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# Record No. 5465

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**RICHARD B. DALE**

v.

**FIDELITY AND CASUALTY  
COMPANY OF NEW YORK,  
ET AL.**

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FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

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## RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

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

AT RICHMOND.

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**Record No. 5465**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 17th day of January, 1962.

RICHARD B. DALE,

Appellant,

*against*

FIDELITY AND CASUALTY COMPANY OF NEW YORK,  
ET AL.,

Appellees.

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From the Circuit Court of the City of Norfolk

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Upon the petition of Richard B. Dale an appeal is awarded him from a decree entered by the Circuit Court of the City of Norfolk on the 8th day of November, 1961, in a chancery cause then therein depending wherein Fidelity and Casualty Company of New York and another were plaintiffs 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**

\* \* \* \* \*

## BILL FOR INJUNCTION.

To the Honorable Clyde H. Jacob, Judge of the Circuit Court of the City of Norfolk:

Your plaintiffs, The Fidelity & Casualty Company of New York and Lamberts Point Docks, Incorporated, respectfully represent:

First: That the defendant filed a petition addressed to T. J. Amelson, a Commissioner in Chancery of this Court, wherein he represented that on July 11, 1961 he was seriously and permanently injured in an accident occurring in the City of Norfolk, Virginia; that he was desirous of perpetuating the testimony of certain witnesses as to the matter or matters in respect to said accident; that there is no suit or action pending in respect to said accident; that your plaintiffs may be affected by the testimony; and the defendant prayed that under §8-317 of the Code of Virginia testimony be taken of Earl L. Elliott, F. V. Dickerson, George Bevan, Britton Pierce, Jr., and Thomas H. Willcox, Jr., at the office of said Commissioner in Chancery at 10:00 a. m. on October 16, 1961.

page 2 } Second: That to be entitled to perpetuate testimony under the said §8-317, the defendant must be prevented from instituting a suit or an action for the recovery of damages sustained by him and arising from said accident of July 11, 1961, and further that the said witnesses whose testimony is sought to be perpetuated must be aged and/or infirm and that it is feared that their death or feebleness will make impossible the taking of their testimony in the future, or that the said witnesses are about to leave the State.

Third: That plaintiffs are informed, and therefore aver, that the defendant is not prevented from instituting a suit or an action for the recovery of damages sustained by him and arising from said accident of July 11, 1961, and that, furthermore, neither the said Earl L. Elliott, F. V. Dickerson, George Bevan, Britton Pierce, Jr., or Thomas H. Willcox, Jr., is aged or infirm or about to leave the State.

Fourth: That by reason of the foregoing it is improper and unjust and defendant has no right to examine the said witnesses for the perpetuation of their testimony or for any

other reason; that if the defendant proceeds to take the testimony of said witnesses your plaintiffs will suffer irreparable injury, and that your plaintiffs are without an adequate remedy at law.

WHEREFORE, the plaintiffs pray that the said defendant, his agents, attorneys, and all others be temporarily and permanently enjoined and restrained from proceeding to take, or to have taken, the testimony of the said Earl L. page 3 } Elliott, F. V. Dickerson, George Bevan, Britton Pierce, Jr. and Thomas H. Willecox, Jr., or any of them, at the office of the said T. J. Amelson, Commissioner in Chancery, at 10:00 a. m. on October 16, 1961, or at any other time before any Commissioner in Chancery in respect to the matter or matters pertaining to injuries sustained by the defendant on July 11, 1961, under the provisions of §8-317 of the Code of Virginia. And the plaintiffs will ever pray, etc.

THE FIDELITY & CASUALTY  
COMPANY OF NEW YORK AND  
LAMBERTS POINT DOCKS,  
INCORPORATED  
By LAWSON WORRELL, JR.  
Counsel.

WILLIAMS, COCKE, WORRELL & KELLY  
1200 Maritime Tower  
Norfolk, Virginia.

State of Virginia,  
City of Norfolk, to-wit:

AFFIDAVIT.

