

UNIVERSITY OF CINCINNATI
COLLEGE OF MEDICINE
GENERAL HOSPITAL

LABORATORY OF APPLIED PHYSIOLOGY

June 14, 1933

Mr. A. E. Mittnacht
Ethyl Gasoline Corporation
Chrysler Building
New York City
New York

Dear Mr. Mittnacht:

In accordance with your request, I am returning to you herewith the letter of Mr. Dodge and the full report of the case in question.

In accordance with our telephone conversation this morning, I have forwarded to Mr. Dodge all of the information which may be useful to him in informing himself as to our observations.

Very truly yours,

Robert A. Kehring

RAK:IS

N8315

STANDARD OIL COMPANY

(INCORPORATED IN NEW JERSEY)

26 BROADWAY, NEW YORK

CHESTER O. SWAIN
GENERAL COUNSEL
GUY WELLMAN
ASSOCIATE GENERAL COUNSEL
FRANK S. PERRY
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EDWARD F. JOHNSON
HENRY DODGE
GEORGE H. TOWER
FITZHUGH C. PANNILL
COUNSEL

June 5, 1933

Re: [REDACTED] Jr. v.
Standard Oil Company of New Jersey
and E. W. Rowe.

Mr. A. E. Mittnacht,
Ethyl Gasoline Corporation,
135 East 42nd Street,
New York City.

Dear Mr. Mittnacht:

I am enclosing herewith a copy of the report of the investigation of the above case made by Mr. Reid, of the United States Casualty Company. I should appreciate it if you would forward this report today to Dr. Kehoe at Cincinnati, asking him to give it his immediate consideration. It is possible that we may need Dr. Kehoe as a witness at the trial of the case, but I wish you would particularly ask him whether, after reading this report, he feels that it would be useful for him to go to South Carolina at this time or whether, in default of this, he can offer any suggestions as to further conduct of the investigation from the point of view of lead poisoning.

To help him decide this question I may state, first, that under the South Carolina law there can be no medical examination of the plaintiff before trial without his consent, and while we have asked for this consent, we are almost certain that it will not be granted. Secondly, I feel certain that our local counsel would be of the opinion that it would be a tactical error to allow Dr. Kehoe to talk personally with any of the non-professional witnesses. There would, of course, be no objection to his talking with the medical men who have already given their opinion. I am inclined to this view myself because I know of the resentment which is often caused in small towns like this when investigations are made by people who are from outside of the state. I am not endeavoring to put any obstacles in Dr. Kehoe's path, and if he believes that his presence in South Carolina would be advisable, either to talk to our attorneys and investigators or with the professional witnesses, we would be most happy to have him go.

The writer will leave tomorrow night for Columbia and should be there on Wednesday. If Dr. Kehoe goes, it would be advisable for him to meet me at the Jefferson Hotel or at the office of Benet, Shand & McGowan. If, on the contrary, he decides not to go but has any comments to make, I should be glad to have him telephone me at Benet, Shand & McGowan's office on Wednesday, the 7th.

Very truly yours,

Enclosure
HD:AB

8315.01

STATE OF SOUTH CAROLINA,
COUNTY OF MARLBORO.

COURT OF COMMON PLEAS.

[REDACTED] Jr.

Plaintiff,

vs.

E. W. Rowe and Standard Oil
Company, a Corporation,

Defendants.

.....

FOREWORD:

This action was brought April 6, 1933 in the Marlboro County Common Pleas Court at Bennettsville. Attorney Townsend of Columbia represents E. W. Rowe. Attorneys Benet, Shand & McGowan of Columbia represent the Standard Oil and they have associated with them at Bennettsville a local firm, Attorneys Bennett & Carroll. Attorneys Herbert & Dial of Columbia are acting in an advisory capacity for the United States Casualty Company although their names have been added to the pleadings as attorneys for the Standard Oil. Attorney Herbert and Attorney McGowan conducted some investigation by going to Bennettsville soon after suit was brought. Attorneys Benet, Shand & McGowan selected Attorney Townsend to represent Rowe, the co-defendant.

On or about April 28 Attorney Townsend filed at Bennettsville his answer for defendant Rowe which among other things admitted that he had employed the plaintiff, also that the gasoline pump used to dispense kero was not equipped with a cut off at the nozzle. The answer was a general denial as to the other material allegations and a plea of contributory negligence, assumption of risk, etc.

The Standard Oil filed a special answer in the Common Pleas Court which raised the same defenses as Rowe but added as a special defense that plaintiff was not its employe because of a contract that existed between Rowe and the Company whereby Rowe merely leased the station and property belonging to the Company. The date of this lease was March 2, 1929. Further alleged plaintiff was Rowe's employe.

In addition to this answer the Standard Oil also filed a petition and bond for removal to the Federal Court for the eastern district South Carolina.

In this petition the sole ground for removal is separable controversy based on the lease or contract between the Company and Rowe. It is alleged in the petition that there was a fraudulent joinder of Rowe but no facts are alleged in the petition to support it. The petition therefore must stand or fall on the contract as raising a separable controversy.

The case is on the calendar for trial June 26 at Bennettsville common pleas. By reason of the petition for removal the case will go to the Federal Court at Charleston where it will remain for trial in the Fall unless the plaintiff files a motion to remand. If it is kept in the Federal Court it will be tried at Florence.

The term of Common Pleas Court at Bennettsville commencing June 26 is known as the summer term and ordinarily lasts only a few days. There are some twenty three cases on the calendar and ours is well down. Judge Dennis, who is reputed to be very fair and who would have no hesitancy to reduce a verdict if he thought it was excessive will preside. If this case is remanded from the Federal Court it will be reached at the Fall term at Bennettsville, which is in October or November, but at that time Judge Rice will preside and his reputation is none too good for defendants. Attorneys Bennett & Carroll of Bennettsville and Attorneys Wilcox & Hardee at Florence both warn against Judge Rice. Their words are - "It would be disastrous to try it before Judge Rice".

Plaintiff's attorneys have said they would like to try the case in June and if both parties agreed it probably could then be tried if, of course, the petition for removal was dismissed.

Right at the outset therefore an important question is presented. If the removal could be made to stick in the Federal Court the case would be tried at Florence at the Fall term but from the rulings Federal Judges Glenn and Cochran have made where similar grounds for removal have been set up it does seem there is little likelihood that the Federal Court will act favorably. Attorneys Wilcox & Hardee of Florence, S. C. representing the Texaco Oil pleaded a contract between it and one of its station leasees in the case of Nims vs. The Texas Company, et. al. and used that with other facts as a basis for setting up a separable controversy but the Federal Court remanded to the State Common Pleas at Florence and in the remanding order the court said:

"Manifestly there is no fraudulent joinder of the resident defendants, who according to the allegations were so intimately connected with the ultimate facts out of which the controversy grows. The defendant, Texas Company, in the verified petition for removal supported by affidavits has asserted that the allegation of agency are without foundation in fact. Neither does the plaintiff file any traverse of the allegations in the petition.

So as we see the proposition to be decided it must be stated as follows: Where a plaintiff sues a non-resident corporation and joins a resident defendant admittedly connected with the facts out of which the controversy grows, and the liability of the non-resident corporation is based on agency alone, does the fact that the agency is disputed by a strong showing make the joinder fraudulent, or is a separable controversy present, so as to compel removal?

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we think not. The fact that this court may take the view that the case on the present showing may be a doubtful one against the defendant, non-resident corporation, does not go to the bad faith of the joinder, but to the merits of the case on trial."

Judge Glenn of the Federal District Court for the Eastern District South Carolina has a splendid decision reported in 33 Federal (2nd) page 1010 in which he intelligently discusses the whole subject. It would be advisable also to read what the Supreme Court of South Carolina said in 167 S.E. page ⁸²⁶ about this kind of contract. Decision attached hereto.

