I heard him say "Well, I've got this one back."

Q. "I've got this one back?" And you were standing there?

A. I was standing there.

Q. What did you do to the shower?

A. There was a hole, and I had my back to him.  
page 207 } Q. Well, you didn't have your whole back to him while he was working there on the shower all the time, did you?



*Edwin Baxton.*

A. Not directly to him, but I wasn't paying attention to what he was doing.

Q. Well, you know he was supposed to fix the shower?

A. That's true.

Q. Was he a plumber?

A. Well, he was just working as I.

Q. The same kind of work you were doing, the same kind of pay?

A. Yes, sir.

Q. And he was a maintenance man or handyman around there, isn't that right?

A. The same exactly.

Q. So you can't say that he fixed it at all then. Of course your back was to him?

A. Well, he doesn't ever walk off a job without he checking his work.

Q. Well, I don't care as a whole. I am talking about on this particular job. What, if anything, did he do to that shower?

A. To my knowing he did check it.

Q. He did check it?

A. He did check it.

Q. What did he do to check it?

page 208 } A. He turned his water back on as we generally do.

Q. Turned the water back on?

A. That's right. I was the one who did that and he was downstairs.

Q. Did you ever have any doubt this tenant was misrepresenting to the Authority that it was leaking; did you think that they were just trying to bluff them?

Mr. Ward: I don't think he is called upon to answer that.

Mr. Fine: Well, I want to—

The Court: Sustained.

Mr. Ward: Your Honor, that is purely argumentative.

By Mr. Fine:

Q. Now, weren't you there in September?

A. September? Yes.

Q. Yes. You were there in September?

A. Yes.

Q. You see this lady there?

A. I recognized that lady in the doorway.

*Albert B. Windley.*

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

DIRECT EXAMINATION.

By Mr. Ward:

\* \* \* \*

page 220 } Q. Where do you live, Mr. Windley?  
A. 1236 Perry.

Q. Where do you work?

A. Admiral Roads.

Q. Were you working there during the year 1960?

A. Yes, sir.

Q. Tell me, are you a maintenance man?

A. Yes, sir.

Q. You do the repairs as they are complained of, is that correct?

A. Yes, sir, it's by order.

Q. Do you make any repairs at any apartment without first getting a work order from the office?

A. No, sir.

Q. Did you ever do any work at 265, Building 11 Bataan where the O'Neils and Miss Oden lived?

A. Nothing more than inspecting the shower box.

Q. With Baxter?

A. With Baxter, yes, sir.

Q. Did you ever do any work on the shower?

A. No, sir.

Q. Did you ever go there to do any work that you did not have a work order?

A. No, sir.

Mr. Ward: Answer Mr. Fine.

The Witness: Okay.

*Albert B. Windley.*

page 221 } CROSS EXAMINATION.

By Mr. Fine:

Q. Mr. Windley, are you a plumber?

A. No, sir.

Q. You do not represent yourself to be a plumber?

A. No, sir.

Q. Why did you go there and inspect the shower, the pipes, the leaks?

A. Well, I—they called me in there and I can see water leaking if it was leaking.

Q. You can see it leaking if it was leaking?

A. Yes, sir.

Q. You don't hold yourself out as a man that can repair plumbing?

A. Yes, I can repair a pipe, but I don't classify myself as a plumber; no, sir.

Q. And you couldn't in connection with the workings of a shower itself, could you?

A. Yes, sir, I can do that.

Q. You can do that?

A. Yes, sir.

Q. And in this particular kind of shower do you know how this is made up?

A. Yes, sir.

page 222 } Q. What kind of showers are they?

A. Well, it's a shower with three sides to it, and it's got a cement foundation with an outlet in it where the water—disposes of the water; and it's supposed to have a shower curtain to them. You've got your hot and cold water with an overhead spray.

Q. And as a matter of fact you spoke about the cement base?

A. Yes, sir.

Q. And that is set in tin, isn't it?

A. No, sir.

Q. What is it set in?

A. It sets right on the floor.

Q. Well, I know it's on the floor but is it surrounded by tin?

A. It's got a tin bottom, around the bottom of it, yes, sir.

Q. All right, sir. And that tin bottom around it is one of the things that over a course of a period of time becomes rusty?