Lawson Worrell, Jr., Attorney for the plaintiffs, The Fidelity & Casualty Company of New York and Lamberts Point Docks, Incorporated, named in the foregoing bill, being duly sworn, says that upon information and belief the facts and allegations therein contained are true.

LAWSON WORRELL, JR.  
Attorney for The Fidelity &  
Casualty Company of New York  
and Lamberts Point Docks,  
Incorporated.

Supreme Court of Appeals of Virginia

Taken, sworn to and subscribed before me, Margaret M. Baucom, a notary public for the jurisdiction aforesaid, this 12th day of October, 1961.

MARGARET M. BAUCOM  
Notary Public.

My commission expires: May 25, 1962.

(on back)

Filed in the Clerk's Office the 12th day of October, 1961.

Teste:

W. R. HANCKEL, Clerk  
..... ROMULUS, D. C.

\* \* \* \* \*

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ORDER.

Upon the prayer of the within bill, an injunction is granted the plaintiffs, The Fidelity and Casualty Company of New York and Lamberts Point Docks, Incorporated, enjoining and restraining the defendant, Richard B. Dale, his agents, attorneys and all others from proceeding to take or to have taken, under Section 8-317 of the Code of Virginia, the testimony of Earl L. Elliott, F. V. Dickerson, George Bevan, Britton Pierce, Jr., and Thomas H. Willcox Jr., or any of them, at the office of T. J. Amelson, Commissioner in Chancery, at 10:00 a. m. on October 16, 1961, or at any other time before any Commissioner in Chancery in respect to the matter or matters pertaining to injuries sustained by Richard B. Dale on July 11, 1961.

This injunction order shall be effective from October 13th 1961 to Nov. 10, 1961 at which time it shall stand dissolved unless prior thereto it be enlarged or further injunction granted.

Enter Oct. 13, '61.

C. H. J., Judge.

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ANSWER.

Now comes the defendant, Richard B. Dale, and for answer to the bill of the plaintiffs says:

1. That the plaintiffs are not entitled to the relief requested in said bill.

RICHARD B. DALE  
By ALLAN S. REYNOLDS  
Of Counsel.

Filed 10-27-61.

OLIVE C. CLARK, D. C.

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Now come the parties on the papers previously read and briefs filed, and was argued, and it appearing to the Court that the order entered herein on October 13, 1961, awarding the plaintiffs a temporary injunction from the date of the entry of said order to November 10, 1961, should be enlarged and made permanent.

It is therefore ORDERED that the defendant, his agents, attorneys, and all others, be permanently enjoined and restrained from proceeding to take, or to have taken, the testimony of Earl L. Elliott, F. V. Dickerson, George Bevan, Britton Pierce, Jr., and Thomas H. Willecox, Jr., or any of them, before T. J. Amelson, Commissioner in Chancery, or before any other Commissioner in Chancery, in respect to the matter or matters pertaining to injuries sustained by the defendant on July 11, 1961, under the provisions of §8-317 of the Code of Virginia.

page 7 } Enter this Order: Nov. 8, '61.

C. H. J., Judge.

I ask for this:

WILLIAM PRINCE, p. q.

Seen and objected to.

ALLAN S. REYNOLDS, p. d.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

Richard B. Dale hereby gives notice of his appeal to the Supreme Court of Appeals of Virginia from a Final Decree entered in this cause on the . . . day of November, 1961; and files this, his appeal, together with the following assignment of error:

The Court erred in permanently enjoining the said Richard B. Dale from proceeding to take, or to have taken, the testimony of Earl L. Elliott, F. B. Dickerson, George Bevan, Britton Pierce, Jr., and Thomas H. Willcox, Jr., or any of them, before T. J. Amelson, Commission in Chancery, under the provisions of Section 8-317 of the Code of Virginia.

Given under my hand this 13th day of November, 1961.

RICHARD B. DALE  
By GEO. E. ALLEN, Counsel  
(ALLEN, ALLEN, ALLEN AND ALLEN)  
4020 West Broad Street  
Richmond 30, Virginia.

Filed 11-15-61.

VIRGINIA MANNING, D. C.

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A Copy—Teste:

H. G. TURNER, Clerk.

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