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Record No. 5438

In the
Supreme Court of Appeals of Virginia
at Richmond

WALTER LEE MOSLEY

v.

VERNON B. CHENAULT

FROM THE CIRCUIT COURT OF APPOMATTOX COUNTY

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

Record No. 5438

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 28th day of November, 1961.

WALTER LEE MOSLEY,

Plaintiff in Error,

against

VERNON B. CHENAULT,

Defendant in Error.

From the Circuit Court of Appomattox County

Upon the petition of Walter Lee Mosley a writ of error is awarded him to a judgment rendered by the Circuit Court of Appomattox County on the 16th day of August, 1961, in a certain motion for judgment then therein depending wherein Vernon B. Chenault was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

page 19 } Circuit Court held for the County of Appomattox,
 at the Court House of said Court, on Friday the
 26th day of May, in the year of our Lord one thousand nine
 hundred and sixty one.

This day came the parties to this suit by Counsel, and the defendant having heretofore filed his Response and grounds of defense; thereupon the Court proceeded to call and examine the jurors regularly summoned according to law, until a panel of thirteen jurors free from exception was completed, from which the Plaintiff and defendant each struck off three names, leaving the following jurors for the trial of this case, to-wit: Charles B. Rush, Edward McPhillips, Stuart B. Kidd, John E. Carnefix, John T. Farrar, Kermit C. Paulette and Wm. W. Cheatham, who were sworn according to law to try the issue joined, and who having heard the testimony of witnesses for the plaintiff in full, the defendant moved the court to strike the evidence of the plaintiff as being insufficient to sustain a verdict, which motion the court overruled, to which ruling of the Court the defendant excepted, and the jurors having heard the testimony of witnesses in full, the defendant, by counsel, renewed his motion to strike the evidence, which motion the Court overruled, and to which ruling of the Court the defendant excepted. And the jurors having heard *argument* of counsel retired to their room to consider their verdict and afterwards returned into court and upon the oaths do say "We the jury find for the Plaintiff, Vernon B. Chenault and fix his damages at \$30,000.00." Whereupon the defendant moved the court to set aside the verdict of the jury for the plaintiff on the grounds:

1. That it is contrary to the law and the evidence and without evidence to support it.

page 20 } 2. That the evidence discloses as a matter of law
 that the negligence of the plaintiff either solely
 cause or proximately contributed to this accident.

3. For the error of the court in giving instruction No. 2 offered by the plaintiff and to which the defendant objected.

4. That the verdict is excessive, which motion the court doth take time to consider. And this case is continued.

page 21 }

This the 16th day of August, 1961, came again the parties by their attorneys, and the Court having taken under advisement the motions of the defendant, took time to consider thereof, and now being advised of its judgment, the Court doth overrule the motions of the defendant to set aside the verdict of the jury heretofore rendered in this action on May 26, 1961, in favor of the plaintiff, and it is, therefore, considered by the Court that the plaintiff recover of the defendant the sum of Thirty Thousand (\$30,000.00) Dollars, with interest from May 26, 1961, until paid, and his cost by him in this behalf expended; and the defendant, by his attorney, duly objects and except to the foregoing action of the Court for reasons heretofore stated.

Enter.

JOEL M. FLOOD, Judge.

page 22 }

Rec'd. and filed 8-18-61.

C. W. S., Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
OF THE DEFENDANT, WALTER LEE MOSLEY.

To C. W. Smith, Clerk of the Circuit Court of Appomattox County:

The defendant, Walter Lee Mosley, by counsel, hereby gives notice, pursuant to the provisions of Section 4 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia, of his appeal from the final judgment entered for the plaintiff in the above action on the 16th day of August, 1961.

The defendant assigns the following errors to the said judgment.

Walter Lee Mosley.

1. The Court erred in refusing to strike the plaintiff's evidence, both at the conclusion of the plaintiff's evidence and at the conclusion of all of the evidence as being insufficient in law to support a verdict on the grounds that the evidence disclosed as a matter of law that the negligence of the plaintiff was the sole proximate cause of the accident or proximately contributed to the accident.

2. The Court erred in granting plaintiff's instruction Numbered 2 on the grounds (1) that the instruction was a finding instruction and should, in terms, have embodied the page 23 } defendant's theory that the plaintiff was guilty of contributory negligence; and (2) that the evidence disclosed as a matter of law that the defendant was not negligent and that the plaintiff was guilty of negligence proximate causing or proximately contributing to the accident.

3. The Court erred in refusing to set aside the jury's verdict for the plaintiff for the errors assigned and on the ground that the verdict was excessive.

Respectfully submitted,

HENRY M. SACKETT, JR.
Attorney for the defendant,
Walter Lee Mosley, 709 Krise
Building, Lynchburg, Virginia.

* * * * *

page 3 }

* * * * *

Mr. Whitehead: I want to call Walter Lee Mosley as an adverse witness.

WALTER LEE MOSLEY,
having been first duly sworn, testifies as follows:

EXAMINATION.

By Mr. Whitehead:

Q. Your name is Walter Lee Mosley?

A. Yes, sir.

Q. You are the defendant in this lawsuit here today?

A. Yes, sir.

Wade Rogers.

Q. And what is your age now?

A. Twenty-one.

Q. And when were you twenty-one?

A. April 10, 1961.

Mr. Whitehead: That is all I want to ask him.

Mr. Sackett: We have no question at this time.

The witness stands aside.

page 4 } Mr. Whitehead: Now, if your Honor please, at
this time I would like to introduce four pictures of
the roadway in question, two looking north and two looking
south. These pictures were taken in April of 1961 and are
introduced solely to show the topography of the land but
have nothing to do with the highway markings or any marks
of the accident at all. It does show the markings of the road
designating traffic lanes going north and south which we can
hook up and will show that it was marked this way at that
time and if I may explain to the jury, if they have no objec-
tions, Plaintiff's Exhibit No. 1 is a picture in which the photo-
grapher is standing just north of North Creek looking in a
southerly direction. Plaintiff's Exhibit No. 2 is also looking
south on State Route 26 but the photographer is further south.
He is up the hill from the bridge when this was taken. Now,
Plaintiff's Exhibit No. 3 the photographer is standing which
would be south of the bridge and south of where the accident
happened, looking in a northerly direction, and Plaintiff's
Exhibit No. 4 is the photographer looking north
page 5 } on Route 26 toward North Creek and is nearer the
bridge than he is in Exhibit No. 3.

Now, gentlemen, will you all please take those and look at
them?

I would like for the record to show that these are not offered
for any markings in the road at all, just to show the layout
of the land and the road at that place.

Mr. Sackett: Did you state when the pictures were taken?

Mr. Whitehead: They were taken in April of 1961.

If your Honor please, if it is all right with the Court, I
will get you to mark these a little while later if you don't
mind.

WADE ROGERS,
having been first duly sworn, testifies as follows:

Wade Rogers.

DIRECT EXAMINATION.

By Mr. Whitehead:

page 6 } Q. Your name is Wade Rogers?

A. Yes, sir.

Q. What is your age now, Wade?

A. Twenty.

Q. Where do you live, Wade?

A. Oakville.

Q. Now, is Oakville south or north of where this accident occurred?

A. North, about a mile, I would say.

Q. That would be like toward Gladstone?

A. Yes, sir.

Q. Now, on the day of Friday, April 10, 1959 when an accident occurred between Mr. Chenault and the defendant Mosley, did you come upon this accident?

A. Yes, sir. I come to the crest of the hill and saw some dust and went down.

Q. Which way were you traveling?

A. I was going north.

Q. Going toward your home?

A. That is right.

Q. Who was the first person to get to the accident after it occurred except for those involved in the accident?

page 7 } A. I think I was the first one because I saw the dust and then I saw the car smoking, smoking or either dust.

Q. Was there any car coming toward you or going south at that time?

A. No, sir.

Q. Then would you mind taking this and maybe you can point out better to the jury—would you mind taking Plaintiff's Exhibit No. 3—that is looking north or you can take Plaintiff's Exhibit No. 4, that is looking north—when you went down point out first approximately to the jury, I don't mean to the inch but approximately where was the Chenault automobile when you came over the hill.

A. I got to the top of the hill and saw smoke or either dust and I saw the car sitting on this side. He was sitting on his side in here right there where the shadow is.

Q. Right where the shadow is in the picture?

A. Yes, sir.

Q. At that time did you see the Mosley automobile?

Wade Rogers.

A. No, sir, I didn't see that because it was down by this bank right here. Afterwards I saw it. I didn't see it then.

Q. Was it in view when you went on down the road?

A. It wasn't in view.

page 8 } Q. Where was it with reference to the bridge there over North Creek, was it the other side of the bridge or south of it or where?

A. This side, on the south side—went down beside that bank.

Q. Where did you go to stop your car?

A. I pulled my car past his and got back to see what I could do.

Q. Did you go across the bridge and stop or where?

A. No, sir, I didn't go across the bridge. I went right down here to this other shadow. I couldn't see the other car until after I passed there.

Q. Now, after you got down to the place and got out of your car then what did you do, Wade?

A. Well, I tried to get him out then.

Q. After you stopped your car and got out where did you go?

A. I went back to see what I could do for Mr. Chenault.

Q. At that time had you seen the Mosley car?

A. No, sir.

Q. When you went back up to where Mr. Chenault was I will ask you first at that time when you got there
page 9 } did you see any smoke or anything at that time?

A. Well, it was smoking, the car was on fire.

Q. Who was in the automobile?

A. Mr. Chenault was in there and right badly injured.

Q. Anybody else in there?

A. No, sir.

Q. Now, on what side of the road was this car sitting? Was it sitting in what would be the northbound lane or the southbound lane?

A. It was sitting in the southbound lane.

Q. Would it be on his right?

A. It would be on Mr. Chenault's right.

Q. Do you know approximately how far it was from the broken line in the middle of the road, the white line?

A. No, sir, but it was, I would say, about twelve inches. He was on his side.

Q. Then when you got there what did you do?

A. Well, I raised the hood—at least the hood was bumped up a little bit and I went across on the other side of the road

Wade Rogers.

and got dirt and throwed it on it and somebody else came by and we throwed dirt on it to put the fire out before we got him out.

page 10 } Q. Where did you get the dirt from?

A. On the north side.

Q. If the road runs north and south you couldn't have got it off the north side. You got it off of what side?

A. Well, it would be his left side.

Q. That would be then the east side?

A. That is right.

Q. When you got this dirt how did you get it?

A. Well, I picked it up in a hub cap, part of it. I found the hub cap laying over in the ditch.

Q. How did you pick some of the other up?

A. Got part in my hand and then I saw the hub cap and I strowed it on the fire with that.

Q. After you got the dirt where did you go with the dirt?

A. Took it and throwed it on the motor.

Q. How did you get to the motor?

A. The hood was bumped up a little bit and I raised it.

Q. You say you left the bank. Where did you walk to get to the Chenault car?

A. I walked across the highway and put the dirt on the fire.

page 11 } Q. The lane you walked across is that the northbound lane or the southbound lane?

A. That would be the northbound lane.

Q. Now, in doing that were you able to get it so you got all the dirt and didn't drop any or did you drop some?

A. I might have dropped some, I was in such a hurry. I wouldn't say whether I dropped any or not but I was in such a hurry to get it and throw it on the motor that I could have dropped some.

Q. Did anybody else pick up any dirt from over there?

A. Mr. Stevens, he was there. He come by after I did.

Q. When did you find out what was the other car involved in the accident?

A. Not until I moved my car again for another car to get by and called the ambulance and State Police. I moved my car across the bridge then.

Q. Then what did you find?

A. Then I saw the car.

Q. And was that off of the road—say going north or toward Oakville, would that be over on the left-hand or right-hand side?

Wade Rogers.

A. I moved my car to the right on the other side
page 12 } of the bridge.

Q. When you found the Mosley car where was
it?

A. I didn't go over there. It was over there on the bank.
I didn't go over on that side.

Q. Was it over on the west side or east side?

A. It would be on the left side going north.

Q. That would be the west side?

A. That is right.

Q. When you got there to the car what, if anything, did
you do for Mr. Chenault?

A. There was no way I could get him out by myself. Another car came along after I did and they helped me get him out and I had to take his shoes off before we could get him out.

Q. Why?

A. The steering wheel was up into his chest and his feet were up under the brake pedal.

Q. Where were his feet?

A. His feet were up under the brake pedal, up where the instruments are and the accelerator.

Q. Why did you have to take his shoes off?

A. He was so cramped up in there there was
page 13 } no other way to get him out.

Q. Then did you all get him out?

A. Yes, sir.

Mr. Whitehead: All right, gentlemen.

CROSS EXAMINATION.

By Mr. Sackett:

Q. Wade, you have testified in response to questions asked you by Mr. Whitehead that you were the first one to arrive at the scene of the accident and that when you arrived there the car driven by Mr. Chenault was entirely in its south-bound lane of travel. Is that correct?

A. Yes, sir.

Q. And that the car operated by the defendant Mosley was down below that between there and the bridge on the west side of the highway. Now, I hand you pictures which purport to be pictures taken at the scene of this accident shortly after it occurred and ask you if this picture reflects the position of

Wade Rogers.

the Chenault car in the highway as you saw it when you arrived.

A. Yes, sir, that is the position.

Q. And does that picture correctly reflect the
page 14 } physical characteristics of the roadway at the scene
of this accident as you saw it when you arrived?

A. I didn't notice those black marks then.

Q. But in other respects then this picture correctly reflects the physical condition of the road?

A. Yes, sir, and he was up in the steering wheel.

Q. This picture is looking in what direction?

A. That is looking south.

Q. That is looking south, looking in the direction of what?

A. Toward Appomattox.

Mr. Sackett: We ask leave to introduce that as Defendant's Exhibit A with this witness' testimony.

Q. I hand you also another picture which purports to be looking north. That is the direction in which the defendant Mosley was traveling and I ask you if that picture reflects the situation as you saw it when you arrived at the scene of the accident?

A. Only one thing, that car wasn't sitting that far back. It wasn't sitting on an angle like that.

Q. You have testified in response to questions
page 15 } that this picture, Exhibit A, correctly shows the
position of the Chenault automobile. It is obvious
in the two pictures that the position of the car is the same, is it not?

A. Yes, sir, but the way it looks on this it looks more like it was sitting like this, wasn't crossways the road the way it looks here.

Q. Isn't that the way this picture, Exhibit A, shows it to be?

A. No, sir, it doesn't.

Q. In other words, you think the position of this car in Exhibit B is different from the position of the car in Exhibit A?

A. Yes, sir.

Q. Were the cars moved before the Troopers got there?

A. No, sir.

Q. So if the Trooper should say that this picture was taken of this vehicle before it was moved you would confirm that, would you not?

A. Repeat that again.

Q. If the Trooper should testify that this picture was taken

Wade Rogers.

before the cars had been moved, and your testimony is that they were not moved before the Trooper got there, page 16 } then this picture would have to show the position of this car in the roadway immediately following the accident, would it not?

A. That is right.

Mr. Sackett: We ask leave of the Court to introduce this as Defendant's Exhibit B.

The Court: Any other questions?

Mr. Sackett: That is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Wade, do you know approximately how long it was before the State Troopers got there?