*Albert B. Windley.*

A. Yes, sir, it does rust.

Q. And if that rust, if that is rusty, the way to take care of a leak would be to replace it, is that correct?

A. Yes, sir.

\* \* \* \* \*

page 224 } Q. I asked you if it wasn't necessary to replace it after it became rusty.

A. Sometimes it is and sometimes no.

Q. If it becomes rusty why wouldn't you replace it?

A. Well, if it is rusty at places sometimes you don't have to take the whole thing out to repair it.

Q. Don't have to take the whole thing?

A. You don't have to take the metal out where it is rusty. We repair it, in other words.

Q. What do you use?

A. Generally I use permatex. If it's bad we take it out or renew it, put new walls in the sides of it.

Q. Exactly. In other words, then, the three methods of repairing would be as follows: If it isn't rusty, sufficiently rusty then you go ahead and use permatex?

A. That's right.

Q. If it is rusty you replace that?

A. If you can't fix it with permatex.

Q. Yes, sir, if you can't fix it with permatex. And thirdly you replace that then and you put new walls on the sides?

A. That's right.

Q. That's three ways of doing it?

A. Three ways of doing it.

page 225 } Q. All right. Now, if it leaks after you put permatex in it, then you have to do one of the other things, is that right?

A. If it leaks, yes, sir.

Q. That is correct. I want to ask you whether or not to your knowledge has anything ever been done to this particular shower other than permatex?

A. It has not, not yet.

Q. I know at the present time. Now I am talking about before September the 19th.

A. Not that I know of.

Q. Not that you know of. So if it had been continually leaking—and I am not blaming you, I'm just talking about the facts—if it had been continually leaking, then the thing to

*Thomas Earl Nettles.*

have done was to have either replaced the panels or take and cut the rusty part out, is that right?

Mr. Ward: That is presuming something.

Mr. Fine: He said yes to that. That is what he said.

Mr. Ward: That is what I object to.

Mr. Fine: I said if it had been continually leaking from the time they put the permatex in, then he had to put either pans there or replace the bottom part that is rusty. And he said yes.

\* \* \* \* \*

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\* \* \* \* \*

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

DIRECT EXAMINATION.

By Mr. Ward:

\* \* \* \* \*

page 228 } Q. Where do you live, Mr. Nettles?

A. 6815 Jackson Street, South Norfolk.

Q. And what business are you engaged in?

A. Plumbing and heating business.

Q. And where is your business located?

A. 607 A Street, South Norfolk.

Q. How long have you been engaged in that business in South Norfolk?

A. Approximately ten years.

Q. Mr. Nettles, have you at my request gone to the Admiral Roads Apartments, Building 11, in Unit 265 and examined the type of shower there?

A. Yes, sir.

Q. Now, bearing in mind the type of construction, the type of project that we are dealing with—

Mr. Fine: I object to that, if your Honor please. I don't think that is a fair question. These people pay rent for that, and the type of project and type building, I respectfully submit, the principle of law does not make any difference in this connection.

*Thomas Earl Nettles.*

Now, I object to that line of questioning, sir.

The Court: All right, sir, try to state your page 229 } question, Mr. Ward—just try to state your question.

By Mr. Ward:

Q. Bearing in mind the project that we are dealing with and the type of construction there, is permatex an acceptable method for stopping leaks?

A. Yes, sir.

Q. Is that what—what is the substance anyway, will you describe it for the gentlemen of the jury; what is permatex?

A. It is a black substance that comes in a tube which varies, of course, from one pound and upwards depending on how you purchase the material. Its purpose, of course, is to form a gasket and is used on steam lines and water piping jobs. As far as its adaptability to stopping a leak it certainly is, in my opinion, two to one better than regular caulking compound. If I may go on?

Q. Yes, sir, go ahead.

A. I would say that you would not use permatex to calk a showerstall, perhaps, in a \$25 or \$30,000 home because it is black and it looks would, in my opinion, prohibit that.