From a careful reading of plaintiff's complaint it is noted on page 6 he charges four specific paragraphs of negligence against Rowe, while on page 7 he charges 5 paragraphs against the Standard. He does not charge Rowe with the same ground as he charges the Company in paragraph 5. In this he charges the Standard with specifically failing to provide him with a reasonably safe and proper appliance and caused the plaintiff to work about a defective appliance. This is not charged against Rowe and at the same time this ground is not set up in our petition.

While it may seem peculiar to discuss this phase of the case so early in this report it nevertheless comes first in the order of importance because the trial judge before whom this case is to be tried at Bennettsville is of great importance. There is a close question of legal liability and a strong judge is necessary. If the case is remanded next Fall and Judge Rice tries it we are advised we will be at a decided disadvantage. He will not disturb a large verdict where Judge Dennis would.

It must be kept in mind that in this state the trial judge alone has the right to pass upon the reasonableness of the jury's verdict. The Supreme Court has nothing to do with that question. Plaintiff's attorneys therefore may be influenced in their settlement demands by the judge before whom they appear.

BENNETTSVILLE

The county seat of Marlboro County is a small town of about 2500. The county is a farming community and its farm lands are considered the most productive in the state. It has or did have before the depression considerable wealth. The residents are therefore above the average and there is none of the radical or unemployed element who might be classed as disturbers. Jurors drawn are ordinarily fair, intelligent and the county never did have a reputation for excessive verdicts. Except for one large verdict for \$60,000.00 returned in December 1931 there is no other cause for believing a fair verdict might not be returned in our case. The town is located 40 miles northwest of Florence and 85 miles northeast of Columbia. Attorneys Tison and Miller representing the plaintiff have been very successful and resourceful. Attorney Tison is the county prosecutor and during his political campaigns he has made many friends. He is extremely well known and well regarded. He is looked upon as capable and a verdict getter. Our attorneys Bennett & Carroll were born and raised in this community and enjoy a fine reputation. Attorney Bennett has been in the legislature for three terms and is still there. He is chairman of the House Ways and Means Committee. Both are young men. Mr. Bennett is about 32 and has been practicing for the past four years, while Mr. Carroll, about 25, has been recently admitted. Mr. Bennett is well liked and regarded. There has been considerable discussion of this case in Bennettsville and the suit has been given wide publicity.

From all accounts the judgment obtained against the National Oil for \$60,000.00 in December 1931 was justified from the standpoint of injuries and liability. The oil company was charged with selling gasoline for kerosene resulting in an explosion. Attorneys Tison & Miller obtained it. It is no criterion by which the outcome of our case should be judged.

To give some idea of the outcome of personal injury cases tried there since 1929 we are listing below the record from year to year as taken from the records of the Clerk of the Marlboro County Common Pleas:

Page 6.

YEAR 1933

Verdict \$1,000.00 - Fatal Case.

Cannady vs. A. C. L.

Attorneys - Tison & Miller

This verdict was big disappointment to Tison & Miller who were expecting \$10,000.00.

YEAR 1932

None.

YEAR 1931

Verdict \$ 200.00 - April 28, 1931.

Verdict \$ 501.26 - July 28, 1931.

Verdict \$1,150.00 - July 28, 1931.

Armour & Co. - Defendants.

Attorneys - Tison & Miller.

Verdict \$60,000.00 - December 3, 1931.

Freeman vs. National Oil.

Attorneys - Tison & Miller.

Verdict \$3,000.00 - December 4, 1931.

Verdict \$ 700.00 - December 4, 1931.

Verdict \$ 350.00 - December 4, 1931.

Attorneys - Tison & Miller.

YEAR 1930

Verdict \$ 635.25 - April 19, 1930.

Fatal case, negro.

Verdict \$ 403.00 - April 19, 1930.

February 12, 1930 - Fatal Case.

Settled \$625.00.

Verdict \$ 175.00 - December 11, 1930.

Verdict \$ 200.00 - December 11, 1930.

INVESTIGATION

PLAINTIFF'S GENERAL HISTORY

plaintiff was born on a farm near Bennettsville, Sept. 20, 1911. There were ten children in the family - five boys and five girls. plaintiff was seventh eldest. His sisters being Edith, Reba, Eulalie, Evelyn and Alice. His brothers were Kenneth, Woodrow, Carlisle and Reginald. His father and mother are living being 55 and 53 years old. All of his sisters are married excepting Alice. His sister Edith, the oldest child, married Roy Mechem who now operates a station for the Standard Oil at Bennettsville and has been so employed by the company for a good many years. His father prospered on the farm and about 1917 moved into Bennettsville and bought what was known as the Powers home at 410 South Main. This was and now is one of the most beautiful homes in Bennettsville. It is situated well back from the street and has a wide surrounding lawn and yard. The family lived elaborately here from 1916 to about 1927.

As a child plaintiff is described by several as having been sickly. At any rate the school records show he had measles, chicken pox, mumps, scarlet fever and whooping cough.

He started to school at the Murcheson School, Bennettsville, in September 1920. This made him 9 years old and rather late to get started. We could find no history of any serious illness up to this time. It is possible there was some very good reason for his late start. While residing in Bennettsville plaintiff lived only a few blocks from school.

He attended the Murcheson school from 1920 to December 1931 when he quit. The Murcheson school has eight grades for grammar school and four grades beyond that for high school.

Following is a complete record of his school attendance:

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MURCHESON SCHOOL RECORD.

[REDACTED] - Born Sept. 20, 1911.

Grade 1B.

Term - September 1920 to May 1921.

Absent 25 days during school year of 176 days.

Tardy 8 times.

Term - September 1921 to May 1922.

Grade 2B.

Attended regularly. Absent 3 days during school year of 176 days.

Grade 3A.

Term - September 1922 to May 1923.

From Sept. 1922 to April 1, 1923 absent only 4 days.

Failed to return last half April 1923 and month of May 1923. Notation on record reads as follows:

"During the month of May and the last week in April he was out 5 weeks with the fever and not present for examinations."

Term - September 1923 to May 1924.

Absent for entire term returning only in May 1924.

Term - September 1924 to May 1925.

Unable locate records at school.

Term - September 1925 to June 1926.

160 days attendance

16 days absence.

Term - 176 days.

Page 9.

Term - September 1926 to May 1927.

Age - 13 years, 11 months. Class 6B.

164 days attendance, 12 days absence, 16 times
tardy.

Was not promoted, remained in 6B.

The average attendance for all students was 176 days.

Term - September 1927 to May 1928.

164 days present, 14 days absent, 21 days tardy.

Total school year was 176 days.

Teacher - Laura Salley. Now residing in Orangeburg,
S. C.

Term - September 1928 to June 1929.

Age - 16.

125 days attendance, 31 days absence, 44 days tardy.

Full school year was 176 days.

There is a photograph of H. H. Hubbard for 1929 which
from close examination shows some irregularity about
the eyes.

This picture may be among the records of Mr. Blanchard,
photographer, of Columbia.

The school records show in 1929 that he was about 4 years
older than any other student in the grade.

Term - September 1929 to June 1930.

141 days attendance. Absences - 33.

Promoted to Ninth Grade.

Term - September 1930 to June 1931. Ninth Grade.

Attended 133½ days.

Absent 142½ days.

Tardy 84 days.

Didn't return to school after injury in fall of 1931.

In this school record the long absence from school for period from April 1923 to May 1924, over one year, will be noted. The school records contain a notation he took sick in April 1923 and did not return for the term which ended May 28, 1923. He did not return in the fall of 1923 but finally did in May 1924.