A. No, sir.

Q. As I understood you to tell Mr. Sackett as far as these pictures were concerned that on Defendant's Exhibit A that that shows where the car was sitting?

A. Yes, sir, that is the way it looked then.

Q. And what you saw when you got there after the accident was like it was sitting there but the black marks were not there in the road at that time?

A. I didn't notice the black marks. They might have been there but I wasn't looking at the black marks, I page 17 } was trying to get him out.

Q. Then, as you recall though, in the picture, Exhibit B, then the car when you got there was not turned around as much as shown in the picture?

A. No, sir, it looked a little bit straighter than that.

Q. It was straighter in the road than is shown in Exhibit B?

A. Yes, sir.

Mr. Whitehead: That is all.

RE-CROSS EXAMINATION.

By Mr. Sackett:

Q. If I understood you correctly, you said the black marks could have been there but you don't know?

A. I didn't notice them.

Al Goode Burks.

By Mr. Whitehead:

Q. Let me ask you this in response to what he asked you: If the black marks had been there when you arrived there was anything to prevent you from seeing them at that time?

A. I didn't look for black marks. I was in a hurry to get him out of the car.

page 18 } Q. I say was there anything though to keep you from seeing the black marks had they been there at the time you got there?

A. They could have been there. I didn't notice the black marks.

Q. I am asking you if the black marks were in the road when you got there was there anything to prevent you from seeing them if you had looked at the road?

A. No, sir. My vision is pretty good.

By Mr. Sackett:

Q. But you weren't looking for them. You were concerned about the man in the car.

A. Yes, sir.

Q. And your answer is they could have been there but you did not notice them?

A. That is right.

The witness stands aside.

page 19 } AL GOODE BURKS,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Your name is Mr. Al Goode Burks?

A. Yes, sir, that is right.

Q. On the day of this accident in question on April 10, 1959 on Virginia State Route 26 over here did you come upon the accident in question?

A. Yes, sir, I was headed from Appomattox going toward Bent Creek.

Q. Who were you riding with?

A. Frank Roy Stephens.

Q. I believe it is Roy Frank Stephens.

A. Well, I always call him Frank Roy.

Q. Did you all stop at the scene of the accident?

Al Goode Burks.

A. Yes, sir. We seen there was an accident and we stopped and got out to help the man.

Q. Had they gotten Mr. Chenault out of the car when you all got there?

A. No, sir.

page 20 } Q. Did you help get him out?

A. Yes, sir.

Q. How was he sitting in the car, do you know?

A. Well, I don't exactly know now, it's been a right good while. I believe he was kind of leaning over a little bit like this (indicating), leaning over a little bit.

Q. When you got there I will ask you this: On what side of the road was Mr. Chenault's car? In which lane of travel was it when you got there?

A. Well, he was on his right side of the road.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Abbitt:

Q. Mr. Burks, did you stay there until the Troopers arrived?

A. Yes, sir. I was there a good while.

Q. The cars were not moved before the Trooper got there, were they?

A. No, sir.

Q. They were left in the same place?

A. Yes, sir.

page 21 } Q. When you got there you just helped get Mr. Chenault out of his car?

A. Yes, sir.

Q. Was anything said by Mr. Chenault as to how the accident happened?

A. Sir?

Q. Was anything said by either driver as to how the accident happened?

A. No, sir.

Q. Do you know how long it was before the Troopers got there?

A. It wasn't too long. I couldn't say exactly how long it was.

Q. Who was there when you got there?

A. Well, this young boy he was there.

Elane Bollinger.

Q. Wade Rogers. He was the only one there that you remember?

A. He is one who helped get him out of the car.

Q. Did you all have to put some dirt on the car to put a fire out?

A. We seen smoke and we took and throwed some dirt on it.

page 22 } Q. On the motor of the car?

A. Yes, sir.

Q. How much dirt was thrown on the car?

A. I didn't pay any attention to that.

Q. Did any other cars pass along there before the Troopers came?

A. Well, I don't exactly know—only one I seen. I don't know, I didn't pay much attention to that. You see I was looking out for the man. He was hurt right bad.

Mr. Abbitt: That is all.

The witness stands aside.

MRS. ELANE BOLLINGER,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

page 23 } Q. You are Mrs. Elane Bollinger?

A. That is correct.

Q. I believe you are kin some way to Mr. Chenault, are you not?

A. That is right, a niece,

Q. You are Mr. Chenault's niece and I believe you are a registered trained nurse, are you not?

A. Yes, sir.

Q. Now, on the day of this accident did you come upon the scene on Virginia State Route 26 down there at North Creek where this thing happened?

A. Yes, sir.

Q. Now, at the time that you came up to the accident was Mr. Chenault still there or had he gone?

A. He had gone.

Q. Now, at that time which way were you going on the road?

A. I was coming to Appomattox.

Q. You were going south?

Elane Bollinger.

A. Yes, sir.

Q. Did you see Mr. Chenault's automobile there?

A. Yes, sir, his car was still there.

Q. Would you please tell us in which lane it
page 24 } was if you know?

A. It was in the right-hand lane. I pulled up
behind it and stopped my car.

Q. The right-hand lane going which way?

A. Coming to Appomattox.

Q. Going south?

A. Going south.

Q. Now then, did you leave and go to Lynchburg General
Hospital?

A. Yes. I left and came to Appomattox to notify the family
and later that evening I went to Lynchburg General Hospital.

Q. Now, did you see Mr. Chenault there in the Lynchburg
General Hospital?

A. Yes, sir.

Q. Now, what had they done for him when you saw him?

A. Well, he was in his room when I got there. They were
just bringing him to his room and putting him in an oxygen
tent. He had a collapsed lung and several ribs broken and a
dislocated hip and he was in his room in an oxygen tent
when I got there.

Q. What did they do for his lung, if anything?
page 25 } A. Well, they have a pressure machine and tube,
they inserted the tube into his lung and kept it in-
flated so it wouldn't collapse again. It is a rubber tube that
went into his lung.

Q. Did you nurse him any?

A. Yes.

Q. When did you nurse him?

A. Not that night. I went on duty the next night. The
hospital put a graduate nurse, I don't remember her name, on
the case but they told me I could come home and they would
put a nurse with him that night and I could come back the next
night.

Q. How many nights did you, as a special nurse, nurse him,
do you know?

A. Oh goodness, I didn't keep count of it but somebody was
with him—I don't know how long I was with him. That was
on Friday and I was there Saturday night and Sunday night,
four or five nights. I have a cousin that married a nurse and
she and I alternated so I didn't really keep account of the
nights.

Elane Bollinger.

Q. At the time you were nursing him was he in any discomfort or pain during those times?
page 26 } A. Oh yes, he was very uncomfortable all the time, couldn't half breathe. That is why he was in the oxygen tent.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Sackett:

Q. Mrs. Bollinger, you got here shortly after the accident happened?

A. I really don't know how long it was. He was gone when I got here. It was in the afternoon.

Q. I hand you what has already been introduced in evidence as Defendant's Exhibit A and Defendant's Exhibit B and ask you if Exhibit A, the picture shown there, reflects the position of the Chenault car in the highway as you saw it when you arrived?

A. Well, I didn't remember it being turned quite that much but it was on his side of the road. I had to pull around him.

Q. In other respects does it reflect the situation as you saw it when you arrived?

A. I guess it does but I don't remember it being on an angle.

page 27 } Q. Then I hand you Defendant's Exhibit B which has already been introduced in evidence which purports to show the position of Mr. Chenault's car in the roadway and the physical markings and situation that existed there at the time. Does that picture reflect the situation as you saw it?

A. I really don't remember seeing the car at that angle.

Q. Do you remember seeing the skid marks?

A. No.

Q. You don't remember that?

A. No.

Q. Do you remember seeing the skid marks in picture A?

A. No.

Q. But Mr. Chenault had gone when you arrived?

A. He had gone when I got there.

Mr. Sackett: That is all.

The witness stands aside.

page 28 } MRS. ELIZABETH O. CHENAULT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Mrs. Elizabeth O. Chenault?

A. Yes.

Q. Will you please talk loud enough so the Court and jury and the lawyers can hear you, please? What is your age, please?

A. I will be fifty next May.

Q. You are forty-nine now?

A. Forty-nine right now.

Q. How long have you and Mr. Chenault been married?

A. Thirty years?

Q. Now, on the day of the accident in question where were you all living at that time?

A. We were living in Appomattox.

Q. In the Town of Appomattox?

A. No, about one mile out of the city on Route 460.

Q. About one mile out of the city on Route 460. Which way was that, toward Lynchburg or toward Farm-
page 29 } ville?

A. South toward Farmville.

Q. Now, where were you when you heard about your husband's accident?

A. I was working in Lynchburg at Craddock-Terry Company.

Q. Did you then go on to the hospital?

A. Yes, sir.

Q. Where did you find your husband?

A. In the emergency room.

Q. And were the doctors and nurses then attending to him?

A. Yes, sir.

Q. Was he later moved to a room in the hospital?

A. Yes, sir.

Q. Did you go to the hospital regularly to see your husband?

A. Yes, sir.

Q. Now, did he have much trouble there as far as pain as a result of the accident?

A. Yes, sir. For the first two or three days he was under an oxygen tent and hardly knew anybody who was there.

Q. Now, since this accident has he worked anywhere?

Sherley C. Martin.

A. No, sir, he is not able to do anything.
 page 30 } Q. Could you tell us whether or not there is any
 difference in him now than what it was before the
 accident with reference to his left leg?

A. Well, he has a lot of trouble with his left leg at night, it stays cold. The circulation in it is not good and he suffers an awful lot and he can't walk without a brace for fear he will fall and break his leg.

Q. You say he has trouble with his leg getting cold?

A. It stays cold, his blood doesn't circulate like it should.

Q. What does he do to keep it warm?

A. I have to keep it warm for him. He puts his leg over on me and then after it gets warm it gets easy and he goes to sleep. When he first hurt it it was so bad the only way he could sleep was to take something to make him sleep.

Q. Now, you did not go over to where the accident happened yourself, did you?

A. No, sir, I went straight to the hospital and I stayed with him continuously every day for six weeks.

Mr. Whitehead: All right.

Mr. Sackett: No questions.

The witness stands aside.

page 31 } MRS. SHERLEY C. MARTIN,
 having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Mrs. Sherley Chenault Martin?

A. That is right.

Q. And I believe you are the daughter of Mr. Chenault, the plaintiff in this case.

A. Yes, sir.

Q. Now, Sherley, where were you when you found out about your father being in this accident?

A. I was at work. I work at Craddock-Terry in Lynchburg.

Q. Did you immediately go to the hospital?

A. Yes, sir, my husband called me and—

Q. You can't tell what he told you but where did you go?

A. I went to Lynchburg General Hospital.

Q. Did you see your father there?

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A. Not then. They said he was too bad off to see anyone.

Q. You can't tell what they said.

page 32 } A. They had to put a tube in his side and said we
could see him later so it was about fifteen minutes
later before they let us see him.

Q. Then when did you see your father?

A. About fifteen minutes later.

Q. What was his condition?

A. Well, he had the tube in his side and they had stopped
his nose from bleeding but they hadn't set his hip.

Mr. Whitehead: All right, gentlemen.

Mr. Abbitt: No questions.

The witness stands aside.

VERNON B. CHENAULT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Mr. Vernon B. Chenault?

page 33 } A. Yes, sir.

Q. When were you born, Mr. Chenault?

A. Born August 1, 1906.

Q. Now, at the time that this accident occurred in April of
1959 where were you working?

A. I was working for the C. and O. Railroad Company.

Q. What was your position with the C. and O. Railroad
Company?

A. I was car inspector.

Q. And approximately how much did you make per week
gross?

A. Well, I would say \$100.00.

Q. How long had you been with the C. and O. Railroad?

A. Thirteen years.

Q. Now, in the work of car inspector what does that man
have to do? What does a car inspector do?

A. He has to walk all over the trains that come in and out
of the yard and look them over, inspect the wheels and brakes
and the running condition.

Q. And before the accident what territory did you work,
from where to where?

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A. Well, I would have to work half of the yard.
page 34 } If a train would come in with two hundred cars to it
I would have to walk half of it or one hundred cars and the other man would get the other half. We would have a hundred cars apiece to walk.

Q. At the time of the accident what kind of health were you in?

A. In A-1 condition, as far as I know. I never had any trouble in my life.

Q. Had you been able to work regularly or not?

A. I had, yes, sir.

Q. Now, on the day of this accident I believe you were driving a car called a Volvo. Is that right?

A. Yes, sir.

Q. Where had you been?

A. I had been to work on the railroad.

Q. Whereabouts?

A. On the C. and O.

Q. Whereabouts on the railroad?

A. Over at Gladstone there in the yard.

Q. Was that where most of your work was done, in the Gladstone yard?

A. Yes, sir.

page 35 } Q. Where were you living at that time?

A. I was living down on 460 here just a little bit out of the city limits.

Q. Where were you going to at the time of the accident?

A. I was coming home from work.

Q. Now, what is the general direction that this road you had this accident on runs? What general direction does it run?

A. I would say it runs north and south.

Q. Do you know the number of the road you were on that this accident occurred?

A. Route 26.

Q. There has been introduced in evidence here Plaintiff's Exhibits 1, 2, 3 and 4. Two of these pictures are looking south and two are looking north. Now, take Plaintiff's Exhibit No. 1 first. Will you look at that? You see where the bridge is there?

A. Yes, sir.

Q. What is the name of that creek?

A. North Creek.

Q. Now, where did this accident occur with reference to

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North Creek, would it be on the south side or north page 36 } side of it?

A. It would be on the south side of the creek.

Q. Had you crossed the bridge coming toward Appomattox before the accident occurred?

A. Yes, sir.

Q. Now, could you take either Exhibit 1 or Exhibit 2 and point out to the jury approximately where this accident occurred? Can you do that?

A. Yes, sir. I would say it occurred right up along in here, about that part of the road there.

Q. And that is about the distance it occurred south of the bridge, is that correct?

A. That is right.

Q. So then at the time of the accident what were you doing, were you going uphill or downhill?

A. I was going uphill.

Q. And how was Mosley traveling, up or down?

A. Down, meeting me.

Q. Now, in Plaintiff's Exhibit No. 3, so we will know about it, there is a sign right there in that picture. What does that sign say?

A. "Appomattox 5 miles" is wrote on there.

Q. Now, was the roadway at the time of the page 37 } accident like it is shown in this picture—that is, by the markings of the highway, the line separating one lane from the other?

A. Yes, sir.

Q. In other words, at that time there was a broken white line between the northbound and the southbound lanes of traffic?

A. That is right.

Q. Could you tell us, if you know, approximately how far is it going in a southerly direction from down at the bridge up to the top of the hill?

A. Well, I would say a quarter of a mile up there, I guess.

Q. Was there anyone in the car with you?

A. No, sir.

Q. Now, will you please, sir, tell us in your own words what happened, if anything, a short time prior to this accident and everything that happened until the accident occurred?

A. Well, when I crossed the bridge I seen Mosley coming over top of the hill and he was straddling the white line. He come down the hill a little ways and got back to his side of the road; came on down the hill and swayed over again, swayed

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over to my side of the road. When he did that I
page 38 } jumped on the brake and clutch and he swayed back
and caught me with his car when he tried to get
back to his side.