Q. Would that be the reason why you could not use it, because of the appearance of it?

A. That is right, sir.

page 230 } Q. From the standpoint of stopping leaks, would it stop leaks as well as anything you could—

A. In my opinion it would stop leaks as regular caulking compound.

Mr. Ward: All right, answer Mr. Fine.

## CROSS EXAMINATION.

By Mr. Fine:

Q. Mr. Nettles, you are familiar with this particular kind of shower, aren't you?

A. Pardon?

Q. You are familiar with this kind of shower?

A. Yes, sir.

Q. And when did you see it?

A. Approximately two or three days ago, sir.

Q. Friday or Saturday?

*William K. Parker.*

A. (Pause) I believe it was Friday.

Q. So you never did see this particular shower as to its deficiencies?

A. That is correct.

Q. Because it had already been done at that time?

A. That is correct.

page 231 } Q. Right. Now, permatex wouldn't do a job if the bottom part of it had rusted, is that correct?

A. If—yes, sir.

Q. Sir?

A. That is correct.

Q. You mean it wouldn't do a job if the bottom part was rusty?

A. That is correct.

Q. And the way to correct it then would be to put in the part that is rusty?

A. That is correct.

Q. And if the panels were rusty or corroded you would have to take them out?

O. Well, I would like to qualify my answer to that. It depends, of course, on the degree of rust.

Q. That's right. In other words, if I understand correctly the situation you would use permatex as a sort of patchup proposition where there isn't any serious difficulty in connection with the construction part of it, is that right?

A. I would say so, yes, sir.

\* \* \* \* \*

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\* \* \* \* \*

**WILLIAM K. PARKER,**

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

**DIRECT EXAMINATION.**

By Mr. Ward:

Q. And where are you employed?

page 239 } A. South Norfolk Redevelopment.

Q. What is your position there?

A. Maintenance foreman.

Q. Are Baxter and Windley under you?

*William K. Parker.*

A. That's right.

Q. What are their instructions about making any repairs to any apartment without obtaining a work order?

Mr. Fine: We object, if your Honor please, as not binding on us. There maybe some secret agreement or some arrangement they have, but certainly it would not affect us we respectfully submit.

The Court: These two men have been shown to work under this man's supervision. He can state what his instructions to those people are. If they are his instructions he may so state it.

Mr. Fine: We respectfully except, your Honor.

By Mr. Ward:

Q. What are your instructions to your men regarding making repairs with or without first obtaining a work order?

A. Well, I have issued an order which they had that no repair work was to be done unless they do have page 240 } a work order.

Q. Are these—and I refer to Exhibits D-1, 2, 3, 4, 5 and 6, are they the work orders?

(Shown to the witness for examination.)

A. Yes.

Q. Is that what you mean when you say "work order?"

A. Yes, sir.

Q. Are they allowed to make any repairs without having a work order?

A. No, sir.

Q. And when they make repairs where do the work orders go?

A. They come back to me.

Q. And then you take them to the office?

A. That's right. And they are put in the tenant's folder or jacket, or whatever you call it.

Mr. Ward: Answer Mr. Fine.

#### CROSS EXAMINATION.

By Mr. Fine:

Q. Who holds the tenant's folder?



*William K. Parker.*

A. It's kept in the office.  
page 241 }

\* \* \* \* \*

Q. All right, that being the case, I hand you this memorandum and ask you if you had them to come around there twice about the shower. I hand you one dated February the 5th, 1960, and I hand you one dated February the 9th, 1960, and ask you if you inspected those.  
page 242 }

(Documents shown to the witness.)

A. Well, it's hard to tell. This is the second month, 1960. If they only went there one time I probably wouldn't have checked it, but if they go as much as twice and if a man has been there more than one time and the tenant puts a repeat order on it, then I go so I will know it.

Q. Well, can you state, having shown you these memoranda of February 5th and February the 9th whether you inspected the shower?

A. Yes, I have been to that shower but I don't know if it was February the 5th or the 9th or when it was; but I have went there.