In August 1922 he with two brothers were taken to Florence, S. C. to the Florence Infirmary by Dr. May of Bennettsville to have their tonsils removed. When they reached the Florence Infirmary plaintiff was running a temperature of 104 and 105 so had Dr. May found he could not safely perform the operation and he returned to Bennettsville. The following April, 1923, plaintiff became exceedingly ill due to some internal infection which caused a severe attack of rheumatism. This was not just an ordinary case of rheumatism, but so severe that he was in bed for months and not allowed out of the house. His knees, ankles, hands, and wrists were so badly swollen he had to be fed. He is described by witnesses as very near dying. His eyes were affected and he had to be kept in a dark room. Sometime during the summer or fall of 1923 we were informed he had his tonsils removed but we checked the hospitals at Florence, Bennettsville and Charlotte and Fayetteville but we could find no record. This we thought was important because the hospital chart probably would carry a history of this serious illness. It must be kept in mind the obvious importance of this because iritis and exudative choroiditis is more frequently caused by rheumatism than any other ailment. It is common too in all ages.

plaintiff finally returned to health in 1924 and then in 1925, 1926 and 1927 while he resided on the beautiful Powers estate at 410 South Main St. he literally turned the back yard and wide lawn into a garage and auto junk yard. He was interested in autos and during this period he bought or collected worn out Fords, Chevrolets and other makes. He would strip them down in his back yard and rebuild them. Witnesses describe the premises during those years as resembling a junk yard. He is described as full of

grease, oil, etc. from the work he did on these cars and one witness says he used to observe him washing the oil and grease from his hands with gasoline which was standing in cans in the back yard. His father gradually lost most of his money about 1927 and the Marlboro County court records showed numerous foreclosures on his father. They moved from here to 710 South Main St. about the fall of 1927 where they remained for about two years, renting this property. When they no longer could afford this they moved to a farm out on the Cheraw Road about 4 miles from Bennettsville, where they now reside. It is worth mentioning that while working around these old cars at 410 South Main we find he used to get under the cars a great deal when the motor was running and some of the cars did not even have on a muffler or an exhaust pipe. He was seen to tear up and down the roads in these old stripped down cars he would rebuild.

In 1927 by reason of his poor marks in school he was not promoted. We understand that from and after his return to school in the fall of 1924 and during the years of 1925, 1926 and 1927 he repeatedly gave as his excuse for his poor grades that his eyes bothered him. He was seen by two witnesses to wear glasses at different times during that period. His school records show poor marks in reading, spelling and geography. He was 19 years old when he finished the grades, or when he was promoted to ninth grade. We compared his age to the ages of other children in his class and he was about 4 years older than the rest.

The Standard Oil Gas Station run by Rowe, co-defendant, was opened on Main Street about August 1927. About the fall of 1927 plaintiff's brother, Carlisle Hubbard, took charge of the station for a short time up until January 1928. During the time his brother was there he used to come down to the station and help around. His brother was relieved as manager by Mr. Russell (Nip) Rowe in January 1928 and during the time Russell Rowe was manager he worked at the station after school and on Saturday and Sunday, earning about 6 or 8 dollars per week. E. W. Rowe, the co-defendant, took this station over from Russell Rowe about March 1929 and he continued to work

page 12.

there with his brother, Carlisle, under E. W. Rowe on through the year 1929 and 1930. Whether he worked there in 1931 is questionable.

During 1926 and 1927 he started to run around with some pretty wild boys. Clyde Pond and several others would go to Florence and Myrtle Beach with him on drinking parties. One witness tells us that about 1926 plaintiff and Clyde Pond one night were driving in one of the stripped down cars plaintiff had rebuilt when they suddenly ran into the ditch and into a cornfield. Both were drunk. We could not learn what injuries were suffered. About a year ago we also understand he was driving from the Atlantic & Pacific Store in Bennettsville one Saturday night with his brother when the lights failed and the car was wrecked in the ditch. We could learn nothing much about the details of this but the manager of the local Atlantic & Pacific Store where plaintiff now works told us of the occurrence. He thought it was serious.

In the fall of 1929 after this so-called accident he sustained at the Standard Station he went out for football at the local high school. He did not play well enough to make the first team but did play. In 1930 he returned to high school and from various schoolmates, also his coach, we find he played football all fall and turned out to be a star tackle. He is described as one of the sturdiest and strongest players on the team. During the summer of 1930 or possibly 1931 he attempted to join the navy and we understand he went to Florence for that purpose. One witness thought it was 1929. Another thought 1931. It is possible he did not go at all. He was medically examined for the football team in 1929, 1930 and 1931. All the history we were able to obtain indicates he was more healthy in 1931 than 1929. His weight increased and everyone says his health improved rather than deteriorated. If he had lead poisoning the history would have been contrary. Certainly no one with lead poisoning could play the most grueling physical test of football.

We could find no record of any medical treatment rendered the

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plaintiff for his eyes until the summer of 1931. Mr. Sam pierson, a local optometrist in Bennettsville, remembers the plaintiff coming to his store about 2½ years ago and he found his eyes to be inflamed. He is not sure of the exact date because he says he destroyed his records. He could not diagnose the trouble and recommended he see a specialist. It is doubtful whether he is telling the truth but nevertheless this is a part of the history. The next we find is that on August 26, 1931 he visited Dr. S. R. Lucas, a very competent and capable eye specialist at Florence, S. C.

There was no inflammation in his eyes at that time and according to the doctor there was nothing present as far as he could see without the aid of the ophthalmoscope. He did examine his eyes under the ophthalmoscope in the dark room and found a 20/70 in the right eye and 20/20 or normal vision in the left. The boy told him he had had his tonsils removed and stated some Esso gasoline had entered his eyes three or four years before. Dr. Lucas sent him to his associate, Dr. Mobley, who examined his throat, sinuses and blood. The boy returned to his office on August 29, 1931 and he told him Dr. Mobley's findings were negative. He diagnosed his eye trouble at that time as exudative choroditis. He said there was nothing he could do to improve the condition in his right eye and therefore did not prescribe glasses. He is positive only the one eye was affected and said the 20/70 vision in the right eye could have existed for years. He was positive there was no inflammation that could be seen on August 26, 1931. He described the condition as a most common one and gave as one of its chief causes rheumatism, tonsils or any systemic infection. Furthermore, exudative choroditis was rarely the result of trauma.

plaintiff returned to high school in the fall of 1931, commencing September. He played football and was looked upon as a very strong, hardy player. His position was tackle. He weighed 170 pounds. In practice one afternoon about October 6, 1931 he sustained a broken nose. He was taken to Doctor Jennings in Bennettsville who set his nose and who says there was

only the normal amount of bleeding which stopped after it was set. The next day it seems he went to see Dr. May in Bennettsville. Dr. May does not remember treating him on that day. There apparently was no hemorrhage. The nose seemed to be set all right according to Dr. Jennings. On October 9 he suddenly developed a hemorrhage which continued throughout the day and his mother brought him to Dr. Strauss at Bennettsville. He plugged up his nose with paper and cotton and finally it stopped. A hemorrhage occurred again the next day on October 10 and he treated it again. Then again on October 11 and again on October 13 he had another. The last one on October 13 could not be stopped and he was rushed by automobile from Bennettsville to Florence where he was placed in the hospital known as the Florence Infirmary. Dr. S. R. Lucas, who had seen him the previous August, has his office at the hospital and he was called in as well as Dr. Henry McCloud. They stopped it temporarily but he bled all that night of October 13 and Dr. Lucas and Dr. McCloud were up with him all night. The next morning about six A.M., October 14, Dr. Lucas called Dr. Strauss at Bennettsville over the telephone and told him it looked like the boy would die. They both felt they could not save him. Dr. Strauss called Mrs. [REDACTED] and they both rushed to Florence. In the meantime the doctors at Florence held a conference and after locating the artery causing the hemorrhage they decided to try and tie up the artery by cutting into his neck. The operation was performed that day and it is described as the most delicate and serious of its kind ever to be performed in that community. The hemorrhage was coming from the internal carotid artery on the right side. This is a large artery which goes up to the eye and branches off into many smaller arteries which go through the vitreous of the eye and up into the brain. They tied up the artery in the neck and were successful in stopping the hemorrhage.