Q. Now, take these automobiles right here, if you will, please, sir, and say that the yellow car is yours and say the red car is Mosley's and show up approximately how these cars came together.

A. Well, Mosley came down the hill running pretty good rate of speed and the car swayed right over on my side of the road, straddling the white line, and he whirled back. Well, I jammed on the brakes like that and he came back and caught me on my side right in there (indicating) like that and just mashed my headlight and pushed it on back and he went on down the hill.

Q. When you saw him then the second time when he came over in your lane of travel, when you saw him do that, then what did you do?

A. I tried to stop.

Q. At the time these vehicles came together were you stopped or were you moving?

A. Well, I figured I had just practically stopped as we hit.

Q. Do you know whether you were stopped or
page 39 } whether you were still moving?

A. I would say I had done stopped. I had done stopped.

Q. Then at the time that the impact took place I will ask you this: Were you in your lane of travel or were you some in Mosley's lane of travel?

A. I was definitely in my lane of travel.

Q. Then when the impact took place what happened to you, Mr. Chenault?

A. Well, it just pinned me up in the car. It caught both feet under the clutch and brake and the steering wheel come up by my head and pinned me between that and the door. I couldn't move no way at all, just sitting up there.

Q. When you saw this Mosley car coming down the hill and coming toward you could you tell us approximately at what speed you estimate he was going?

A. Well, he was traveling at a right good rate of speed, I would say doing a good sixty miles an hour, maybe sixty-five.

Q. Now, did he seem to slow up any before he hit you?

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A. No, sir, not to my noticing.

Q. Then after he hit you did he stay there or what became of him, do you know?

page 40 } A. I don't know, I didn't look back. I was pinned in the car and there I was.

Q. Do you know whether his car stayed there where your car was or not?

A. No, it wasn't there.

Q. Now I want to ask you this and want you to tell us whether or not before or at the time of impact or after the impact was your car at any time in Mosley's lane of travel?

A. No, siree.

Q. What lane of travel was it in at all times?

A. I was in the southbound lane, on my side of the road.

Q. Do you recall them taking you out of the car?

A. Yes, sir.

Q. How did you get to Lynchburg?

A. The ambulance came and picked me up.

Q. Now then, what happened to you in the accident? How were you hurt?

A. Well, I had three ribs broken on my right side, this lung punctured and this hip knocked out of place.

Q. The lung and ribs were on which side of your body?

page 41 } A. On the right side. The steering wheel came in and broke them.

Q. And which hip was thrown out of place?

A. My left hip.

Q. Was the pain bad or not?

A. Yes, sir.

Q. Then after they got you to the hospital do you know how many days you stayed in the hospital?

A. Twenty-one days.

Q. Do you know approximately how many days you were under the oxygen tent?

A. It was four days, I think. I am not positive.

Q. Now, during that time were you having any trouble breathing or not?

A. Oh yes indeed.

Q. When you breathed would it hurt you or not?

A. Yes, it hurt all in here (indicating).

Q. Did your left hip give you any trouble? Did that hurt?

A. Oh yes—awful.

Q. Now, I show you here marked "Plaintiff's Exhibit No. 5" showing your whole body and then showing your leg with

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the brace on it. Is that a true picture of you as of
page 42 } August of 1959?

A. Yes, it is.

Mr. Whitehead: I want to introduce that as Plaintiff's
Exhibit No. 5.

Q. Now, after they got you in the hospital it is in evidence
they put a tube in your side. Do you know about that?

A. Yes, sir.

Q. Who was your doctor looking out for your hip?

A. Dr. Mundy.

Q. Dr. B. K. Mundy?

A. B. K. Mundy.

Q. Since this accident what has happened to Dr. Mundy?

A. Well, he has had a heart attack and is not practicing.

Q. Now, I show you here marked "Plaintiff's Exhibit No.
6" a bill from Lynchburg General Hospital for \$402.35 and
ask you to look at that and see if that is correct.

A. Yes, sir.

Q. I show you Plaintiff's Exhibit No. 7, a bill from Dr.
B. K. Mundy, up to August 7, 1959 in the sum of \$232.00 and
ask you if that bill is correct.

page 43 } A. Yes, sir.

Q. I also show you a bill from Dr. Barney in the
sum of \$23.00 and ask you if that bill is correct.

A. Yes, sir.

Q. That is marked Plaintiff's Exhibit No. 8, is it not?

A. Yes, sir.

Q. Mr. Chenault, on this Route 26 from Appomattox over
to Gladstone were you familiar with the road?

A. Yes, sir.

Q. Did you travel it frequently or not?

A. Every day of the week, you might say.

Q. Now, since Dr. Mundy has gotten sick and had a heart
attack have you had any other doctor to examine you about
your leg and your hip?

A. Yes, sir.

Q. What is that doctor's name?

A. I can't remember. He was in here a minute ago.

Q. Dr. John Devine, Jr.?

A. Yes, sir.

Q. Then before this accident were you having any trouble
with your hip or with your leg at all?

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A. No, sir.

page 44 } Q. Then after this accident have you been having any trouble with your left hip or leg or foot?

A. Oh yes, plenty of it.

Q. Now, that contraption you have got on there, and which is shown in Plaintiff's Exhibit No. 5, who prescribed that for you?

A. Dr. B. K. Mundy.

Q. Now then, have you been wearing that brace on your left leg since you have been able to walk?

A. I can't go without it.

Q. I say have you been wearing it since you have been able to walk?

A. Yes, sir.

Q. Now, I wish you would please, sir, pull your pants leg up there on the left and take that contraption off for just a minute, please.

Note: The witness does as requested.

Q. Also take your right shoe off too.

Note: The witness does as requested.

Q. Is this the type of brace shown in the picture?

A. Yes, sir.

Q. Now, does this brace when you wear it does it
page 45 } help you any?

A. Yes, sir, it holds my foot up.

Q. Now, would you mind standing right here, please.

Note: The witness does as requested and Mr. Whitehead rolls the witness' pants legs above his knees.

Q. Now, the first thing stand on your left foot and lift your right foot up.

Note: The witness does as requested.

Q. Keep your foot up but let your toe go as far as it will go to the floor. Now, can you raise that toe up?

A. No, sir.

Q. Now, stand on your right foot, please. Now, lift this left leg up. Now, let it go down as far toward the floor as it will go.

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A. It won't go any further than that.

Q. Let me see you put it up in the air. Put your toes up in the air.

A. It won't come up, just stays there.

Q. Hold it out there. Now, I want you to strain all you can and try to get that toe up as high in the air as you
page 46 } can.

A. That is all I can get it.

Q. Now, can you let it down any more?

A. No, that is as far as it will go.

Q. Can you control it by pulling it up or letting it down?

A. No, sir.

Q. Now, when you were trying without that brace on and when you are trying to walk along what trouble, if any, do you have with your left foot?

A. It drags. My toe drops down when I pick my foot up. It hangs down and drags. I have to wear that to hold my foot to keep from stumping my toe and throwing me down.

Q. Does that brace help you to keep your toe from dragging?

A. Yes, sir.

Q. Now, you say you can't control it up and down?

A. No, sir.

Q. Now, what trouble other than that are you having, if any, with your left leg or foot?

A. Well, I have a lot of misery there, through here and through here (indicating the thigh and calf). It stays cold like a block of ice all the time and at night I can't
page 47 } sleep. Lots of times it gets so cold it wakes me up.

Q. Now, put that brace back on and show us how that does help you.

Note: The witness does as requested.

Q. Stand up and show the Court and jury how that helps you. You have got to move around so they can see you. Now, how does this keep your toe from dragging?

A. My leg up here controls that. When I lift my foot up this brace holds the leg up so it won't let my foot give.

Q. Is there any numbness in your foot or in your leg?

A. Oh yes.

Q. This has been I know over two years but are you having any trouble with your side now, your right side?

A. No, not any you might say.

Q. Are you having any trouble with your lung?

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A. No, sir.

Q. What happened to your head or your face? Did you get cut anywhere?

A. Yes, sir, I got cut across my nose.

Q. Are you having any trouble from that now?

A. No, sir.

Q. As a result of this accident what are you page 48 { having trouble with, if anything?

A. This leg altogether.

Q. Have you gone back to try to go back to work for the railroad?

A. Yes, sir, I tried to.

Q. Will they take you back?

A. No, sir, disqualified me.

Q. Why?

A. They won't allow you to work with a brace.

Q. Have you been able to get employment anywhere else?

A. No, sir.

Q. Have you had any income of your own from your work since this accident?

A. No, sir.

Q. Who supports you now? How do you live?

A. My wife and kids.

Q. Now, with reference to your leg at night when you go to bed if you get it warm then what happens to you?

A. It stops hurting so I can go to sleep.

Q. Does your leg hurt you now up in your hip, up in here?

A. Yes, sir.

page 49 { Q. Now, put your hand where it does hurt you, show us.

A. Right in this part of the hip, where the knuckle joint is in the hip.

Q. While you were there in the hospital when you had this condition what about your ribs, did you have any trouble breathing?

A. Yes, a lot of it.

Q. When you would breathe what would happen to you?

A. This whole side would just ache, just in misery.

Mr. Whitehead: That is all I can think of.

CROSS EXAMINATION.

By Mr. Sackett:

Q. Mr. Chenault, Mr. Whitehead asked you about Dr.

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Mundy and if it was not a fact he treated you for your injury or the injury to your hip. When did you last see Dr. Mundy?

A. In January, I believe.

Q. This accident happened in April of 1959 and then you last saw him in January of 1960 or January of 1961?

A. 1961.

Q. January of 1961 and then he wasn't treating you after that?

page 50 } A. Yes, sir, he was but he had his heart attack and I didn't go back to see him any more.

Q. That is what I am getting at. Was he still treating you at the time he had his heart attack?

A. Yes, sir.

Q. But you hadn't seen him after January of 1961. That is January of this year. You hadn't seen him after that, had you?

A. No, sir. I had an appointment with him to go back.

Q. Do you know when he had his heart attack?

A. No, sir.

Q. But you never saw him after January of 1961?

A. It was the last part of January in '61.

Q. So then you were sent to see Dr. Devine by Mr. Whitehead. Did he tell you to go to see Dr. Devine?

A. Yes, sir.

Q. And how many times have you seen Dr. Devine?

A. Four times, I believe.

Q. And when was the last time you saw him?

A. It was this week.

Q. Now, Mr. Chenault, you said you were working at the C. and O. in Gladstone yard and that you had been
page 51 } working on the day of this accident. What time did you go to work that day?

A. 7:00 o'clock.

Q. 7:00 o'clock in the morning?

A. Yes, sir.

Q. And what time did you get off?

A. 3:00 o'clock in the evening.

Q. And had you worked the previous day too?

A. Yes, sir.

Q. And was that your normal work shift from 7:00 o'clock in the morning until 3:00 in the afternoon?

A. No. My regular work shift was the third shift, what we call the third shift from 11:00 o'clock at night until 7:00 in the morning but I was just called in for extra that day was the reason why I was there.

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Q. Then the previous day had you worked from 11:00 o'clock in the night until 7:00 o'clock in the morning?

A. Yes, sir.

Q. Then they called you in and you worked from 7:00 in the morning until 3:00 in the afternoon?

A. Yes, sir.

Q. So then you had worked almost continuously page 52 } from 11:00 o'clock the previous night up until you got off from work at 3:00 o'clock in the afternoon prior to this accident?

A. Yes, sir.

Q. In other words, to make extra time, you had worked from 11:00 o'clock at night until 7:00 in the morning and then worked an extra shift from 7:00 in the morning until you got off from work at 3:00 o'clock shortly before this accident?

A. Yes, sir.

Q. So having worked that period of time, from 11:00 P. M. one night until 3:00 P. M. the next afternoon, you were then on your way home when this accident happened?

A. Yes, sir.

Q. Now, if I understood you correctly, you said as you started up the hill approaching where this accident happened, and when you were crossing or after you had crossed the bridge over North Creek, you saw the car operated by Mr. Mosley up on the brow of the hill.

A. Yes, sir.

Q. And you think it was then straddling the white line?

• A. Yes, sir, definitely.

Q. Did you pay any attention to that car afterwards?

A. Yes, sir.

page 53 } Q. Did you watch it closely?

A. Yes, sir.

Q. And you saw that car go back to its right side of the roadway?

A. It did, yes, sir.

Q. Now, how far was it from you when it went back to the right side of the road?

A. It was a good distance from me at that time.

Q. Then it came on down. How far was it when you say now he moved over into your lane? How far was he from you then?

A. Well, he was a good distance from me at the time, twenty yards or something.

Q. In other words, about sixty feet?

A. Something like that, I imagine.

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Q. I am not trying to pin you down to mathematical accuracy but your best estimate now is the car was about sixty feet away?

A. Yes, sir.

Q. Tell me exactly what he did do in your observation of that car?

Q. page 54 } A. He just swayed over the white line to my side of the road and he tried to get back but he was traveling at a high rate of speed and didn't make it.

Q. Now, what did you do?

A. I tried to stop, which I did.

Q. Did you make a quick brake application?

A. Yes, sir, just as quick as I could.

Q. Did you skid your wheels?

A. I couldn't say whether I did or not. We went together like that (the witness snaps his fingers) as I was trying to stop my car.

Q. You tried to skid them, didn't you?

A. I did.

Q. You did everything you could to put the brakes on heavy?

A. Yes, sir.

Q. How fast were you going prior to this accident?

A. I figured I imagine I was running thirty-five or forty miles an hour, something like that.

Q. Thirty-five or forty miles an hour?

A. Something like that, not over that I know.

Q. And you saw that car you estimated about sixty feet away and you made a quick heavy brake application?

Q. page 55 } A. Yes, sir.

Q. And it is your contention that you had stopped when this accident happened?

A. If I hadn't stopped I was close to it.

Q. Now I hand you what has been introduced in evidence here a picture, Defendant's Exhibit A, which shows the position of your car in the highway after this accident happened and before it was moved. Does that show the position of your car as you recall it after this accident happened?

A. Well, not exactly. My car, as well as I can remember was sitting straight right up the road the way it looked to me.

Q. If the Trooper who took this picture and other witnesses should say that the car was not moved before the picture was

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taken then you would have to admit that that is the position of the car in the roadway at the time, would you not?

A. If it wasn't moved.

Q. I am proceeding on the assumption that other witnesses have said it was not moved and if the Trooper should say that he took this picture as the cars were when he arrived at the scene then you would have to admit that that was the position of your car in the roadway, would you not?

page 56 } A. No, sir, my car looked like it was sitting straight up the hill.

Q. Then you think this picture is wrong and that other witnesses who say the car was not moved and this situation reflects the position of the car immediately following the accident, you would say that is wrong?

A. According to the way I remember it.

Q. I hand you Defendant's Exhibit B which has already been introduced in evidence and show you another picture which has been introduced in evidence and purports to show your car and its position in the roadway.

A. That don't look right to me.

Q. Have you any clear recollection of what took place?

A. Yes, sir. My car was sitting straight up and down the road.

Q. And you are just as positive of that as you are all the rest of it?

A. I am.

Q. And that these pictures are wrong; that they do not show the position of your car correctly?

A. No, sir, they don't.

page 57 } Q. Then who moved your car?
A. I don't know.