Q. You say you were there in September, 1960?

A. September? Did I go there in September?

Q. Yes, sir?

A. (Pause) I don't know exactly whether I went there in September or not.

Q. You knew they were having some trouble with the shower; that is the reason you went there, isn't it?

A. No, sir, I didn't know they were having trouble with the shower.

Q. Why did you go there?

A. To make my rounds where the men is working to see that they are doing the job right.  
page 243 }

Q. Well, I mean I'm not being critical, Mr. Parker, I'm just trying to ask you for the information; don't misunderstand. You said you went there?

A. Yes.

Q. All right, sir. Now I am asking you if you can tell us, reasonably, what month you went there. That is all I am asking you. I'm not trying to argue with you, sir.

A. Well, I think I went there February the 9th while they were working.

*William K. Parker.*

Q. You think you did?

A. I think I did.

Q. And did you see them put any permatex on it?

A. Yes, sir, some was put on it.

Q. Did you see them put it on?

A. I wasn't right there but I seen it was put on there.

Q. I see. And did you go by there and see it any more after February?

A. Yes, sir, I think I went back there.

Q. When did you go back, what month was that?

A. After they put the permatex on there. I think it was about probably a week or two.

Q. In the month of February?

A. (Pause) I think it was.

\* \* \* \*

page 245 }

\* \* \* \*

Q. But if it is rusty or corroded this permatex wouldn't do the job because it would be too large a place  
page 246 } to fill, wouldn't it?

A. That's what I'm trying to tell you, if there is rust, the rust is on the back of it, not the inside of the shower.

Q. That's what I say, in the back of it in connection where it's set in; isn't that where the rust—the water comes down there; don't you put the permatex to keep water from going down there?

A. Well, we just use permatex more or less to keep it from splattering behind and dripping down.

Q. That is exactly it, for little leaks, but if it is a large leak it has to be taken out?

A. That's right.

Q. That is what I am talking about.

A. That's right.

Q. Now, did you inspect this in April to see whether such a leak had to be taken out?

A. Yes, sir.

Q. You did in April too?

A. In April?

Q. Yes. Now, I'm not trying to misquote you.

A. Not in April.

*E. G. Payne.*

Q. Did you go there in March?

A. I went there when the men was doing the work on the shower.

\* \* \* \* \*

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\* \* \* \* \*

E. G. PAYNE,  
recalled as a witness on behalf of the plaintiff, having been  
previously sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

\* \* \* \* \*

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\* \* \* \* \*

Q. All right, sir. Now, you have seen this type of shower;  
you have been out there, have you not?

A. Yes, sir.

Q. You were out there last Saturday?

A. Yes, sir.

Q. And if there is a leak which involves rust or corrosion, I  
ask you whether or not it would be workmanlike to put per-  
matex around it.

Mr. Ward: I object to that, your Honor. He has said that  
he is unfamiliar with permatex and never used it. He does  
not know whether it is good, bad or indifferent.

Mr. Fine: He can state whether or not he would use it, if  
your Honor please, and whether or not it is customary to use  
it in connection with a leak.

The Court: He said he never used it.

By Mr. Fine:

Q. Have you ever known it to be used in connection with a  
shower and a leak?

*E. G. Payne.*

page 251 } Mr. Ward: I object to that.

Mr. Fine: Well, I want to ask him what is customary in the trade.

Mr. Ward: It is irrelevant. He is totally unfamiliar with permatex.

The Court: He said he is not.

By Mr. Fine:

Q. What is usually done as custom in the trade in connection with stopping leaks of this kind. Tell us.

A. There are several different types of corrections today. Myself, I use and I instruct my men to use what we classify as a plastic seal. I have used seal—

Q. All right, sir.

A. —and I have used red lead and putty, and that is about the only thing I ever had any dealings so far in trying to repair leaks.

Q. Now, is that customary or not in connection with the ordinary use to prevent leaks in showers of this kind?

A. I can't answer that question successfully except either one of them, if rust was properly removed from it, would eliminate a leak.

Q. And if the rust is not properly eliminated what follows?

A. Well, the question would be that your  
page 252 } material would have adhered to the rust and  
through vibration or settlement your rust would  
rise and you would still have a gap or an opening.

Q. All right, sir. Now, assuming that it not being just an ordinary small leak, what would be the next procedure in the ordinary custom and use?