It then became necessary to save his life to perform blood transfusions. He had lost over a gallon of blood. Three men, the football

coach, C. S. Redding; the football captain, Lacy Jackson and A. C. Green, another boy gave blood. This pulled him through. About a week after he was in the hospital he also developed convulsions in his stomach and he would vomit up clots of blood. He remained at the hospital from October 13 to November 4. About October 26th he developed some trouble in his right eye. It seemed to be inflamed. Dr. Lucas was again called in and ordered hot compresses, atropin and dionin. He was kept in a dark room and it finally cleared up. Dr. Lucas confined this trouble to the right eye. It will be kept in mind the internal carotid artery was on the right side also.

The plaintiff did not return to school until December when he stayed only a few days and then quit. On January 6, 1932 he returned to Dr. S. R. Lucas at Florence who examined his eyes thoroughly again. He found his left eye O.K. with 20/20 normal vision, but this time he found a 20/200 vision in the right eye. He pronounced the right eye vision practically totally impaired for all practical purposes. He could not tell whether the optic nerve was atrophied. Dr. Lucas has not seen the boy since that date. When he examined him in January 1932 there was no inflammation in the eyes. During the spring of 1932 the plaintiff attended the Robert Fletcher Memorial School which is a privately endowed school about 8 or 9 miles from Bennettsville in the country. He did not return there as far as we could learn after the spring of 1932.

During the summer of 1932 he retained attorneys or his parents did for him. Sometime during that summer Attorney Eden, also Attorney Miller, who are now representing him, went over to the Standard Station operated by E. W. Rowe, co-defendant, and made discreet inquiries about the conditions in and about the place. At that time they talked with E. W. Rowe and there is some information they started preparing this case then.

In January 1933 plaintiff's father was taken to the Bennettsville Hospital after collapsing on his farm. He entered the hospital January 18, 1933 and left February 10. The hospital history chart records the following about him which is of interest because of its parallel with the plaintiff on rheumatic trouble:

Occupation

Age 55.

Farmer

Entered January 18, 1933.

Discharged February 10, 1933.

Complaints:

1. Gastric hemorrhages.
2. Headaches.
3. Rheumatism.

Patient collapsed suddenly this A. M. with advent of very copious hemorrhages. Had been passing blood by bowels since July 1932.

Patient has been suffering from severe rheumatism since September 1924 and this condition has grown progressively worse until at present he has badly ankylosed knee joints and hands and fingers show severe deformities. Has had tonsils and teeth removed. Went to Hot Springs in 1930 and got more relief than from any other treatment. Since he began losing blood by bowels he says his rheumatism is better. Father of 10 children all in good health."

This is all the history copied of importance. It is stated he almost died and had to have blood transfusions. It is further stated his hands and joints are so affected by the rheumatism he is unable to do much work around the farm.

At the Purchaseon School we found a record of severe illness to S. A. Townsend, the son of Malalie Hubbard, who is an older sister to the plaintiff. She married the father of S. A. Townsend. The medical card for this child, who is a first cousin of plaintiff, reads as follows:

March 19, 1928.

Age 7 - Grade 1B.

Throat - (Bad)

Teeth - (Bad)

Nutrition - (Bad)

"Nothing can be done for this child. He is a bleeder."

According to Roy Mechem, who married plaintiff's sister and who now operates one of the stations for the Standard at Bennettsville, the Hubbard family is afflicted with Hemophilia, otherwise known as bleeders.

There is also some information that one of the other sisters lost a child at birth by bleeding to death. This is only mentioned to round out the history and give a clear picture to the type of plaintiff we are dealing with. It is quite possible he may have suffered from excess bleeding in his early youth.

One witness gives some rather vague information which we are checking up on now to the effect that after the football accident on Oct. 6, 1931, the plaintiff engaged in a fight with some drunken person about two or three days later and it was from the blow he received in this fight rather than the football injury that started the internal carotid artery hemorrhage. Since the summer of 1932 the best trace of the plaintiff's activities we can get is that on Saturday nights and at various other times when work was heavy he has worked as a clerk at the local store of the Atlantic & Pacific Tea Company. Besides this he helped his father on the farm. We searched the records of all the hospitals and eye specialists in Florence, Bennettsville and Payetteville, besides one in Charlotte. We could find no record of any treatment other than as already described.

The boy is now wearing dark glasses and has been for the past few months.

WITNESSES

1. E. W. ROWE, co-defendant - Not interviewed. Upon arrival in Bennettsville after first visiting local attorneys Bennett & Carroll went to see E. W. Rowe after Attorney Carroll had made appointment. Upon meeting him at the oil station he said he had given his statement and told all he knew. He criticized the laxity, as he termed it, of our attorneys and was rather general in his criticism of everyone connected with the defense. It was of course vitally necessary to commence the investigation with

him, but this failure to get his co-operation seriously hindered everything. This sort of attitude would not help the Standard Oil in such a small community where he might be talking with a prospective juror. For ten days I waited for some one to talk to him and tell him to talk to me. Finally when he was told to talk to me he suddenly left the city for a week and went to Norfolk, Virginia. Consequently, he was not seen through no fault of the United States Casualty Company. He lived across the street from the Hubbard family for years on Main Street and probably knew considerable about the plaintiff's illness, also his mechanical work on autos. There were many other important facts to be developed through him.

2. LINWOOD H. ROWE. Resides Bennettsville, 22 years old, brother of E. W. Rowe, co-defendant. He was born and raised with plaintiff. (Statement attached). This witness establishes the serious illness plaintiff had in 1923. The fact plaintiff had trouble with his eyes, wore glasses shortly after his serious sickness in 1923. Also establishes plaintiff had grease and oil all over himself from cars he worked on in the rear of his home during 1925, 1926 and 1927. He says he saw him wash the grease off his hands with gasoline. He also remembers plaintiff giving his eyes as his excuse for his failure to get better marks in school. He also establishes that plaintiff was a strong, able bodied boy in 1930 and 1931 while he played football. He also thinks he tried to join the navy. A summary of his testimony is in the statement attached. This witness will be extremely valuable but he must be carefully schooled before putting on the witness stand. He can tell his story much more definitely. He is truthful. The only trouble being he is co-defendant's brother.

3. POLLY JOHNSON. (Colored woman about 38 years old). Splendid witness. She worked for Hubbard family when they lived in Bennettsville at 410 South Main Street. She was a nurse and general houseworker in Hubbard home during years 1920, 1921, 1922, 1923, 1924 and 1925. She recalls very vividly the terrible time plaintiff had in 1923. She said she had to feed him and he could not pick his food up in his hands because of the swollen condition. She described his hands as claws and he could not hold a piece of bread in his hands. He would slobber his food all over the bed because his head would jerk. She said the plaintiff was kept in a dark room for a long time on account of his eyes and everyone thought he was going to die. She is one fine witness.

4. OSCAR JOHNSON. (Colored, about 40 years old).

Statement attached.

Witness employed as a farmer now but worked for the Hubbard family for 18 years. He recalled the plaintiff's suffering in 1923 and corroborates much that Polly Johnson told us.

5. COKE BREKIDEN. (White, male, 35 years old).

Statement attached.