Q. You were there. Did anybody move it before you left?

A. Not before I left.

Q. It hadn't been moved before you left but you think somebody must have moved this car afterwards?

A. I do.

Q. Because it wasn't that way when you left?

A. No, sir.

Q. Do you know Mr. Wade Rogers?

A. Yes, sir.

Q. Did you see him at the scene?

A. Yes, sir.

Q. If he should say your car was not moved before the

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Trooper arrived and before the Trooper took this picture would you say he was wrong?

A. How did you have that?

Q. I asked you if you knew Mr. Wade Rogers and your answer was that you did.

A. I do.

Q. I asked if you knew he had testified under oath that this car was not moved before the Trooper arrived and that the car was in the position it was when the Trooper page 58 } took the picture of it. Would you say he was wrong?

A. As far as I can see it the car was sitting straight up and down the road. That picture could have been made a half hour after I left there.

Q. Did you lay down any skid marks in the roadway when you made a brake application?

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

Q. But you did make a brake application when you saw this car, a heavy brake application?

A. I did.

Q. Now, Mr. Chenault, you are insured with the Travelers Insurance Company, are you not?

A. Yes, sir.

Q. And is it not a fact that following this accident a representative of the Travelers Insurance Company came to see you at the Lynchburg General Hospital and is it not a fact that he came there for the purpose of investigating the accident to determine how the accident happened, and is it not a fact that he took a signed statement from you at the hospital on April 29, 1959?

A. I remember about this man being there.

Q. You remember him coming?

page 59 } A. But just what I told that man I can't say.

Q. But you do remember him coming?

A. I do.

Q. And it was on April 29th following the accident on April 10th, was it not?

A. I couldn't tell you that.

Q. It was a number of days after the accident, was it not?

A. Yes, sir.

Q. And you remember him coming there and you remember him coming for the purpose of investigating the accident to determine from you how it happened?

A. Yes, sir.

Q. Now, is it not a fact that you told him at the time, and I

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quote "I was looking at him (meaning Mosley) more or less and looked back on my side of the road and suddenly we hit left front end to left front end. He was on his side of the road as far as I know. As far as I know I was on my side of the white line. I haven't been able to figure out how the accident happened." Did you make that statement on April 29th, nineteen days after this accident happened?

A. I can't say I did and can't say I didn't.
 page 60 } Q. You don't deny making the statement?
 A. No, I don't know whether I did or didn't.
 Q. My question is you do not deny making it?

Mr. Whitehead: If your Honor please, the man testified he didn't know whether he made it or not.

The Court: Objection sustained.

Mr. Sackett: He recalls the man coming there, if your Honor please, to investigate the accident and recalls that the man came there to determine how the accident happened.

Q. But you just don't now what you told him?
 A. I don't know.
 Q. Now, do you know Mr. Crawford Davidson at the Bank of Appomattox?
 A. Yes, sir when I see him.
 Q. You know him by sight?
 A. Yes, sir.
 Q. He knows you?
 A. Yes, sir, I would think so.
 Q. Now, do you remember executing an affidavit before him or do you remember executing a written document before him?
 page 61 } A. No, sir.
 Q. You have no recollection of it?
 A. No, sir.
 Q. I hand you what purports to be—

Mr. Whitehead: I object to him handing it to him under the rule, something in writing about this accident, and I don't think it is proper.

Mr. Sackett: I don't propose to introduce the statement. I want to refresh his recollection. I want him to say if that is his signature.

The Court: You may prove by him his signature if that is his signature.

Vernon B. Chenault.

By Mr. Sackett:

Q. Is this your signature?

A. I guess it is. It looks like my scratching.

Q. It is your signature?

A. Yes, sir.

Q. Does that refresh your recollection as to whether you executed such a document before Mr. Crawford Davidson?

A. No, sir, I do not remember it.

Q. You do not remember it?

A. No, sir.

page 62 } Q. To be more specific, this was on August 3rd, 1960. Do you remember going to Mr. Burks' office and signing some papers?

A. I do.

Q. Do you remember Mr. Burks or someone in his office taking you to Mr. Crawford Davidson's?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Do you remember anyone taking you to Mr. Davidson's office?

A. I didn't have any business to talk to Mr. Davidson.

Q. Mr. Crawford Davidson is a notary public. Now, does that refresh your recollection any?

A. No, sir, I don't remember going to Crawford Davidson's.

Q. Do you remember executing anything before him in Mr. Burk's office?

A. No, sir, I do not.

Q. Well, do you remember executing a document which says this: "I got over the white line—"

Mr. Whitehead: If your Honor please, he is
page 63 } trying to do indirectly what he can't do directly.

If they want to they can bring the people in here but these writings cannot be introduced.

The Court: I assume Mr. Crawford Davidson will be here.

Mr. Sackett: If your Honor please, I think I should lay the foundation for impeachment. I have got to ask the man the question whether he made such a statement.

The Court: He says he has no recollection of making it.

Mr. Sackett: I cannot refresh his recollection about it?

The Court: You may refresh his recollection about it.

Mr. Whitehead: As to the signature.

Mr. Sackett: I want to be fair to him and I want to re-

Vernon B. Chenault.

fresh his recollection by reading him his statement to see if that does refresh his recollection.

The Court: You may do that.

page 64 } By Mr. Sackett:

Q. Did you make this statement: "I got over the white line in the highway and sideswiped the car coming from the opposite direction."

A. No, siree. Why should I do a thing like that? I would be lying.

Mr. Sackett: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Chenault, Mr. Sackett asked you, didn't say who it was, but asked you while you were out at the hospital didn't some representative from the Travelers Insurance Company come out there to investigate about this accident. You tell us that you do recall some man coming there. Is that correct?

A. Yes, sir, I do.

Q. Now, I will ask you this: Any statement made there did you write it out or did the insurance company man write it out?

A. He wrote it out, I didn't.

Q. Did you write anything?

A. No, sir.

page 65 } Q. Did you write anything about the accident out?

A. No, sir.

Q. Did he?

A. Not as I know of.

Q. Did he leave any copy of anything that he wrote out there with you?

A. No, sir.

Q. He asked you if you didn't make a statement out there at the hospital that you were on your side of the road and that Mosley was on his side of the road and you hadn't been able to figure out how the accident happened. Now, did you ever tell anybody at any time that Mosley was on Mosley's side of the road?

A. No, sir.

Q. Have you ever at any time told anybody that you were over on Mosley's side of the road?

Vernon B. Chenault.

A. Why no, sir.

Q. Now, the statement which was not introduced but which you were asked about made some time in August of 1959, as I understand, you tell us according to your best recollection you have no recollection of appearing before Mr. Crawford

Davidson about that statement. Is that correct?
page 66 } A. No, sir, I do not.

Q. Who wrote that statement up, do you know?

A. No, sir, I don't.

Q. Did you sign any statement in August of '59 or did you sign any piece of paper?

A. I signed a piece of paper.

Q. And where did you sign it?

A. I signed it down at Mr. Burks' office.

Q. That is Mr. Burks, the insurance man?

A. Yes, sir.

Q. In other words, they asked you to sign the paper?

A. Yes, sir, and they said they would finish it up.

Q. And did you do what they said? Did you put your name where they told you?

A. I did.

Q. Did you read what was in the statement at that time?

A. No, sir, I did not.

Q. Do you know what was in there at that time or what was put in there, if anything, later?

A. No, sir.

Q. That is while you were down there making application for insurance money under a policy you had with
page 67 } Travelers, was it not?

A. Yes, sir.

Q. Questions were asked you by Mr. Sackett about these pictures, Defendant's Exhibit A and Defendant's Exhibit B, now, are either one of those pictures taken from the rear of your car?

A. Don't seem to be.

Q. As a matter of fact, both of those pictures show the front of the car, do they not?

A. That one it looks to me was taken from the rear.

Q. No rear is shown in that picture, is it?

A. No, sir.

Q. The photographer would be looking in a northerly direction in that picture, wouldn't he?

A. I would think so.

Q. And in Exhibit A the photographer would be looking in a southerly direction, wouldn't he?

Vernon B. Chenault.

A. Yes, sir.

Q. But none of these pictures show directly to the rear of your car, do they?

A. No, sir.

Q. As shown in these pictures if you did make page 68 } brake application and if you did or did not make any skid marks there is nothing shown in these pictures as skid marks directly behind your car, is it?

A. No, sir.

Q. Mr. Chenault, I forgot to ask you but if you could tell us approximately what would you say the distance is from where your car was hit down to the bridge?

A. I would say it is sixty or seventy yards.

Q. You have not measured it?

A. No, sir. It might be seventy-five.

Q. Now, it is not in evidence and I want to ask you this: Do you know approximately what time this accident occurred?

A. Well, about 3:45.

Q. Was it a clear day, rainy day or what?

A. It was clear.

Q. And how was the surface of the road, was it wet or dry?

A. Dry.

Q. Now, at the point of this accident looking both north and south can you see for some distance?

A. Oh yes.

page 69 } Q. Could you tell us approximately what is the width of this hard surface of the road?

A. I would say about sixteen feet or eighteen feet.

Mr. Whitehead: All right, gentlemen.

RE-CROSS EXAMINATION.

By Mr. Sackett:

Q. Mr. Chenault, Mr. Whitehead was asking you about this statement you admit making or admit signing in Mr. Burks' office. Who would they have gotten information from to fill that statement out if it hadn't been you?

A. I don't know.

Q. But you do admit signing a statement?

A. I signed a paper.

Q. You don't mean to imply that Mr. Burks put anything in there that wasn't a fact?

A. I didn't say that.

Vernon B. Chenault.

Q. Of course not. Now, Mr. Whitehead asked about some pictures we showed you and said we had showed you no pictures that showed you the back of your car. I will hand you a third picture which has not been yet introduced in evidence and ask you if that correctly shows the position of your car after this accident.

page 70 } A. Not in my mind it does not.

Q. This one does not either?

A. No, sir.

Q. So everybody is wrong about that too?

Mr. Whitehead: Don't say everybody is. Some witnesses have testified they thought it was straight up and down the road.

By Mr. Sackett:

Q. I don't mean to belabor the point but if the Trooper should say that is the picture of the car as he found it at the time of the investigation and other witnesses would say it was not moved before the picture was taken then again you would say this picture is wrong?

A. It don't look right to me, not to my mind it doesn't.

Mr. Sackett: We would like to introduce this now as Defendant's Exhibit C. That picture too is looking south in the direction Mr. Chenault was traveling.

I believe that is all.

page 71 } RE-RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Chenault, in the picture introduced called "Defendant's Exhibit No. C" that still doesn't take in all of the rear of your car, does it?

A. No, sir. My car was straight with the road on my side.

Q. Now, let me ask you one more thing. When they got you out of the car did they get you out of the right-hand door or the left-hand door?

A. The left-hand door.

Q. That is the door which is shown in this picture?

A. Yes, sir.

Mr. Whitehead: That is all.

The witness stands aside.

Dr. John W. Devine, Jr.

The Court: Gentlemen, it is now twenty-five minutes past twelve. A recess of one hour will be taken. The jury will be back in an hour's time. You will not discuss this case with anyone nor permit anyone to discuss it with you or in your presence.

(Recess).

page 72 }

May 26, 1961.

Afternoon Session.

DR. JOHN W. DEVINE, JR.

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Dr. John W. Devine, Jr.?

A. Yes, sir.

Q. You practice your profession where?

A. Lynchburg, Virginia.

Q. What is your age, Doctor?

A. Fifty-two.

Q. What branch of the profession do you specialize in?

A. Surgery.

Q. Now, in that branch of surgery in your work are you dealing with nerves of the body?

A. Yes, sir, and I did that type of surgery during the war for four years.

Q. What qualifications do you have for specializing in surgery? What is your background, training and education, Doctor?

page 73 } A. Washington and Lee University, Duke University, for my medical degree, then trained at Duke University four years; then Lahey Clinic in Boston and then two years in an Army hospital and overseas for neurosurgery and brain surgery and since that time have been back in Lynchburg, Virginia practicing.

Q. That is since World War II?

A. Yes, sir.

Q. Now, during the time you were in the Army were you then specializing or then were you doing work with reference to the nerves that lead from the different joints of the body or not?

Dr. John W. Devine, Jr.

A. Yes, sir.

Q. Now, Dr. Devine, the evidence here is this man was under the care and treatment of Dr. B. K. Mundy as a result of this accident of April, 1959. What happened to Dr. Mundy this year?

A. He has been sick.

Q. What is the matter with him?

A. He is said to have had a coronary occlusion.

Q. Now, at my request did you see and examine Mr. Vernon

B. Chenault in April of 1961?

page 74 } A. Yes, sir.

Q. Do you know approximately what date you saw him in April of '61?

A. Yes, sir, it was April 18th, 1961.

Q. And at my request did you see him for an evaluation of his injuries received in this accident and whether or not anything could be done to help his trouble?

A. Yes, sir.

Q. Based on that did you go to the hospital and look at his record and also the x-rays taken right after this accident?

A. Yes, sir.

Q. Now, starting out with that, Doctor, do you have the x-rays there that were taken right after this accident?

A. Yes, sir.

Q. Will you please show those to the Court and jury and show what injury this man received with reference to his hip and his left leg?

A. This man in addition to the injury to his left leg—

Mr. Sackett: If your Honor please, I am not going to object to this testimony but I would like for Mr. Whitehead to ask him—we know that he did not take the
page 75 } x-rays himself, they were not taken under his supervision and I would like for Mr. Whitehead to develop who the x-rays were taken by and how Dr. Devine got them and then let Dr. Devine testify.

By Mr. Whitehead:

Q. Doctor, do you know who took these x-rays?

A. The x-ray technician at the hospital took them and they were under the supervision of Dr. Dillard and they were read by him.

Q. They were not taken by you. As a matter of fact, are they ever taken under the supervision of a doctor attending a patient?

Dr. John W. Devine, Jr.

A. Well, very rarely they are. They are usually ordered. You order them and the nurse takes a slip down to the x-ray room and they send for the patient and take the x-rays.

Q. They are the x-rays which the hospital has taken of this man's injuries after this accident. Will you please explain what those x-rays show?

A. Yes, sir.

Q. You might take one at a time.

A. Well, in addition to his injuries to his leg he page 76 } received a steering wheel injury to his chest which caused fractured ribs and a collapse of the lung on the right side.

Q. Is that shown on that x-ray?

A. Yes. This x-ray shows the lung which is collapsed and a tube is into it to bring back the chest so that the lung can expand.

(Referring to another x-ray film) Now, the hip x-ray shows that the right side is in a normal position. You can see the big bone of the leg into the hip socket and over here it is shown and you can see it is up and out of the joint. Now, the hip is also broken. The socket is broken at this point where the arrow is and the injury that really occurred that has left him crippled is the fact that this nerve that normally goes across the bone in this direction by being dislocated, the head of the hip pushed out of joint and was stretched and injured up at this point which now some two years after the injury is still paralyzed.

Q. Does this thing represent a hip joint?

A. Yes, that is the pelvis and the hip bone right here. This bone was thrown out of this joint here as you can see on the x-ray and thrown up to into this position and the nerve is coming out across from the spinal cord going down page 77 } the leg is stretched by this being out of position and is injured up at this level which has left the foot paralyzed.