Mr. Ward: I object to this. There is no evidence—

The Court: Sustained.

By Mr. Fine:

Q. I hand you this picture, which is D-4. What would be the ordinary customary manner in which a leak of that kind would be stopped by an ordinary plumber?

Mr. Ward: Now, I object to that.

By Mr. Fine:

Q. —rather than a maintenance man?

Mr. Ward: I object to that, your Honor.

*E. G. Payne.*

The Court: Sustained.

Mr. Fine: I except, your Honor, to—

The Court: I understand.

Mr. Fine: —your adverse ruling of it.

The Court: Yes, sir.

page 253 } By Mr. Fine:

Q. You say that you never have heard of permatex?

A. I didn't say that, Mr. Fine. I said I never have used it.

Q. Used it. I see. Well, now, not having used it, would you say that one who does use it—do you know anything about its use or nonuse other than the fact that you have not used it?

A. I couldn't verify that statement, Mr. Fine, because I have never had any experience with it, so I don't know.

Q. Is it generally known in the trade of any kind? I am speaking about it's reputation.

A. Well, it is highly advertised, but who uses it and how often it is used, I couldn't answer your question; but I never had any experience with it.

Q. All right. And how long has it been on the market, do you know?

A. No, sir, I have no idea.

Q. Now, irrespective of the fact that you have not used permatex yourself, I want to ask you referring to a leak of this kind of shower, what would be the way someone would handle the situation of this kind if he was called upon to stop a leak?

Mr. Ward: I object to that question as being  
page 254 } so indefinite—

Mr. Fine: I don't think so.

Mr. Ward: —as to not call for any answer.

The Court: Sustained, and note your exception.

Mr. Fine: I respectfully except.

\* \* \* \* \*

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\* \* \* \* \*

Mr. Fine: He said it leaked from time to time.

The Court: From time to time?

Mr. Fine: Yes, sir. That is the only—I don't mean every

day, but it continued to leak at times from the time it was done until February the 6th, and then on February the 6th the party came there to repair it again and it leaked the next time on September the 19th.

The Court: I will sustain the objection to the question.

Mr. Fine: I respectfully except.

The Court: All right.

Mr. Fine: All right, sir.

Mr. Ward: I have no questions.

The Court: All right, you are excused.

Mr. Fine: We rest, may it please the Court.

The Court: All right.

page 257 } Mr. Ward: We rest.

If your Honor please, I have a motion.

The Court: All right, gentlemen of the jury, step out, please.

(The jury were excluded from the courtroom.)

The Court: All right, sir.

Mr. Ward: If your Honor please, I renew and repeat my position that there is no evidence here of any negligence on the part of the South Norfolk Redevelopment and Housing Authority.

I move the Court to strike the plaintiff's evidence and grant summary judgment in favor of the defendant. There is no evidence of negligence, and this certainly, no *res ipsa loquitur* can be applied in a case such as this.

There is no expert testimony as to what was done. The only evidence as to what was done was that they used permatex to attempt to stop an existing leak, and permatex—the only positive evidence—is that it is perfectly satisfactory for that purpose; and certainly, regardless of what substance was used or what plumber was used, no plumber,  
page 258 } licensed or unlicensed or anything else, would have to guarantee the stoppage of water. He would be held to the test of an insurer if he were, and that is certainly not the situation.

There is no evidence to be submitted to the jury on the question of negligence, and I move the Court to sustain my motion.

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The Court: I don't think it is. The Court will sustain your motion to strike the plaintiff's evidence and will enter summary judgment. Bring the jury in.

Mr. Fine: We respectfully except, if your Honor please.

The Court: Yes, sir; note the exception.

(The jury were recalled into the jury box.)

The Court: Gentlemen of the jury, the Court has held that under the evidence as presented here there is not sufficient evidence as would justify the jury returning a verdict under the law on the evidence here, and for that reason the Court has struck the plaintiff's evidence and enter up summary judgment for the defendant, which will relieve you of the responsibility of deciding this particular case.

page 262 } Therefore, you are excused from the trial of this case.

The Court stands adjourned.

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

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