Witness is supposed to have been in the auto of Slim Mathews at the gas station August 26, 1929 when the gasoline spilled out. He is a brother-in-law of one of plaintiff's attorneys. His statement is self-explanatory. His value will depend upon his sobriety the day of the trial. He is frequently drunk.

6. MISS IRENE COVINGTON. (Single lady about 45 years old)

Witness was county nurse in 1923. She is from one of the finest families in Bennettsville and it was part of her duties in 1922 and 1923 to visit the sick. She recalls the serious

illness plaintiff had in 1923 and has a record from that date showing a visit to plaintiff's home on April 21, 1923 when he was in bed and his wrists and joints were swollen. She recalls some trouble with his eyes at that time. She will furnish corroboration for Polly Johnson and Linwood Rowe.

7. CLYDE POND. (White, young man, 22 years).

Statement attached. Schoolmate of plaintiff. Importance of his testimony is the fact plaintiff had trouble in his knees and legs in 1924, 1925 and 1926. He describes his legs as almost useless in 1923 and 1924. His statement also is important to show plaintiff was stronger and stouter in 1930 and 1931 than he ever was before, which certainly would not support a history of lead poisoning.

8. CHAS. POND - Bennettsville. (Male, white, about 33 years).

While this party was not interviewed his name is being inserted here as a possible witness against us. He is an older brother to Clyde Pond and worked for the Standard Oil for five years, quitting about two years ago. He worked under W. L. Hunter when he was manager for all the stations in Marlboro County. He should be seen and his statement secured because he is wearing dark glasses now and then. It is rumored he claims his eyes are affected and he intends to file a suit as soon as he learns what we do with Hubbard's case. The statute of limitations is six years in S. C.

9. MRS. C. E. BERRY - Bennettsville. (Married, white, 35 years old).

She was formerly plaintiff's school teacher in April 1923. She was married the following month in May 1923 and recalls plaintiff very well. She remembers when he took sick in April 1923 and made inquiry as to the cause of his absence. She was told and

she understood he was very sick with some rheumatic fever. He did not return for the balance of the school year, which was five or six weeks. She did not return to school in the Fall of 1923, consequently does not recall how long he was sick.

10. JOHN F. KELLY - Columbia, S. C. (White, age 46).

Witness is now state supervisor of schools and occupies a very responsible position as state supervisor. He was superintendent of the Murcheson school in 1923, 1924, 1925, 1926, 1927, 1928 and 1929. He remembers plaintiff quite well. He remembers it was necessary to discuss his class work because of his poor marks and at that time plaintiff gave as a reason for his poor work his eyes. He thinks his eye trouble existed a long time before 1929. He desires an opportunity to review the school records to refresh his recollection. He is not anxious to be a witness because of his position, but probably by proper approach he may be induced. He would aid materially.

11. WARREN VIA. (White, male 30). Charlottesville, Va.

He is an athletic coach at the school and remembers plaintiff very well in 1930 and 1931. He said he was robust, healthy and strong. Recalls the football accident in October 1931. It occurred in practice when plaintiff and Gordon David, another player, collided. He was the toughest, strongest player on the team. Never heard of him having trouble with his eyes. Each player was required to have a medical certificate of good health before being allowed to play. These certificates are still on file at Columbia with State Athletic Committee under Mr. Lockwood. Witness resides in Charlottesville, Virginia, number 921 Cherry Ave. Still coach and instructor

at school in Bennettsville. Witness gave one transfusion of about two pints of blood at Florence Infirmary to save plaintiff's life.

12. "SLIM" MATTHEWS - Bennettsville. (White, age 27).

Witness has given two previous statements, consequently none taken this time. States in the fall of 1932 plaintiff asked him to come down to Attorney Eden's office where they had prepared a paper for him to sign. He signed it but afterwards prepared a statement of his own and gave it to plaintiff as well as E. W. Rowe. The true story he says is that he recalls about three or four years ago in summer driving up to Rowe's station in a car which belonged to someone else. It was a coupe. Coke Breeden was in the car and did not get out because he was drunk. He thinks it was on a Sunday afternoon about 2:30 P.M. Plaintiff was at station and serviced him. He remembers distinctly of stopping his car at the Esso pump and asking for 3 gallons. After getting the gas he leaned against the pump and accidentally opened the out off or slot at top of pump, which caused the gas to come through the nozzle and into Hubbard's face. He is about 6 feet tall and claims it was purely an accident. He could not fix the date any more definitely. Hubbard went in the station and washed his face off and he drove off. He is not convincing, however, as he tells the story it makes a pretty weak case against us and it is possible plaintiff may not use him.

Witness is now an advertising solicitor, extremely loud and should not carry much weight with any jury.

13. MILDRED BUTLER - Bennettsville.

Witness is employed as a stenographer in the office of our attorneys Bennett & Carroll. She has known plaintiff since

the family first moved to Bennettsville about 1918.

Witness graduated from high school in 1930 but recalls seeing plaintiff in the grades about 1926 or 1927 wearing glasses. Recalls the time when he was sick in 1923 and 1924. He was away from school for about one year. She recalls seeing him when he suffered with rheumatism and he was unable to leave the house. She remembered an auto accident in which Clyde pond and plaintiff were drunk and went in the ditch.

14. CHARLES BUTLER - Bennettsville. (Age 22).

Witness is a brother of Miss Mildred Butler and knew plaintiff well. During 1930 and 1931 he played football and plaintiff was strong and healthy. No apparent weakness. Plaintiff did complain to him of his eyes and attributed his trouble to Esso getting in his eyes. Believes plaintiff went to Florence and tried to join navy but cannot remember the year.

15. R. O. DERRICK - Bennettsville.

Witness was former principal of high school and remembered Hubbard in 1930 and 1931 as a strong, healthy boy. He said he was a fine physical specimen as far as he could see and heard no complaints from him during those years. Has recently noticed him with glasses and plaintiff told him his eyes were affected by gasoline.

16. WILLIAM ALLEN ROGERS - Bennettsville.

Witness knew plaintiff in the years of 1930 and 1931 and he was a fine physical specimen.

17. LACY JACKSON - Bennettsville. (white, age 23).

Statement attached.

Witness played football with him in 1929 and 1930. He was a strong, able bodied boy who played an excellent game. He had

no trouble with his eyes. First he knew of any trouble was when he heard of the suit filed against Standard Oil. When plaintiff was in the hospital in October 1931 he gave his blood to save his life.

18. RICHARD HALIXUM - Pickens, South Carolina.

High school instructor and knew plaintiff during 1929, 1930 and 1931. He was a strong, able bodied boy. He knew of his football accident in October 1931 and a few days after it happened he attended a party at one of the homes of one of the boys whom he thinks was Odell Matthews. He thinks Hubbard was there also. He heard some of the boys talk about a fight Hubbard got into and he thinks it was stated Hubbard was struck again causing the hemorrhage complained of. This witness will have to be seen again and a more clear account obtained. He says Mrs. Thelma B. Chalmers, now residing in Carleton, Georgia, was his home instructor when he was in the grades and he thinks she knew the boy very well. She would go to his home and instruct him because of his absences. She is also reputed to be a close friend of the Hubbard family and could easily tell us about his physical condition. She would make a valuable witness for us according to this witness.

19. MISS LAURA SALLER - Orangeburg, S. C.

Witness was his teacher in the 6th or seventh grade and could remember nothing of value.

20. MRS. WADE ABBONS - Florence, S. C.

Witness was one of his grade teachers and could not recall anything of value.

21. MISS NORMA ROSE - Marion, S. C.

plaintiff's school teacher in third grade. Was not home May 23. Now at Myrtle Beach and will have to be seen later. Several have referred to her as a possible witness.