Q. Now then, is the hip bone back in the socket? Is that all right now, Doctor, as far as being back in the socket?

A. Yes, that is back all right now.

Q. You have referred to some nerve there. What is the name of the nerve you are referring to?

A. Well, that is the sciatic nerve that goes down from the spinal cord and supplies the muscles and the sensation to the leg, the lower leg.

Q. Do you have any other name for that? What do you call this condition the man has now with his left foot?

Dr. John W. Devine, Jr.

A. Well, where the nerve divides the sciatic nerve divides into two nerves and one is called the tibial nerve and the other the peroneal nerve and he has complete paralysis of the peroneal nerve which holds the foot up and that results in a foot drop.

Q. Let me see if I get it straight. The sciatic nerve leads down to the knee?

A. The sciatic nerve goes down the back of the leg and this divides into two nerves at the knee.

Q. And one is the peroneal nerve?

page 78 } A. Yes, sir.

Q. And the other is what?

A. The tibial nerve.

Q. Which nerve is he having trouble with?

A. The peroneal nerve.

Q. As a result of that what is his condition now, Doctor?

A. He is unable to lift his foot up and he has no sensation in over half of his foot. He cannot feel and he has to wear a brace to hold the foot back up at right angles so his toes won't drag when he walks, and due to the paralysis of this nerve he has coldness, pain and numbness in the foot all the time.

Q. Have you run tests to see whether or not there is numbness?

A. You run tests by touching it with cotton and pin pricks, seeing whether he is feeling or not.

Q. Is the peroneal nerve dead now or is there some life there?

A. At the time of the injury that part of the nerve was permanently injured and died.

Q. So now he has none of the benefits from the
page 79 } peroneal nerve?

A. That is right.

Q. Doctor, would you please, sir, point out to the jury on Mr. Chenault what his trouble is?

A. Well, because of his nerve being paralyzed these muscles through here have no power to enable him to lift his foot up so this spring shoe has to hold it up so when he walks along that does it for him. If he walked without the brace these toes would drag because he can't pick it up and lay it down, and this foot is colder than the other foot and there is a shriveling up of the muscles there resulting from that injury.

Q. Have you examined him to determine whether or not there may be any operation or anything you may do for him that might help him some?

Dr. John W. Devine, Jr.

A. Yes, sir. I have given him a great deal of thought. The only thing that could be done would be to help his coldness by increasing circulation by sympathectomy which is taking out some additional nerves up in the back.

Q. You mean up in the back where?

A. Back up here at the top. This will not improve the motion of the leg, the power of it, or would not
page 80 } improve the sensation but would give him better circulation in his foot so he wouldn't suffer so much from the coldness, or we would hope he wouldn't. That is the only operation or only thing I know we can benefit him from. He will just have to wear his brace the rest of his life.

Q. If that operation were performed approximately what would be the charges for that to increase the circulation and try to get some more warmth back in his leg and foot?

A. Well, it would be \$150.00 surgical fee and probably about \$200.00 hospital fee. He would be in the hospital about seven or eight days with it.

Q. Now, is there any kind of operation or anything, in your opinion, you can do for him to give him any better control of his foot—that is, the up and down movement?

A. Not that would be any more satisfactory than what he has got.

Q. Doctor, let me ask you this if you know: When a man has fractured ribs in a person breathing does that affect the feeling there of the fractured ribs or not?

A. Oh yes. They have pain with breathing and coughing after fractured ribs for several months.

Q. How many breaths or exhales or inhales does
page 81 } a person do say in a minute?

A. Approximately twenty normally.

Q. Is that in and out or twenty in and twenty out?

A. It is both, in and out twenty times.

Q. I will ask you this: You have seen Mr. Chenault to make this evaluation approximately how many times?

A. Four times I have seen him since the time of the first examination.

Q. Now, assuming this to be true for the moment that prior to this accident of April of 1959 that his left leg and foot were in good condition and he had control over them and was having no trouble with them I will ask you to tell us, in your opinion—you have told us that the man had permanent injuries there—now, will you please tell us, in your opinion,

Roy Frank Stephens.

what percentage of permanent injury, if any, he has now in his left leg and left foot.

A. I would say fifty per cent.

Q. Now, could he get along anyway satisfactorily without wearing this brace?

A. No, he could not.

Q. With reference to his condition is the main trouble with him as far as the movement, is it the up and down movement?

A. He cannot lift his foot up. It just drops page 82 } down like this (indicating).

Q. Let me ask you this: You say fifty per cent. Do you mean that is permanent, temporary or what?

A. It is permanent. This is after two years of injury and it will not get any better.

Mr. Whitehead: All right.

CROSS EXAMINATION.

By Mr. Sackett:

Q. Dr. Devine, do you know when Dr. Mundy had the heart attack?

A. No, I don't.

Q. This man says he last saw Dr. Mundy in January of 1961. Do you know whether he has had any medical care between then and the time he came to see you in April of '61?

A. No, I don't but there wouldn't be any to be done.

Q. Do you know the month in which Dr. Mundy was taken sick?

A. No.

Mr. Sackett: That is all, Dr. Devine.

The witness stands aside.

page 83 } ROY FRANK STEPHENS,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. You are Roy Frank Stephens?

A. That is right.

Q. And where do you live, Mr. Stephens?

A. At the present time I am living in Lynchburg.

Roy Frank Stephens.

Q. And who do you work for?

A. I work for Wood's Dry Cleaners.

Q. Now, were you in the dry cleaning business in April of 1959?

A. No.

Q. What were you doing then?

A. I believe I was working at the shoe factory in Lynchburg.

Q. Well, did you come by the scene of this accident on the day of accident in April of 1959? Were you over that road that day?

A. Yes, sir, I was over that road several times page 84 } that day.

Q. Did you travel that road frequently or not?

A. Quite frequently.

Q. Now, on the day of this accident had you been over the road where this accident occurred before the accident took place that day?

A. Yes, I had.

Q. You had been from where to where?

A. From Bent Creek to Appomattox.

Q. Now then, did you also come up after the accident had occurred?

A. Yes.

Q. Which way were you going at that time?

A. Heading north toward Bent Creek.

Q. Now, I will ask you this: On the day that you say you went over this road before the accident do you know approximately what time that was?

A. It was some time in the morning.

Q. You know where the accident occurred, do you not?

A. Yes.

Q. I will ask you this: When you went over that road in the morning or on that day before the accident I will ask you whether or not there were any marks, either skid page 85 } marks or any marks there in and about the vicinity of where this accident happened?

A. There were black marks there as if someone had been spinning the wheels, pulling away or sliding the wheel to stop.

Q. And do you know what lane of travel that was in?

A. That would be on the lane leading north.

Q. Now then, when you got to the scene of the accident after it happened—you didn't see it happen, did you?

A. No, sir.

Roy Frank Stephens.

Q. Were there many people at the scene when you got there?

A. There was only one, possibly two people there.

Q. Do you know who that was?

A. The Rogers boy from the vicinity of Oakville.

Q. Now then, when you got there what did you do first? Did you stop?

A. Yes, I stopped.

Q. Did you stop south or north of the accident?

A. I stopped south of the accident.

Q. And what did you do, Mr. Stephens?

A. We went and pulled Mr. Chenault there out
page 86 } of the automobile.

Q. What was the condition of the automobile at the time you got there?

A. Well, the left side of it, beginning at the headlight, was badly damaged.

Q. Was any car on fire when you got there?

A. Yes, the car was burning, smoke was coming out of the motor.

Q. Did you play any part in putting that out?

A. Well, we dug up dirt off the bank and threw it on the motor.

Q. Which bank did you get this dirt from?

A. Well, we had to get it off of the east bank because the honeysuckle vines and bushes were growing on the west bank.

Q. Now, after you got this dirt where did you take it to?

A. To the front end of the car.

Q. What lane of travel, if any did you have to go across to get it to the car?

A. The east lane of travel.

Q. East lane? The road runs north and south.

A. That is right—well, you go east to the bank
page 87 } and get the dirt and go west to bring it back to
the car.

Q. In doing that which lane of travel did you go into?

A. The northbound lane.

Q. Did you all just pick up one little handful of dirt or pick up right much dirt?

A. We had to throw lots of dirt on it because it was smoking quite badly. We couldn't pull the wires off the battery, had no tools with us.

Q. Did you do this before or after you got Mr. Chenault out—that is, put the fire out?

A. Well, we took Mr. Chenault out of the car first. Then

Roy Frank Stephens.

we started throwing dirt on the motor. We laid him on the seat cushion.

Q. When you arrived there in what lane of travel was the Chenault automobile?

A. In the southbound lane.

Q. Did you see the automobile at that time driven by Mosley?

A. No, I did not.

Q. Did you ever see it?

A. I saw it quite some time after that.

Q. And whereabouts was it?

page 88 } A. On down the hill over the west bank.

Q. You know where the bridge is down there?

A. Yes.

Q. Was it down near the bridge?

A. It was quite close to the bridge, over the embankment.

Q. Then I will ask you this. Did you look when you arrived there and while you were there to see where the debris was from this accident?

A. Well, there wasn't too much debris in the road. It was mostly just the glass from the headlights and some dirt from under the fenders.

Q. Where did you find the glass from the headlights of the Chenault automobile and the dirt from the fenders?

A. Well, you could say it was scattered around in a three or four foot area.

Q. Where was most of it?

A. Well, it would be on the southbound lane.

Q. Could you tell us approximately how far from the middle of the road in the southbound lane the Chenault automobile was when you arrived there?

A. Oh, approximately twelve inches to eighteen inches.

page 89 } Q. Did you stay there until the ambulance came and got Mr. Chenault?

A. Yes.

Mr. Whitehead: All right, gentlemen.

CROSS EXAMINATION.

By Mr. Abbitt:

Q. Frank, I believe you say only one other person, maybe two, were there when you got there?

A. That is right.

Q. I believe it was Wade Rogers.

Roy Frank Stephens.

A. That is right.

Q. And Mr. Chenault was still in the car?

A. Yes, sir.

Q. Did you stay there until the Troopers arrived?

A. Yes, sir.

Q. The car was never moved before they got there, was it?

A. Not at that time, not as I know of.

Q. I believe you first mentioned these tire marks and will you repeat that, what you said about the tire marks? Who did you first tell you saw these tire marks?

page 90 } A. I told the Trooper, if I am not mistaken. It was the Trooper I was talking to at the scene of the accident.

Q. You think you discussed those marks at the scene of the accident with the Trooper?

A. I think so.

Q. You then saw the marks there after the accident?

A. I saw the marks before the accident and also after the accident.

Q. How did you happen to notice them before?

A. Because we crossed that road there approximately an hour or two hours previous to the accident.

Q. You mean you went along the road?

A. That is right. We were traveling south coming through Appomattox.

Q. You remember who was with you?

A. Al G. Burks and my mother.

Q. Who was driving?

A. I was doing the driving.

Q. Did you hear either one of the drivers say anything about how the accident happened?

A. No, I didn't.

Q. Did Mr. Chenault say anything to you?

page 91 } A. Mr. Chenault wasn't in a condition to do much talking. He was suffering quite a bit.

Q. Did you help get him out of the car?

A. Yes.

Q. Were you there when the Trooper took pictures of the vehicles?

A. No, I didn't see any pictures made.

Q. You did wait there until the Troopers got there?

A. Yes.

Mr. Abbitt: I believe that is all.

Roy Frank Stephens.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Let me ask you this: They asked you just now about seeing those black marks and you told them you saw them when you were coming on to Appomattox before the accident. Now, when you went back after the accident, when you came up on the accident, were those black marks still there then that you saw when you were coming on to Appomattox?

A. Yes, sir, still there.

Mr. Whitehead: All right.

page 92 } RE-CROSS EXAMINATION.

By Mr. Abbitt:

Q. Did the Chenault car make any tire marks?

A. I still can't hear you.

Q. Did you notice whether any tire marks were made by Mr. Chenault's car?

A. There were no tire marks, no brake marks of any kind.

Q. You didn't notice any?

A. No.

Mr. Abbitt: That is all.

The witness stands aside.

Mr. Whitehead: We rest, if your Honor please.

Mr. Sackett: If your Honor please, we would like to make a motion in the absence of the jury.

The Court: Gentlemen of the jury, go into your room.

(Jury out).

Mr. Sackett: If your Honor please, the defendant, by counsel, moves the Court to strike the plaintiff's evidence as being insufficient in law to support a verdict and on the ground that the plaintiff's own evidence is incapable of credulity. It discloses, we think beyond any question, that the accident happened on the defendant, Walter Lee Mosley's side of the road, and if that be a fact, and if the plaintiff's own evidence and the pictures demonstrate that the accident happened on the defendant

page 93 }

R. A. Reynolds (former state trooper).

Mosley's side of the highway then obviously the plaintiff in this case is not entitled to recover.

Note: Further argument in support of the above motion is here omitted.

The Court: I think it is entirely a jury case and your motion will have to be overruled. Call the jury in.

Mr. Sackett: We respectfully except to the action of the Court in overruling the motion to strike the plaintiff's evidence.

(Jury in).

page 96 } Note: Due to the omission of argument of counsel in support of the motion to strike plaintiff's evidence there is in this transcript no page 94 or 95.

EVIDENCE FOR THE DEFENSE.

R. A. REYNOLDS (former state trooper),
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Sackett:

Q. You are Mr. R. A. Reynolds?

A. That is correct.

page 97 } Q. Were you employed on the State Police force
in April of 1959?

A. I was, sir.

Q. Were you stationed in Appomattox County?

A. I was.

Q. Where are you employed now, Mr. Reynolds?

A. I am employed with the United States Treasury Department, the Alcohol and Tobacco Division.

Q. You are living in Martinsville, Virginia now?

A. In Collinsville, close to Martinsville.

Q. Did you have occasion on April 10, 1959 in the course of your duties as a State Trooper to make an investigation of an accident that had happened on State Route 26 north of Appomattox in Appomattox County, Virginia?

A. Yes, sir, I did.

Q. Would you state the make and model of the two vehicles involved and by whom they were owned and operated?

R. A. Reynolds (former state trooper).

A. There were two vehicles involved, a 1947 Chevrolet Sedan driven by Walter Lee Mosley of Evergreen, Virginia and the owner at that time was William Mosely of Evergreen, Virginia. The other vehicle was a 1956 Volvo driven by Vernon B. Chenault of Appomattox and the owner was listed as the same.

page 98 } Q. Now, could you determine or will you state in what direction the road generally runs, state Route 26?

A. That is a north-south road from Appomattox to Bent Creek.

Q. In which direction was the automobile being driven by Walter Lee Mosley traveling?

A. North toward Oakville.

Q. In which direction was the automobile of Mr. Chenault traveling?

A. That was traveling south toward Appomattox.

Q. What is the speed limit in that area, Mr. Reynolds?

A. At that time it was fifty-five miles per hour speed limit.

Q. Did you make any measurements as to the width of the roadway?

A. I don't have any recorded in my notes here. If I made them I don't recall as to the width of the highway.

Q. Now, I hand you what has already been introduced in evidence as Defendant's Exhibit A and ask you in which direction the camera was facing when that picture was taken?