22. BOOG HOLLIS - Bennettsville.

Witness is formerly a schoolmate. Played on football team. Now attending University at Columbia. Has not been seen but have been told he may help.

23. MATTHEW MILLS - Bennettsville.

Formerly played football with plaintiff and knew him during his school career. He is attending University of North Carolina at Chapel Hill, N. C. and will be seen by our claim manager, McHugh of Raleigh. We are informed that both this witness and plaintiff had eye trouble together in school.

24. RED DAVID - Cheraw Highway near Bennettsville.

Witness attended school and knew plaintiff. Has not been seen. It was with this boy that plaintiff collided in football practice. He should be seen. He may know something about plaintiff receiving a blow in a fight subsequent to the football accident.

25. HAMP RICHARDSON - Now in Navy. Address - Trumpeter W. H.

Richardson, Norfolk Navy yard, Portsmouth, Virginia. S.S.D.

Witness attended school and played football with plaintiff. Also, we are told plaintiff attempted to join navy at same time. Witness has not been seen and should be.

26. SAM PIERSON - Bennettsville.

Witness conducts a jewelry store and is an optometrist besides. When interviewed in his store he tried to convey impression he did not want to be mixed up in the case but volunteered the information he recalled the plaintiff coming in to see him about his eyes about two and one-half or three

years. At which time plaintiff assigned no cause for his trouble but his eyes seemed to be inflamed and a condition existed which he had not seen before. He recommended he see a doctor. Witness has destroyed his records.

27. J. F. PATERSON - Bennettsville.

A garage operator who was interviewed to ascertain if plaintiff worked for him. He did not and knew nothing of value.

28. J. E. WILLARD - Bennettsville.

Witness is local manager of A. & P. store in Bennettsville and states plaintiff came to work for him about one year ago. His work was that of a clerk and he worked extra on Saturdays. He noticed the boy had difficulty in seeing figures and is sure he has a definite eye disability. He stated about two years ago one Saturday night plaintiff left his store with his brother, who was then employed there and on their way home in an auto the lights suddenly went out and they had a bad accident by wrecking the car in the ditch. The extent of injuries was unknown.

29. JOHN B. ROGERS - Bennettsville.

Witness was schoolmate of plaintiff but ahead of him. He remembers his rheumatic trouble in 1923 and saw his feet swollen. He remembered that as a football player in 1930 and 1931 he appeared strong and well.

30. VIRGINIA TOWER now MRS. H. H. BROADHURST - Leavenworth, Kansas.

Witness was a home teacher for plaintiff during his third and fourth grades and we are informed she replaced Mrs. C. E. Berry when she resigned in the summer of 1923. We should interview her because she probably talked to plaintiff when

he returned to school in May 1924 after his long absence.

She may be very important.

31. RUTH SPROWLES now MRS. JIM CARROLL, residing Greenwood, S. C.

This witness never taught plaintiff and knows nothing about him. The record is made only of the interview so that it will not be duplicated.

32. VIVIA FORD now MRS. B. F. WHITMERS - Bennettsville.

Formerly his teacher but could remember nothing of value.

33. MRS. POWERS - Bennettsville.

She took over home at 410 South Main Street after Hubbard family moved out about 1927. She said they made a garage under the porch and had the yard full of old cars and junk. She, however, could give no information of definite value.

MEDICAL TESTIMONY AND WITNESSES

1. DR. MAY - Bennettsville.

Family doctor for years. States he saw boy in August 1922 when he found his tonsils bad and took him to Florence Infirmary to remove them. His fever was running 104 and he decided not to operate. Plaintiff returned to Florence and he did not see him again until April 12, 1923 when he was called to the house and found the boy suffering severely from rheumatism. He was running a temperature and one knee was badly swollen. He treated him from April 12 to May 28. The boy was in bed and both knees were swollen. He did not remove his tonsils and did not know they were ever taken out. He did not see the boy again until October 7, 1931. He saw him only one time on that date. He knew nothing about any eye trouble due to gasoline. This witness should be again

seen but Attorney Neville Bennett at Bennettsville formerly retained him to testify for us. The doctor should be more carefully interviewed. He was in a hurry to get away to Alabama to attend his son's commencement exercises at school. We were much afraid the plaintiff was relying upon this witness but fortunately for us he is not against us. The importance of his testimony cannot be underestimated. He shows a running temperature and infection for one year previous to April 1923 and then a course of infection in the spring and summer of 1923. He apparently was followed by other doctors. We had understood he performed a tonsilectomy in the summer of 1923 but apparently other doctors were called in. The doctor did not minimize the rheumatic condition and upon further interview can probably add considerable. Dr. May also volunteered the statement the sickness in 1923 was so severe he was left with a weak heart or a heart murmur known as a myriatic heart.

2. DR. L. R. KIRKPATRICK - Anderson, S. C.

This doctor practiced in Bennettsville in 1923 and has just been seen today, May 25, in Anderson where he moved from Bennettsville a few years ago. He saw plaintiff at his home in 1923 following Dr. May. His testimony is of vital importance.

He says the boy's father is badly crippled with rheumatism and has been for a long time.

He says when the boy was about 10 or 12 years old he had a very severe case of arthritis or rheumatism exhibiting the characteristics of chorea, accompanied by lack of control of his nervous and muscular reactions, this being spasmodic.

This he said was due to some chronic infection. The doctor was under the impression the plaintiff was probably operated for tonsillitis in 1929 in the old hospital organized by Doctors Smith and Jennings at Bennettsville. This hospital was about 1929 taken over by a new hospital but the witness thinks the records of the old hospital were probably transferred to and preserved in the new hospital. The doctor recalled visiting the boy at his home about ten years ago this summer. The boy was in bed in a darkened room. He thinks Dr. May, the family physician, or Dr. Will Evans, his partner, know all about this medical history which was bad. Dr. Jennings may remember about the operation for tonsils.

3. DR. S. R. LUCAS - Florence, S. C.

About 40 years of age. Enjoys fine reputation in Florence and considered by leading defendants' attorneys in Florence - Wilcox & Pardee, as fair, competent and honest. Does considerable work for corporations such as Atlantic Coast Line and Insurance Companies. His office is in the Florence Infirmary. He can be cultivated and contacted through Attorney Fred Wilcox, who has known him since boyhood and who acts as his personal attorney. Attorney Wilcox represents about every insurance company in Florence and the Atlantic Coast Line, also the Texaco Company. It was stated to me by Attorney Wilcox that during the week of May 29 he was going to try a case for the A.C.L. in which the plaintiff claims eye disability from head poisoning due to paint. That Dr. Lucas is to appear as an expert witness for the defense and the defense will contend lead poisoning will not and did not produce the eye condition claimed. It would be interesting and important to get a copy of Dr. Lucas' testimony.

Interview with Dr. Lucas took place in his office at 12:30 P.M. May 16.

H. H. Hubbard, Jr. was brought to Dr. Lucas' office first on August 26, 1931 and complained of some interference with his vision. Dr. Lucas secured a history of his troubles as follows:

1. Had the usual childhood diseases.
2. About three or four years before August 1931 he had spilled some gasoline in his eyes while working for the Standard Oil Company at one of its stations in Bennettsville.
3. Had rheumatism about five or six years previous and to cure this he had his tonsils removed.
4. Outside of this he gave no other sickness as a likely cause.

Dr. Lucas then referred him to Dr. Mobley, his associate, who had him examined for his throat, sinuses and blood. These were all negative and he examined his eyes under the ophthalmoscope.

When the boy entered his office there was no appearance of inflammation, swelling or burning. His eyes seemed perfectly normal to all outward appearances.

By testing his eyes he found the left eye normal with 20/20 sight - right eye 20/70-2.