A. That was facing south toward Appomattox.

Q. Looking in the direction toward which Mr. Chenault was going?

A. That is correct.

Q. Was that picture taken at the scene of the accident shortly after the occurrence?

A. It was.

Q. Was it taken while you were there?

A. It was.

Q. By whom was it taken?

A. Trooper Paul Hollingsworth.

Q. Does it accurately reflect the conditions in the roadway as they existed when you arrived at the scene?

A. I would say it does.

Q. Do you know whether the vehicles had been moved prior to your arrival at the scene?

A. I had no report of them being moved. The debris and so forth at the scene indicated they were at the same place they came to rest.

R. A. Reynolds (former state trooper).

Q. In other words, your investigation revealed that this Volvo owned by the plaintiff Chenault was in the position it was immediately following the accident when this picture was taken?

A. That is correct.

page 100 } Q. Now, I will ask you to take this picture and demonstrate to the jury from the picture where you determined the point of impact to be and the basis of your determination of that fact.

Mr. Whitehead: Now, if your Honor please, I object to that. He can tell what he found on the scene but it is for the jury to determine where the point of impact took place. The Supreme Court has said that just recently.

Mr. Sackett: If your Honor please, the witness should be allowed to testify from the picture what he found and the indications as to the point of impact based upon those physical findings in the road. He is not expressing any opinion. All he is doing is testifying as to the physical facts as he found them.

The Court: Go ahead.

By Mr. Sackett:

Q. Bearing that in mind, will you state to the Court and jury the physical facts indicating the point of impact?

Mr. Whitehead: I object to that. He can't indicate where the point of impact was. He can state what he
page 101 } found and the jury determines from all the evidence where the point of impact was.

By Mr. Sackett:

Q. Would you point out the physical facts that you found?

A. On the picture?

Q. Yes, using Defendant's Exhibit A.

"A. Upon my arrival at the scene the vehicle, the Volvo automobile operated by Mr. Chenault, was in a position as it is shown in the picture, the front end being approximately six inches from the white line in the southbound lane, the right rear of it sitting over next to the right edge of the highway. There was a considerable amount of debris around in the road which can be seen in the picture. There was a gouged mark in the asphalt that was fresh that can be seen in the form of a white line leading from the rim of the left front wheel and extending from it to a point two feet from the white line in the road and beginning over here in the northbound lane,

R. A. Reynolds (former state trooper).

extending up to the vehicle. There were fresh brake marks in the northbound lane, burn marks, and debris being thrown in a circular fashion around over here where the other vehicle went.

page 102 } Q. Could you take the picture entitled Defendant's Exhibit B and tell the Court and jury if you can whether you could trace these skid marks from the point where you first saw them begin to the point where you found the automobile of the defendant Mosley?

A. Yes, sir, they were very distinct from a point approximately adjacent to where this vehicle was stopped in the road and the tracks led off to the right, the right wheel going off on the shoulder and the left wheel leaving a mark from the rim. It was running on the rim as if the left tire had been blown. It left a white mark in the road veering back to the left and over to the bank out of sight in this picture.

Q. Then you could determine from that that the skid marks were made by the Mosley car?

Mr. Whitehead: I object to that. He can't testify to that, Judge. He can just tell what he found and the jury can decide and that is what I thought the Court had instructed counsel to ask him.

By Mr. Sackett:

Q. To satisfy Mr. Whitehead tell me where these marks that appear in this picture and other marks in page 103 } the roadway that you found led to.

A. Where they led to?

Q. Yes.

A. They led to a 1947 Chevrolet over the bank on the left which had been involved in the wreck.

Q. Is that the car operated by the defendant Mosley?

A. It is.

Q. Were these marks in the northbound lane of travel?

A. They were.

Q. Was the gouge mark that you have testified leading up to the left front wheel of the Volvo operated by the plaintiff, were those gouge marks in the northbound lane of travel?

A. The gouge marks started in the northbound lane and extended over—

Mr. Whitehead: I object to that. He can't testify to that. He don't know where they started.

R. A. Reynolds (former state trooper).

The Court: Mr. Whitehead, he can state where he thought they might have stopped. The objection is overruled.

Mr. Whitehead: If your Honor please, let me say something about that. He says "where they started". They might have started at the other end and gone to that page 104 } end. That is the point that I make, Judge.

The Court: I imagine you could look at them and tell which way they were going. Objection overruled.

By Mr. Sackett:

Q. Tell me where those marks were, which lane they were in and where they led to.

A. They started in the northbound lane two foot from the white line and extended to the left front rim of the Volvo vehicle in the southbound lane.

Q. Do you know whether either of the front tires on the car operated by Walter Lee Mosley were down after the accident?

A. To the best of my recollection the left front tire was down.

Q. Mr. Reynolds, just so there can't be any question would you point out to this jury again the rim and describe that rim in relation to this mark if you will?

A. The metal rim of the car can be seen in this picture immediately above the white sidewall on the tire and the white gouged mark indicated in the roadway went from page 105 } the point in the northbound lane up to the point where the left front wheel was sitting. The tire was still half-way on the rim."

Q. And that rim is turned up at that point, is it not?

A. Yes, sir.

Q. Now, these pictures, all of which have been introduced in evidence, are the three pictures that were taken at the scene by Trooper Hollingsworth?

A. That is correct.

Q. Did you say that the tire marks appeared to be fresh tire marks?

A. Are you referring to the skid marks or the burn marks in the highway?

Q. The skid marks.

A. Yes, sir.

Q. Did you see at the scene of the accident a boy by the name of Roy F. Stephens? Do you know Roy F. Stephens?

A. I don't believe I know him.

Q. Did any person at the scene of this accident tell you that

R. A. Reynolds (former state trooper).

these tire marks were in the roadway and made prior to the occurrence of this accident?

A. I recall no one making any such statement.

Q. Since the skid marks were very significant in page 106 } the course of your investigation if any such person had told you that would you have remembered it?

A. Most likely I would but I don't recall any such statement.

Mr. Sackett: That is all.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Do you recall from the point where the Volvo car Mr. Chenault was driving, from that point did you step it off to see approximately how far the Mosley car went before it came to a stop?

A. No, sir. I measured it with a tape line.

Q. How far was it?

A. It came to rest over the west embankment on the west side of Route 26 one hundred foot from where I determined to be the point of impact.

Q. Then that car was entirely off the road over the embankment, wasn't it?

A. Yes, sir.

Q. Now, Mr. Reynolds, let me ask you this: Take this Defendant's Exhibit B—now, you have referred page 107 } to these marks right here. That mark is turning into the bank, isn't it?

A. It is going toward the right side of the road.

Q. Now, this car didn't go into that bank there, did it?

A. You are asking me?

Q. Yes, sir.

A. No, sir, the right wheel went onto the shoulder and then veered back across the road.

Q. Then if it was cutting that way it would have gone into the bank, wouldn't it? It was headed for the bank, wasn't it?

A. At the place this line ends where you can see in the picture it is headed toward the bank.

Q. But you didn't find the car over here in the bank, you found the car down over a bank on the west side down near the bridge, didn't you?

R. A. Reynolds (former state trooper).

A. Between the bank and the bridge, approximately behind where you can see the top of the wrecker there.

Q. And also Defendant's Exhibit No. C, this picture, there is a line right there which is leading right into that bank, isn't it?

A. That particular line is, yes, sir.

page 108 } Q. And that is the same line shown here in Defendant's Exhibit A, isn't it?

A. The same skid mark.

Q. Then this picture here shows a scraping or something over in the middle of the northbound lane, doesn't it? Do you see that?

A. Yes, sir.

Q. Isn't that a mark there? Now then, this picture—that would be Defendant's Exhibit A—that, as I understood you to tell us, that is, as shown by all three of these pictures, the Volvo or Chenault car and all three of them show it was in the southbound lane, don't they?

A. Will you repeat that question? You said all three.

Q. All three pictures.

A. Showing the Volvo sitting in its right-hand lane?

Q. Yes, sir.

A. Yes.

Q. A, B and C, all three pictures, although they don't show it, you have testified that the Mosley car was not on its proper side of the road when you got there but it had gone across the southbound lane and was over the bank. Is that correct?

A. That is correct, on the west side.

page 109 } Q. You did not see this accident happen, did you?

A. No, sir.

Q. And the only thing you can tell us is the marks you found when you got there?

A. Correct.

Q. You did not see these marks made, did you?

A. No, sir, I didn't.

Q. Could you tell us if you know approximately from down at the bridge looking south or looking toward Appomattox to the top of the hill approximately how far is that?

A. You mean visibility? Do you mean as far as you can see an automobile?

Q. Yes, sir.

A. It would be strictly an estimate. I don't recall measuring that but I would say perhaps two-tenths of a mile.

Q. Now this road, as shown on these pictures, and also by

R. A. Reynolds (former state trooper).

defendant's pictures—anyway, these pictures here which you haven't seen—at the point where you found the Volvo car sitting, at that point was there a broken white line, one broken white line separating northbound and southbound traffic?

page 110 } A. There was a central broken line at that particular place in the approximate center of the highway.

Q. And that is as shown by all of the pictures?

A. As shown by the pictures.

Q. You got a call and you went there and you made your investigation, did you not, Mr. Reynolds?

A. Yes, sir.

Q. And I believe you tell us that while you were there Mr. Hollandsworth, another State Trooper, at that time took these pictures which are introduced here?

A. Yes, sir.

Q. Are these all the pictures he took?

A. I don't recall how many he took. I developed what you see there, the three.

Q. You don't know whether you developed them all or not?

A. I developed all the negatives and I picked out the ones that would serve the purpose and which I needed at the time.

Q. What did the other pictures show? Weren't they pictures of the scene of the accident?

A. Other pictures were of the scene of the accident if he made any others. I don't recall what they were.

Q. Let me ask you this, Mr. Reynolds: When you made your investigation on that day the weather was clear, was it not?

A. Well, it wasn't completely clear. It was somewhat overcast—wasn't heavy clouds.

Q. Wasn't it raining?

A. No, sir, the roads were dry.

Q. These pictures indicate that, do they not?

A. Yes, sir.

Q. Then after that on I believe a Monday after this thing happened on Friday did you not go down to the Chenault home and find a young man there by the name of Ralph Chenault?

A. I don't recall.

Q. Do you recall going and getting one of Mr. Chenault's sons and showing the pictures to him there?

R. A. Reynolds (former state trooper).

A. I don't recall, I might have. One of them asked me about the accident and wanted to know what happened.

Q. I will ask you on Monday after this accident happened do you recall one of the Chenault boys being with you and looking at the pictures?

A. No, sir, I don't recall that specifically.

page 112 } Q. I will ask you this then: Then a few days after this accident on Monday and this accident occurred on a Friday, did it not?

A. It did.

Q. I ask you if on that Monday you did not tell Ralph Chenault on that day that you were under the impression that the cause of this accident was Mosley's fault but that you had looked at your pictures now and they indicated that it was Mr. Chenault's fault?

A. No, sir, I never made any such statement.

Q. Approximately how far is it where this accident occurred to Oakville, do you remember?

A. It is approximately a mile, perhaps a tenth shy of a mile south of Oakville.

Mr. Whitehead: All right, thank you.

RE-DIRECT EXAMINATION.

By Mr. Sackett:

Q. One other thing, Mr. Reynolds, I overlooked asking you. The skid marks on the pictures shown in these two pictures and that you determined and say were made by the Mosley car would you tell me if you measured those skid
page 113 } marks as they appear in this picture and the length of them?

A. I did.

Q. What was the length of them?

A. The skid mark on the left, that would be the left coming down the hill, the one nearest to the white line, that was twenty-three feet from the end up here to a point I determined to be the point of impact at the scene. It started and stopped a distance of eighteen inches of the white line in the northbound lane. The one made by the right wheels of the Mosley vehicle—

Mr. Whitehead: I object to that. He can tell what he found. He does not know who made them, he wasn't there.

Paul C. Hollandsworth.

By Mr. Sackett:

Q. Go ahead.

A. The black mark on the left side of the picture, this one, was nineteen feet long from the end up here to a point that I determined at the time to be the point of impact for the purpose of measurement.

Q. Now, again how far from the point of impact to the point where you found the Mosley car?

A. One hundred feet.

page 114 } Mr. Sackett: That is all.

The Witness stands aside.

PAUL C. HOLLANDSWORTH,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Sackett:

Q. Will you state your name?

A. Paul Clayton Hollandsworth.

Q. Are you stationed here as a State Trooper in Appomattox County?

A. Yes, sir.

Q. Were you stationed here in April of 1959?

A. Yes, sir.

Q. Does it lie within your knowledge that there was an accident on State Route 26 in Appomattox County which happened April 10th, 1959 and which was investigated
page 115 } by Trooper Reynolds and in which you took some pictures?

A. Yes, sir.

Q. I hand you pictures that already have been introduced in evidence and ask you if these are the pictures that you took, pictures entitled Defendant's Exhibits A, B and C. Did you take those pictures?

A. Yes, sir, I did.

Q. Do you see the skid marks in pictures A and B?

A. Yes, sir.

Q. In which direction was the camera looking in those two pictures?

A. The pictures were made looking in a southerly direction, headed south.

Q. And these skid marks that you see in those pictures then are in the northbound lane of travel?

Walter Lee Mosley.

A. Yes, sir.

Q. I will ask you if in your observations at the scene you could trace indications of where those skid marks led to? What I am getting at, Trooper, is this: Was there anything in your observation, and it may not have been, I want to know whether you saw the Mosley car at the scene of the accident.

A. Yes, sir.

page 116 } Q. Where was it in relation to these pictures?

A. It would be on back north of the view here.

Q. On the west side of the highway?

A. Yes, sir, it would be on the west side.

Q. Was there anything in your observation at the scene of the accident to relate these skid marks to that car?

A. Well, I really don't remember because I just took the pictures and didn't participate in the investigation other than taking the pictures.

Q. That wasn't your responsibility?

A. No, sir.

Q. And you were there only to take the pictures?

A. Just called me and told me to bring the camera.

Q. You did take the pictures and these are the ones you took?

A. Yes, sir.

Q. Did you take any other pictures other than these three?

A. As I recall it was just three negatives.

Mr. Sackett: That is all.

Mr. Whitehead: I don't want to ask him anything.

The Witness stands aside.

page 117 } WALTER LEE MOSLEY,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Sackett:

Q. Will you state your full name?

A. Walter Lee Mosley.

Q. Mr. Whitehead asked you this morning your age. You are now twenty-one?

A. Yes, sir.

Q. Do you live in Appomattox County?

A. Yes, sir.

Walter Lee Mosley.

Q. You have heard the evidence here this morning. Were you the operator of the automobile that was traveling north at the point of this accident?

A. Yes, sir.

Q. What was the make and model of your car?

A. 1947 Chevrolet.

Q. What was the mechanical condition of the car at the time?

A. Good condition.

Q. Were the brakes in good condition?

page 118 } A. Yes, sir.

Q. Was the steering mechanism in good condition?

A. Yes, sir.

Q. What time of day did this accident happen?

A. It was between 3:30 and 4:00 o'clock.

Q. Where were you working at the time?

A. I was going to school.

Q. You were going to school?

A. Yes, sir.

Q. You are working in Lynchburg now, are you not?

A. Yes, sir.

Q. Where were you going at the time of the accident?

A. I was going to my aunt's house.

Q. I will ask you as you approached the scene of this accident whether you were proceeding downgrade?

A. Yes, sir.

Q. Approximately how fast were you going?

A. About forty or forty-five.

Q. When you got closer to the scene of the accident, or as you came over the brow of the hill to proceed south down toward the scene of the accident, did you see a vehicle with which you collided?

page 119 } A. When I first hit the hill I didn't see him.