He found a blurring of the vision in the right eye. He diagnosed his condition as an exudate choroiditis.

He did not prescribe glasses but did prescribe idoxide. He stated the condition of his right eye could not be seen by casual observation. In other words the eyes appeared normal until under the machine in a dark room and then he found the iris and the choroid affected in the right eye only.

The boy returned again on August 29 and he merely confirmed his previous findings and also told him his blood Wasserman was negative.

He next examined his eyes about Oct. 25, 1931 when he was in the Florence Infirmary for the football accident. At that time he found his right eye inflamed somewhat and he treated it with dionin and atropin. When the boy left the hospital on November 4 the condition had subsided. He said only the right eye was involved.

He next saw him on Jan. 6, 1932 when the boy called again at his office in Florence. He gave him a thorough examination and found the vision in the right eye had deteriorated so that it was then 20/200 and the left eye was 20/20. He has not seen him since.

It was the doctor's opinion the condition of the right eye was not communicated and would not be communicated to the other eye. He thought the vision of 20/70 in the right eye could have existed for many years previous to August 1931. It could have resulted from scarlet fever which the boy had. He enumerated rheumatism, gout, gonorrhea, septic infections and many other causes as possible sources. He could not say that the gasoline which had fallen in his eyes could have caused the trouble. He felt that the gasoline in itself would not do it alone but might light up a condition that had existed before, by reason of its burning qualities.

He thinks the condition in his right eye is permanent and there is no operative cure for it. He did not think glasses would help any. He says the condition is a common one and cannot be discovered except by close tests under a strong light in a darkened room. He says it is known as Exudative choroiditis and also adds iritis involvement.

4. DR. KRAUSS - Bennettsville.

Witness is a physician in good standing in the community, about 40 years of age, who states his first professional contact with plaintiff was about October 9th, 1931 when the boy and his mother came to his office after his broken nose sustained October 6th, 1931 had been set by Dr. Jennings. The plaintiff's nose was bleeding. He seemed to be having a hemorrhage. He stopped it but it started again on October 10 and he tried again to stop it. This continued until October 13 when it suddenly became worse and could not be stopped. He rushed him to the Florence, S. C. hospital reaching there about 2:30 P.M. The boy was put to bed and he turned him over to Dr. S. R. Lucas, an eye specialist, and Dr. McCloud, Jr., on the medical staff of the hospital. He warned both doctors they had a serious case on their hands. That evening Dr. Lucas called him at Bennettsville and said the boy was resting easy and thought the hemorrhage was under control. Dr. Strauss warned them again it was not through. The next morning about 6 A.M. Dr. Lucas called Dr. Strauss over the telephone at Bennettsville and told him he was up all night with the boy and it looked like his life could not be saved. He requested Dr. Strauss to come at once and bring the boy's mother. This Dr. Strauss did. Arriving in Florence that morning there was a consultation of Doctors McCloud, Lucas, Mobley and Strauss and it was decided to operate on his neck and tie up the internal carotid on the right side of his neck. This is a large artery that runs up the right side of the face and feeds the eye where it branches off into many smaller arteries that feed the vitreous of the eye and up into the brain. Dr. Strauss stated the doctors

held little chance of saving the boy because if this artery was not the source of the hemorrhage it would be too late to find the right one. The boy up to this time had lost over a gallon of blood and he said if the boy had not been exceptionally strong and in good physical condition he could not have survived. Most ordinary men or boys would have died. Dr. Straus thinks he examined the boy on some previous occasion to the football accident for a students military training camp at Fort Bragg near Fayetteville, N. C. He also may have examined him for the football team. These examinations he was not sure of and would consult his records again. He said he was not sure whether the football injury was responsible for the hemorrhage because he understood the nose had been set without trouble and without bleeding and this hemorrhage started three or four days later and was severe. He said Attorneys Tyson & Miller had approached him for a report which he gave them. He retained him to testify for us. He said after the operation on the boy on October 14 or October 15, 1931 blood transfusions were given to restore his health. The internal carotid artery would affect the right eye in his opinion. The doctor is amiable and readily conversant. He should make a good witness for us.

5. DR. JENNINGS - Bennettsville.

Witness attended the plaintiff when his nose was broken October 6, 1931. All the details of the exact location of the break were not obtained and Attorney Bennett of Bennettsville is to see him again. He says there was no profuse bleeding October 6, 1931 and the break or injury was to the bridge of the nose near the eyes. He saw the boy only once and he thought the nose was set without trouble. He knew the boy

previous to the football injury and thinks he examined him for the football squad but is not sure. He is positive the boy was in good physical shape, strong and rugged. He was a hard tackler and played the most important position of tackle. Dr. Jennings took considerable interest in the school athletics and followed the games closely. He knew of no trouble this boy had with his eyes. The boy never complained to him.

6. DR. J. N. LILLY - Fayetteville, N. C.

Dr. Lilly is one of the leading eye specialists in Fayetteville and many people from Bennettsville go to see him. We talked with Dr. Lilly at his office in Fayetteville, sixty miles northeast of Bennettsville. He did not remember ever treating plaintiff but did have a record of treating the boy's mother, Mrs. H. H. Hubbard, in July 1923. She complained of throat trouble and hay fever and said it was affecting her eyes. He prescribed glasses to correct the trouble. She went to him again in August 1925 for further treatment and correction of glasses. Dr. Lilly said from the history we had he was sure this boy's trouble would be found in his systemic infection in 1923. He said rheumatic iritis was common. That if gasoline had affected his eyes he would have an acute attack in shortly after and his condition would have developed promptly. He further said gasoline was a disinfectant and would tend to destroy infection rather than produce it. He said gasoline might burn the eyes if allowed to remain in them. In all his many years of practice he never heard of this trouble coming from gasoline.

7. DR. ROBERTSON - Fayetteville, N. C.

Eye specialist prominently known there who could find no record of treatment.

8. DR. CHESTER - Fayetteville, N. C.

Eye specialist in Fayetteville who may have attended the boy or removed his tonsils but he moved from Fayetteville a few years ago and was not located. He could probably be located through the State Medical Convention Headquarters.

9. HOSPITALS - Fayetteville, N. C.

All hospitals were carefully checked in Fayetteville but no record of treatment.

10. HOSPITAL - Bennettsville.

We checked all records of both the old and new hospital in Bennettsville but it is reported there is no record there covering any treatment to this plaintiff. It is suggested our local attorneys in Bennettsville should check these records a little more carefully again.

11. HOSPITALS - Florence, S. C.

There are two. The Florence Infirmary and Saunders Memorial. Neither place has any record excepting the Florence Infirmary shows his treatment there in October and November 1931 which we have already described.

12. FLORENCE INFIRMARY - Florence, S. C.

The hospital records show plaintiff entered October 13 and remained until November 4, 1931. The record is voluminous and there is nothing in it we do not already know.

The history on the chart states plaintiff was injured in a football accident October 6, 1931.

His nose was reset by Dr. Douglas Jennings at Bennettsville with no bleeding until October 8 or October 9 when he had a profuse hemorrhage from right side of his nose. It was controlled by cold compresses. Considerable bleeding again

October 10, but none on October 11. On night of October 12 profuse hemorrhage again and was treated by Doctors May and Evans at Bennettsville. On Tuesday, Oct. 13, had a bad hemorrhage and was brought to hospital in Florence 2:30 P.M. by Dr. Strauss of Bennettsville.

The record then shows treatment and serious condition. There is no complaint of eye trouble nor any notation of inflammation or other condition.

Dr. McCloud, Jr. operated and tied up internal carotid artery. There were frequent urine examinations which showed presence of albumin.

Blood examination and blood count shown. Negative Wasserman for syphilis.