About two hundred feet, I would say, or a little further I seen Mr. Chenault. He was on his side of the road like I was on mine. Then really as he got opposite me he came straight into me. The first thing I did was hit the brakes, cut to the right a little bit, and he hit the front wheel and that broke the front wheel back and I had no brakes or nothing and the hood flew up and I didn't know where I was going and when the car stopped the door flew open and when the car stopped I got out and went back and asked what was wrong. He said "Go on man, go on man, I don't want to talk to you."

Walter Lee Mosley.

I tried to help him out of the car like the other guy said. The first thing they did they took him out of the car first and then put the fire out. The rest of the guys say they put the fire out first. I helped get him out of the car.

Q. But as you were proceeding downgrade in your approach to where the accident happened on which side of the road were you?

A. I was on my right-hand side of the road.

Q. Did you ever get out of your lane of travel?

A. No, sir, I did not get out of my lane of travel.

Q. Were you in your lane of travel when the page 120 { collision occurred?

A. Yes, sir. I seen him before he got to me and he was over on his side of the road. I don't know what happened to him unless he was asleep or drunk. I don't know what happened to him.

Q. Approximately how far was he from you when he swerved?

A. Oh, he was right at me, come straight into me like that (indicating). He was on his side as good as anybody at first and I was on my side of the road and as soon as he got opposite me he came straight into me like that. I hit the brakes. He still was going to hit me. The first thing you think of when you are driving is hitting your brakes and getting over. It happened so quick that I just hit the brakes and cut a little bit like that and when you hit the brakes your car, I imagine, is going to slide and if he had hit his brakes his car would have slid too if he had good brakes on it.

Q. Do I understand that the hood on your car came up?

A. Yes, sir, and when he hit me that broke my brake line and bent the wheel back too. It was pulling me across the road on his side of the road. My wheel was broke or page 121 { bent and it was pulling me across like that.

Q. Then, of course, as the Trooper has testified you did go over and end up on the west side of the road?

A. Yes, sir, the west side of the road. He must have went asleep or something like that.

Q. It is just the facts that we want. You were driving alone?

A. Yes, sir.

Q. These pictures that have already been introduced in evidence, A, B and C, do they show the position of his car in the roadway after the accident?

A. Yes, sir.

Q. By whose car were those marks in the road made?

A. Mine.

Walter Lee Mosley.

Q. They were made by your car?

A. Yes, sir.

Mr. Sackett: That is all, you may cross examine.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Now, these marks in the northbound lane shown in Exhibits C and B, have you looked at these before?
page 122 { A. I seen them when we had the trial here.

Q. Do you see them now?

A. Yes, sir.

Q. You see that is in the northbound lane, isn't it?

A. Yes, sir.

Q. See how that mark there comes right there and is heading toward the bank? Do you see how it is making a right turn there toward the bank?

A. Yes, sir.

Q. Do you see how that mark is leading the same way like that toward the bank?

A. Yes, sir.

Q. You didn't go in this bank, did you?

A. No, sir, I went to the edge of the road there. You see I slid my brakes before I got to him and you can see that but when he hit my car it automatically went over a little bit.

Q. If you went to the edge of the road then you would have gone into the bank, you were heading into it?

A. No, sir. When I went to the side of the road you see the wheel was bent and that pulled me back across the road.

Q. Here you are right down here and you are
page 123 { heading right to the bank, aren't you?

A. Yes, sir.

Q. And instead of you being over here at this bank you went over on the left side entirely across over the hard surface and over the bank?

A. That is right. I didn't have no control, no brakes and didn't know where I was going and the wheel was bent and pulling all the time.

Q. That is what I am saying, these marks here lead you into this bank, didn't they?

A. Yes, sir, they headed toward the bank.

Q. If you didn't have any control and the marks were leading into the bank then you would run into the bank, wouldn't you?

Walter Lee Mosley.

A. If one of your wheels was bent it would pull you back.

Q. If it pulled you back it would have pulled you back up the road some?

A. It won't pull you over all of a sudden, it will pull you lightly like.

Q. In other words, if it pulled you lightly like page 124 } then it pulled you so slightly, according to your contention, that it pulled you away from the bank over on your right-hand side and then took you back over on the bank on the left-hand side?

A. When he hit me that bumped me a little ways. When he hit me that knocked me over on the side a little ways and then the wheel was bent and that pulled me straight on down to the other bank.

Q. Now, as a matter of fact, you never made these black marks here in this road?

A. Who?

Q. Who did make them?

A. The car wheel did it.

Q. Weren't you coming down there going about sixty or sixty-five miles an hour?

A. No, sir, I tell you the truth, you take that old Chevrolet and try to run it sixty or sixty-five miles an hour and you just as well be flying. I don't drive a car like that.

Q. That is right, it would be flying?

A. Right.

Q. In other words, after this impact took place you went on down yonder around a hundred feet and went page 125 } down over a bank and you were going about sixty or sixty-five miles an hour?

A. No, sir, I didn't travel sixty or sixty-five, I traveled forty or forty-five.

Q. That is what you say here today. Then you say the man must have been drunk?

A. Asleep or drunk, one of the two, he had to be to come out like that.

Q. Now, when you came on down the hill you had a long downgrade before you got to where Mr. Chenault was, didn't you?

A. Right.

Q. You had plenty time to get up a good speed, didn't you?

A. If I wanted to run that fast but I didn't want to run that fast.

Q. Were you hurt in the accident?

A. A little bump on my head.

Curtis J. Kelly.

Q. Just got a little bump on your head and that was all that was the matter with you. Who else was in the car with you?

A. By myself.

page 126 } Q. Did you hear my question? I asked you who was riding in the car with you?

A. I said by myself.

Q. Wasn't anybody else in that car?

A. No, sir.

Q. Was there any other young man or young boy in the car with you?

A. If it was I didn't see him.

Q. Now, after your car came to a rest then were you able to get out of your car?

A. Yes, sir.

Q. Your car was down over the bank, which would be on the left-hand side going north?

A. Yes, sir.

Q. And that was entirely out of sight, wasn't it?

A. Yes, sir.

Mr. Whitehead: All right.

Mr. Sackett: That is all.

The witness stands aside.

page 127 } CURTIS J. KELLY,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Sackett:

Q. Mr. Kelly, will you state your full name?

A. Curtis J. Kelly.

Q. By whom are you employed?

A. Travelers Insurance Company.

Q. In what capacity?

A. I am an insurance adjuster.

Q. Were you so employed on April 10, 1959?

A. Yes, sir.

Q. Does it lie within your knowledge that an insured of Travelers, Mr. Vernon B. Chenault, was involved in an accident on State Route 26 in Appomattox County on April 10, 1959?

A. Yes, sir.

Curtis J. Kelly.

Q. In the course of your duties in your employment by the Travelers Insurance Company were you directed to go and did you go to the Lynchburg General Hospital on April 29, 1959 to interview Mr. Chenault?

A. Yes, sir.

page 128 } Q. Did you go there for the purpose of determining and investigating how the accident happened?

A. Yes, sir.

Q. Did you talk to and see Mr. Chenault at the Lynchburg General Hospital?

A. Yes, sir.

Q. I will ask you if he gave you at that time a signed statement.

A. Yes, sir, he did.

Mr. Whitehead: I object to that, if your Honor please. He can't testify to that.

Mr. Sackett: I am not undertaking to introduce the statement.

Q. Did he tell you at that time in the course of your conference with him as to how the accident happened?

A. Yes, sir.

Q. What did he say to you?

A. He said that he was going uphill and the other car was coming downhill; that it was broad daylight and the road was a two-lane road and black top; that he looked at the other car and saw it coming; that it was on its own side of the road; that he glanced back down to his own side of the road and that they hit left front to left front;
page 129 } that the other car was on its own side of the road and he was on his own side of the white line and that he actually didn't know how the accident happened.

Q. And that is what he told you at the time?

A. Yes, sir.

Mr. Sackett: That is all.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Now, Mr. Kelly, you say you work for Travelers Insurance Company?

A. Yes, sir.

Curtis J. Kelly.

Q. Now, at the time of this accident Mr. Chenault had a contract of liability insurance with the Travelers Company, did he not?

A. Yes, sir.

Q. And at that time also he had in his policy, in addition to that, and which he had paid the Travelers Insurance Company for, coverage under the uninsured, did he not?

A. Of my own personal knowledge I don't know that but I imagine he did.

page 130 } Mr. Sackett: If your Honor please, I don't know whether Mr. Whitehead intends to pursue this line of examination. He is entitled to ask Mr. Kelly by whom he is employed and whether he has any interest in this case but the line of examination that he has begun seems to me to be irrelevant to the issues involved in this case.

The Court: I will hear you on that, Mr. Whitehead.

Mr. Whitehead: If your Honor please, the reason I am asking that I am going to ask him several other questions to clear it up but the reason, of course, it is to the interest of the Travelers Insurance Company in this case to try to put the blame on their own insured because the man in the other car wasn't hurt to amount to anything but this man was hurt and under their contract of insurance if the Colored man, if Mosley, the defendant is held liable then they have to pay this man. I think that is very material to show his interest in this case of obtaining or saying this man made a statement which he has.

page 131 } Mr. Sackett: If your Honor please, if Mr. Whitehead is going to make a long statement I think it ought to be in the absence of the jury.

The Court: All right, the jury will retire to the jury room.

(Jury out).

Mr. Sackett: If your Honor please, the defendant, by counsel, objects to the statement which plaintiff's counsel has made to the Court in the presence of the jury because its purpose was calculated to prejudice this jury in the defense of this case because of the insurance involved. Now, we injected the insurance into the case, yes, and he is perfectly, I think, within his right to ask Mr. Kelly by whom he is employed and whether he has an interest in this case, and he does, and what he would seek by that line of questioning would be to impute prejudice to Mr. Kelly. He is entitled to

Curtis J. Kelly.

do that but when he goes beyond that and seeks to impute to the Travelers Insurance Company motive in what it has done and in the type of coverage that it carries with this insured Chenault, both liability and uninsured motorist, page 132 } I think it is improper and I think it is prejudicial to this defendant and I ask the Court to instruct the jury to disregard Mr. Whitehead's statement about the type of coverage that the Travelers had and the motive he seeks to impute to Travelers.

The Court: I think the Travelers Insurance Company is a fine company.

Mr. Whitehead: It is a fine company, but in this matter here this is a peculiar situation we have under this uninsured law and in this case Travelers Insurance Company is not only covering Mr. Chenault for what damage he may have done but in this insurance, as Mosley does not have liability insurance himself, Travelers Insurance Company becomes his insured under the law and therefore—

The Court: Was that law in effect two years ago?

Mr. Whitehead: Yes, sir, it became effective July of '58.

Mr. Sackett: Judge, that has nothing to do with the cause of action of the plaintiff against the defendant page 133 } and the fact that Travelers may have insured Chenault and may be obligated to pay a judgment gotten against an uninsured motorist does not determine nor is it relevant to the issue of the defendant's liability. Mr. Whitehead in his statement before this jury has sought to prejudice the defendant in the trial of this case by injecting into it the uninsured motorist coverage and imputing to Travelers a motive through the witness Kelly and I think it is improper and I respectfully ask the Court to direct the jury to disregard Mr. Whitehead's statement.

The Court: I didn't realize that the uninsured motorist law was in effect two years ago. Bring the jury in.

Mr. Whitehead: I want to understand the ruling of the Court. I don't want to do anything wrong. I wanted to ask him with reference to them having an interest in this case to the effect that if the judgment is obtained against Mosley then they will have to pay. They are very interested in this case and the very next question I was going to page 134 } ask him was whether from his investigation had he found out that Mosley was not hurt.

The Court: Do you object to that?

Mr. Sackett: I think it is improper. Whether Walter Lee Mosley was hurt or was not hurt has nothing to do with the

Curtis J. Kelly.

liability in this case. Mr. Whitehead is seeking to prejudice the defendant by asking the witness if the plaintiff gets a judgment against the defendant Mosley will the Travelers have to pay it. I think he is entitled to ask him questions as to whether he is employed by Travelers and if he has got an interest in the outcome of this case, yes, but to go further than that I think is going too far.

Mr. Whitehead: Judge, Mr. Sackett is seeking to have you follow the old theory that was handed down before we had this kind of insurance. Now Travelers has insurance that covers Mr. Chenault and also covers Mosley. He is vitally interested now to see that no judgment is obtained against Mosley because if it is they have got to pay it.

The Court: Bring the jury in.

page 135 } Mr. Sackett: Are you going to instruct the jury in respect to disregarding the statement of Mr. Whitehead's?

The Court: No.

Mr. Sackett: The defendant, by counsel, objects and excepts to the Court's ruling for the reason stated and excepts to the action of the Court in permitting the continued examination of the witness on that ground.

(Jury in).

By Mr. Whitehead:

Q. Mr. Kelly, after this accident occurred on April 10, 1959 you did investigate the accident, did you not?

A. No, sir. The only thing I did was to see Mr. Chenault in the hospital.

Q. You never investigated the accident at all?

A. The accident happened in a territory which I do not handle. Another adjuster handled the accident itself. My connection was simply to see Mr. Chenault in the hospital.

Q. Who investigated it for the company?

A. I think it was Beverly Marshall, but I am not sure.

Q. You do know the type of policy that was issued by the company at that time, do you not?

A. Mr. Whitehead, I don't.

Q. Then, as I understand it, Mr. Kelly, you did not interrogate witnesses and did not get the evidence at the scene of the accident and the only person you saw and talked with concerning this accident was Mr. Chenault, the plaintiff in this case?

A. Yes, sir.

J. Crawford Davidson.

Q. And you say when you talked to him over there in the hospital on that day he told you that he was on his side of the road?

A. Yes, sir.

Mr. Whitehead: All right.

RE-DIRECT EXAMINATION.

By Mr. Sackett:

Q. And that the defendant Mosley was on his side of the road?

A. Yes, sir.

Q. And that he didn't know how the accident happened?

A. Yes, sir.

Mr. Sackett: That is all.

page 137 } The witness stands aside.

J. CRAWFORD DAVIDSON,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Sackett:

Q. Mr. Davidson, what is your full name?

A. J. Crawford Davidson.

Q. And where are you employed? I am sure all the people on the jury know.

A. Bank of Appomattox.

Q. On April 3rd, 1960 were you a notary public then?

A. Yes, sir.

Q. I will ask you if Vernon B. Chenault executed an affidavit before you on April 3rd, 1960?

A. He executed an affidavit before me.

Q. I said April 3rd, I meant August 3rd.

A. It was about that time. I don't keep a record of acknowledgments but it was some time last summer
page 138 } I took his acknowledgment.

Q. Was he sent to you from Mr. Burks' office?

A. I don't know.

Mr. Sackett: That is all, Mr. Davidson.

J. Crawford Davidson.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Then, as I understand it, Mr. Davidson, you don't know where you saw him?

A. Well, I wouldn't say it was in the bank, no, sir. I just don't know.

Q. You just don't know?

A. I don't recall because I don't make a note of those things but I assume I was at the bank but I don't know.

Q. Do you know whether or not he signed his name to a piece of paper in your presence?

A. Yes, sir.

Q. And what was the piece of paper?

A. I don't make a practice of reading those things. A man comes in and says he has got something he wants me to take his acknowledgment on and I acknowledge his signature.

Q. Do you know who brought this to you to acknowledge?

A. I assume it was Mr. Chenault.

page 139 } Q. You assume it was but you don't know, do you?

A. I couldn't take his acknowledgment unless he was present to acknowledge his signature.

Q. You take a lot of acknowledgments for people down there out of Mr. Burks' insurance office, don't you?

A. Well, not necessarily but the party I take the acknowledgment from is present, that is what I am trying to say.

Q. You just don't know where it happened?

A. I can't say I do.

Q. And you don't know what was in the thing, do you?

A. No, sir.

By Mr. Sackett:

Q. Your office is next door to Mr. Burks' office, isn't it?

A. Yes, sir.

Mr. Sackett: That is all.

The witness stands aside.

Mr. Sackett: The defendant rests, your Honor.

The Court: Is there any other testimony, Mr. Whitehead?

page 140 } Mr. Whitehead: Yes, sir.

Ralph Oscar Chenault.

REBUTTAL EVIDENCE FOR THE PLAINTIFF.

RALPH OSCAR CHENAULT,
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Your name is Ralph Oscar Chenault?

A. Yes, sir.

Q. Mr. Chenault, where do you live?

A. Newport News.

Q. And you are the son of Mr. Vernon B. Chenault, the plaintiff in this case?

A. Yes, sir.

Q. When your father was hurt in an accident of April 1959 where were you living then?

A. Newport News.

Q. After you heard about your father's accident did you come straight home?

A. Yes, sir.

page 141 } Q. Now then, after the accident and after you
got home did you see Mr. Reynolds who was then
a State Trooper but who is now with the Tax Department?

A. Yes, sir, he came to my father's trailer and got me.

Q. Do you know what day that was?

A. That was on Monday after the wreck happened on Friday.

Q. I will ask you this: Did Mr. Reynolds at that time tell you anything about the accident?

A. No, he didn't tell me anything about the accident, he just told me he didn't think my father was in fault in causing the accident until after he had seen the pictures he wanted to show me.

Q. Then after he looked at the pictures did he tell you anything?

A. He said the pictures indicated that my father was in fault.

Q. In other words, before he looked at the pictures he told you what?

Mr. Sackett: If your Honor please, he is leading the witness.

Ralph Oscar Chenault.

page 142 } By Mr. Whitehead:

Q. On the way up to the headquarters where the pictures were what did Mr. Reynolds tell you at that time?

A. Well, he told me on the way up that until the pictures were developed he did not think that my father was in fault, he was sure he wasn't in fault until the pictures were developed, and after the pictures were developed that they indicated that my father was in fault.

Mr. Whitehead: I see, all right.

CROSS EXAMINATION.

By Mr. Sackett:

Q. Mr. Chenault, actually you went to Mr. Burks' office and made a written report of this accident, did you not?

A. I don't remember if I did or not. I remember going to Mr. Burks' office. I don't remember making a report. Mr. Reynolds gave me the papers, I believe, to make the report.

Q. And you went to Mr. Burks' office and signed your father's name "Vernon B. Chenault, by Ralph Chenault," did you not?

A. I think I did.

Q. In that report—

page 143 } Mr. Whitehead: I think we are entitled to see what you are talking about and the witness is entitled to see it.

By Mr. Sackett:

Q. I will show it to you. Is that your signature "V. B. Chenault, by Ralph Chenault"?

A. Yes, sir.

Q. Is it not a fact you told them then that car one was driving south on Highway 26 and car one, that is your father's car, was headed south, was it not?

A. Yes, sir.

Q. And car one got over white line one and one-half feet?

A. I never told him any such thing as that. I didn't know because I hadn't seen that. I wasn't here when the wreck happened. How could I tell the man that?

Q. This is your signature.

A. I never signed any such thing as that with writing on it. That would be like hanging my own father.

Q. I sort of felt the same way. That is your signature?

Vernon B. Chenault.

A. That is my signature but that writing wasn't on there when I signed this paper.

page 144 } Q. You mean you signed a blank sheet of paper?

A. That wasn't on that paper when I signed my name to it.

Q. What was on it?

A. I didn't see that.

Q. Did you remember it being filled out?

A. That side of it.

Q. That side of it was filled out but this side wasn't?

A. I know no such thing as that was on there.

Mr. Sackett: That is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Do you use a typewriter?

A. No, sir, I don't use one.

Q. This thing Mr. Sackett shows you is typed in there?

A. My signature I signed but I do not type. I could not type two words a minute.

Q. Who typed this in here?

A. I don't know, the insurance office, I guess.

Q. Who typed it on the front?

A. The insurance office. I carried the papers page 145 } there but I didn't fill them out.

Q. In other words, the insurance company filled out the papers or a representative of the insurance company filled them out?

A. I do not type. I never took typing and know nothing about it.

Mr. Whitehead: All right.

The witness stands aside.

VERNON B. CHENAULT,
recalled in rebuttal, testifies as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Chenault, the defendant, Mosley, in this case, testifying today said that you were either asleep or drunk. Now

Vernon B. Chenault.

I want you to look at this jury and tell them were
page 146 } you asleep?

A. No, sir.

Q. Were you drunk?

A. No, sir.

Q. Had you had anything to drink?

A. No, sir.

Q. Now, in any statement which has been referred to here
and not introduced, statement by Mr. Kelly, and anything in
writing, who did the writing? Did you do any of the writing?

A. No, sir, I did not.

Q. Did you do anything except sign your name to it?

A. No, sir, that is all I did.

Q. Now, down at the insurance office here in August of
1959, I believe it was at that time, did you do any of the writ-
ing on the paper?

A. No, sir.

Q. You only signed your name?

A. That is right.

Mr. Whitehead: All right.

page 147 } CROSS EXAMINATION.

By Mr. Sackett:

Q. You can read all right, can't you, Mr. Chenault?

A. I can read very well.

Q. You read all right?

A. I said very well, not too good.

Mr. Sackett: That is all.

The witness stands aside.

Mr. Whitehead: We rest, if your Honor please.

(END OF ALL TESTIMONY)

Mr. Sackett: If your Honor please, the defendant would
like to renew his motion in the absence of the jury.

The Court: Gentlemen of the jury, go to your room.

(Jury out).

Mr. Sackett: If your Honor please, the defendant, by counsel, now renews his motion to strike the plaintiff's evidence as being insufficient in law to support a verdict on the grounds now that all of the credible evidence page 148 } when it has now been tied in by the testimony of the investigating Trooper shows that these marks were definitely made by the Walter Lee Mosley car and the pictures, which I think demonstrate so clearly how the accident happened, we consider, in the light of the investigating Trooper who definitely indicates that the point of impact by all the physical marks in the roadway, which I say can't be gainsaid, can't be contradicted, led from this point back to there indicating that the point of impact definitely was in the northbound lane of travel and that the skid marks made by the Mosley car indicate definitely that that car was in the northbound lane of travel and the Trooper who says that he could trace those marks freshly made from the point where they occurred by other marks in the roadway right up to the point where he found the Mosley car. Now, if they be the facts, and I say those physical facts demonstrated by this picture, fortified by the testimony of the Trooper, disclose, as a matter of law, that the accident happened in Mosley's lane of travel and disclose, as a matter of law, that page 149 } the plaintiff is guilty of contributory negligence which bars his right of recovery and that the defendant is free of any negligence, and we earnestly submit that this case is a proper case in which the Court ought to strike the plaintiff's evidence.

The Court: Gentlemen, if the jury would believe the testimony of Mr. Chenault it could find for the plaintiff. If the jury believed the defendant's evidence it could find for the defendant. The opinion of the Trooper shouldn't be given too much weight. It is purely a jury case, it is what the jury believes.

Mr. Sackett: In all deference, it is not the opinion of the Trooper, the Trooper is testifying to uncontradicted facts as to physical marks in the roadway which demonstrate so clearly where the accident happened.

The Court: The motion will be overruled. I assume you gentlemen want to take up instructions now.

Mr. Sackett: The defendant, by counsel, expects to the action of the Court in overruling page 150 } the motion to strike the plaintiff's evidence for the reasons stated.

page 151 } INSTRUCTIONS AND OBJECTIONS AND
EXCEPTIONS THERETO:

The Court: I will give instructions 1 and 2 for the plaintiff.

Mr. Sackett: We have no objection to Instruction No. 1.

The defendant, by counsel, objects and excepts to the action of the Court in giving Instruction No. 2 offered by the plaintiff on the ground that the instruction is a finding instruction and should embody the defendant's theory that the plaintiff was guilty of contributory negligence.

The defendant further objects and excepts to the action of the Court in giving Instruction No. 2 for the basic reason that the evidence discloses as a matter of law that the defendant was not negligent and that the plaintiff was guilty of negligence as a matter of law.

The Court: I am giving instructions lettered A, B, C, D and E for the defendant and to which the plaintiff has no objection.

page 152 } *Plaintiff's Instruction No. 1 (Granted):*

"The Court instructs the jury that should you find for the plaintiff, Vernon B. Chenault, it is your duty to determine the amount of damages to be awarded him and in determining the same you should fix the amount at such sum as from a preponderance of the evidence to you seems a fair and just compensation for the injuries and resulting damages sustained by him as the proximate cause of the collision, but not to exceed the amount sued for, \$50,000.00; and in arriving at the amount of damages, you may take into consideration any of the following items or elements of damage that the preponderance of the evidence shows was suffered by Vernon B. Chenault, as the proximate result of the collision sued for;

"a. Any bodily injury or disability, the character and duration thereof;

"b. Any physical pain, suffering and mental anguish he has already been caused to endure or that he will likely and probably, with reasonable certainty, be hereafter caused to suffer.

"c. Any expense for surgical, medical and hospital treatment, including necessary traveling expenses, he has already incurred or will likely and probably, with reasonable certainty, hereafter incur in a proper effort to be cured of his injuries or to alleviate the effects thereof;

page 153 }

"d. Any inconvenience and discomfort that he has already sustained or will likely and probably, with reasonable certainty, hereafter sustain; and,

"e. Any humiliation or embarrassment associated with his alleged injuries."

Plaintiff's Instruction No. 2 (Granted):

"The Court instructs the jury that at the time and place this accident occurred it was the duty of the defendant, Walter Lee Mosley, to use reasonable care to perform or comply with each and all of the following duties:

"a. To drive the Chevrolet automobile under proper control;

"b. To drive said Chevrolet automobile at a speed and in a manner so as not to endanger the life or limb of the plaintiff;

"c. To drive said automobile so as not to exceed a reasonable speed under the circumstances and conditions
page 154 } existing at the time;

"d. To keep a proper lookout;

"e. To drive upon the right half of the highway and in the lane of travel designated for northbound traffic;

"f. To drive within a single lane and not to move from said lane until such movement could be made with safety;

"That these were continuing duties to be exercised when they would be reasonably effective, and that if the defendant, Walter Lee Mosley, failed to perform any one or more of said duties as above set forth and that such failure, if any, was the sole proximate cause of the accident, then you shall find for the plaintiff, Vernon B. Chenault."

Defendant's Instruction A (Granted):

"The Court instructs the jury that even though you may believe from the evidence in this case that the plaintiff sustained an injury as the result of a collision between an automobile operated by him and an automobile operated by the defendant, Walter Lee Mosley, this does not prove that the defendant was guilty of negligence or that he is liable in damages to the plaintiff. The Court instructs the jury that

before the plaintiff can recover of the defendant
page 155 } in this case the plaintiff must prove by a preponderance of the evidence that the defendant was guilty of some act of negligence as charged in plaintiff's motion for judgment and that such negligence proximately

caused the injuries of which the plaintiff complains. And if in a consideration of all of the evidence the jury believe that the defendant was guilty of no negligence, then the jury should find for the defendant, Walter Lee Mosley.”

Defendant's Instruction B (Granted):

“The court instructs the jury that if you believe from the evidence in this case that at the time and place of this accident the defendant, Walter Lee Mosley, was operating his automobile at a lawful and proper rate of speed, on his own proper side of the highway, was maintaining a reasonable and proper lookout for other vehicles using the highway at that point, and was using such care as a reasonably prudent person would have used under the same or similar circumstances, then he was not guilty of negligence and the jury should return a verdict for the defendant.”

page 156 } *Defendant's Instruction C (Granted):*

“The court instructs the jury that it was the duty of the plaintiff, Vernon B. Chenault, at the time and place of this accident to use reasonable care to operate his automobile as nearly as practicable entirely within a single lane of the highway and not to move from said lane until he had first ascertained that such movement could be made with safety. And if the jury believe from a preponderance of the evidence in this case that the plaintiff, Chenault, drove his automobile from his lane of travel into or partially into the lane of travel of the defendant, Mosley, striking his automobile and that in the exercise of reasonable care he could have avoided the collision by continuing in his own lane of travel, then he was guilty of negligence and if the jury believe from the evidence that such negligence proximately caused or proximately contributed to this accident, then the plaintiff is not entitled to recover of the defendant in this case and the jury should find for the defendant.”

Defendant's Instruction D (Granted):

page 157 } “The court instructs the jury that if was the
duty of the plaintiff, at the time and place of this
accident, to use reasonable care to perform or
comply with each of the following duties:

- “1. To operate his automobile at a reasonable and proper

rate of speed under all of the conditions then and there existing, but in no event at a speed in excess of 55 m.p.h.

"To keep a reasonable and proper lookout ahead of said automobile to see and observe other vehicles using the highway at that point.

"3. To keep his automobile under proper control.

"4. Not to operate his automobile to the left of the center of the highway at that point.

"That these were continuing duties to be exercised when they would be reasonably effective and that if the plaintiff failed to perform any one or more of said duties as above set forth then he was guilty of negligence and if the jury further believe from the evidence that such negligence proximately caused or proximately contributed to this accident then the plaintiff is not entitled to recover of the defendant in this case and the jury should find for the defendant."

page 158 } *Defendant's Instruction E (Granted):*

"The court instructs the jury that if they believe from the evidence that both the plaintiff, Vernon B. Chenault, and the defendant, Walter Lee Mosley, were negligent and that the injury of the plaintiff resulted from their concurring negligence then the jury cannot weigh the negligence of one against the other, for if you believe that the plaintiff was guilty of any negligence which proximately contributed to his injury such negligence bars the plaintiff's right of recovery and the jury should find for the defendant."

Note: The jury having returned its verdict in favor of the plaintiff in the amount of \$30,000.00 the following motion to set aside the jury's verdict was made, which motion was taken under advisement by the court:

Mr. Sackett: The defendant, by counsel, moves the Court to set aside the jury's verdict for the plaintiff on the grounds: (1) that it is contrary to the law and the evidence and without evidence to support it; (2) that the evidence discloses that as a matter of law the negligence of the plaintiff
page 159 } either solely caused or proximately contributed to this accident; (3) for the error of the Court in giving Instruction No. 2 offered by the plaintiff and to which the defendant objected; and (4) that the verdict is excessive.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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