Inflammation in eye started few days before November 4 and he was treated by Dr. Lucas, eye specialist, at Florence Infirmary, also Dr. Mobley, his associate. Treatment given is noted on hospital chart as dionin, atropin and hot compresses. A daily occurrence for five days.

The chart shows daily vomiting of blood.

Many transfusions shown. Believe four. Doctor McCloud did not feel at liberty to give us a typewritten copy because it was a private case.

13. DR. HAYNE - State Department of Health, Columbia, S. C.

This doctor was interviewed in his office at the capitol building in Columbia. He has been in charge of State Department of Health for 22 years and he has never heard of lead poisoning from Esso or any other form of gasoline. He does not think it is possible. He attended Dr. Cummings' conference at Washington, D. C. some few years ago when the subject of Tetra Ethyl gasoline came up. He is familiar with Dr.

Leach's

report and read it before. He could see no harm in the sale of it and has issued no orders or instructions against its use in South Carolina. He believes the exudative choroditis was due to rheumatic trouble or other systemic infection.

14. R. W. CUMMINGS - Chief State Chemist for Dept. Agriculture - South Carolina - At Columbia.

He is familiar with Esso gasoline and has never heard of lead poisoning in this state from it. Does not think it possible. Principal trouble he experiences with lead is among the farmers who spray fruit trees, also vines and farm products with lead arsenate and other poisonous compounds. He has had a number of lead cases among farm workers. He will make a chemical analysis of Esso gas for us if we desire. However, Attorney McGowan at Columbia has since this interview taken this up with Mr. Cummings and will have a chemical analysis made by someone else.

He thinks gasoline will burn if it gets in one's eyes but the burning will be acute and the results acute. He says the State has no lead expert unless he could be called one.

15. DR. JAMES MCLOUD - Florence, S. C.

Dr. McCloud was not interviewed but seen by Attorney Wilcox for us of Florence. He knows nothing particularly harmful but probably later on it might be advisable to see him.

16. DOCTORS SMITH and JENNINGS - Bennettsville

While we have mentioned Dr. Jennings previously we mention him again in connection with Dr. Kirkpatrick's statement. Our attorneys in Bennettsville should see both doctors and make a careful check to ascertain if either doctor performed

the tonsillectomy on plaintiff. In view of what Dr. Kirkpatrick of Anderson, S. C. says it is quite probable the operation was performed in Bennettsville and a real careful search of the hospital records should develop something.

17. DR. KINNEY - Bennettsville, S. C.

We had information this doctor treated plaintiff in 1923 or sometime later. He is a relative of plaintiff's attorney, also closely connected with him and we were cautioned not to see him for fear of tipping off plaintiff. However, it is suggested our attorneys in Bennettsville see him regardless.

18. DR. JOHN D. SMYSER - Saunders Memorial Hospital -
Florence, S. C.

In canvassing Florence for probable eye specialists or doctors who may have treated plaintiff we visited this doctor May 24. He went through his records carefully, also hospital records but could find nothing.

This doctor is about 50 years old and he is called frequently to testify for plaintiffs in this type of a case. He is regarded among the lawyers in Florence as one of the best expert witnesses on the stand there can be found. After inquiring whether he knew of the case and finding he did not we thought it would be an excellent idea to forestall the plaintiff by retaining him for our side. He is considered a much more able expert witness on the stand in this kind of a case than Dr. Lucas who practices in the same city.

He readily agreed to testify and he said, after getting a history of the case, that he was convinced this boy had a rheumatic iritis. He said it so emphatically we felt we had discovered a fine witness. He would be an exceedingly dangerous man against us.

It is a peculiar co-incidence by there is a suit about to be tried in Florence Monday, May 29, wherein an employe of the Atlantic Coast Line R. R. is suing for blindness due to lead poisoning. Dr. Lucas is appearing for the railroad and Dr. Smyser is appearing for the plaintiff. We have talked with the attorney for the railroad, Mr. Fred Wilcox. He is quite interested in our case and he will examine both doctors on the stand on the question of absorption of lead and its affect upon the optic nerves, etc. It would be well to have a transcript of the testimony of each. We told Dr. Smyser we wanted him to make an examination of our plaintiff and we told him we would notify him when it was possible. He assured us we had come to the right doctor when we came to him, that he would show any jury the improbability of gasoline or lead causing this with such a clear picture of rheumatic trouble.

19. DR. EVANS - Bennettsville.

This doctor treated plaintiff's father for his serious rheumatic condition and may have treated the plaintiff. Attorney Bennett in Bennettsville knows him well and should see him. He is important.

20. MR. LOCKWOOD - Columbia, S. C.

Secretary State Board Athletics.

We saw Lockwood at the Y. M. C. A., Columbia, where he stated he had records for 1929, 1930 and 1931 of all physical examinations by doctors for men playing football at the high school in Bennettsville. These reports may be important because they show the boy's physical condition to be excellent. At least they will tend to negative any claim the boy has failed in health since 1928 or 1929. Mr. Lockwood agreed to turn

these reports over to Attorney McGowan in Columbia, S. C.

21. MEDICAL EXAMINATION.

Under South Carolina practice the defendant is not entitled to a medical examination unless plaintiff voluntarily submits to one. We have approached plaintiff's attorneys for such an examination and we will know definitely in a few days whether we will be permitted one. At Florence we suggested to Dr. Lucas we would like to retain him to perform the examination with some other doctor. He hesitated, saying it might not look right. On the other hand it is possible plaintiff may want Dr. Lucas present for himself. We really believe Dr. Lucas has been cultivated so much by us he will or may favor us more even should he make the examination for plaintiff. If we are careful we may find the plaintiff insisting on Dr. Lucas, not knowing the extent of our contacts with him. It is extremely important for us to know whether the left eye is affected. Dr. Lucas says it was not the last time he saw him in January 1932.

LIABILITY WITNESSES

1. E. W. ROWE - Bennettsville.

Co-defendant not seen.

2. RUSSELL (NIP) ROWE - Bennettsville.

some disagreement he had with him on an account. He said he had no feeling against the Standard Oil Co. but did have feeling against Clark. He said that during the whole year that he was in charge of the station that H. H. worked for him after school and on Saturdays and Sundays. He says that he earned from six to eight dollars a week. He also stated that under the arrangement he had with Standard Oil Co. he employed for temporary work men whom he wanted. He also stated that during the entire time that Hubbard was there he was thoroughly familiar with handling of gasoline, the manipulation of the pumps that he was handling oil in and about the station, and as far as he knew he was thoroughly conversant with gasoline and its affects. He said there was trouble at different times with pump and hose because of leaks. He said he had tried to get the Standard Oil people at Florence and Columbia to repair it, but at different times they refused to come over. He said that the uniforms were not furnished by the company but that no uniform of any kind that was saturated with gasoline was ever furnished this boy. Also said that he never experienced any trouble with gas on his hands and that he had frequently got it on various parts of his body. Except one time when he got some on his hands and they seemed to turn rather white. He said it was well understood by everybody that gasoline would burn if allowed to remain on the skin or get in one's eyes. He says he knew the Hubbard family for years, having been born and reared here. He never heard of illness or that eyes bothered Hubbard. He says he does not remember warning Hubbard of the danger of using Esso. He hired the boy himself and paid him out of his personal funds. He says when he took station over in January, 1928, he took it over from Carlisle Hubbard, brother of H. Hubbard,

who had been operating it for some time before that. He is not sure of the period of time Carlisle ran it. He says he thinks that H. H. was there with his brother, Carlisle. He thinks that if the first work Hubbard did around a station. Did not know hose leaked but remembered pump leaked. He said that Carlisle had worked at the station as manager under Hunter. He does not recall the condition of the boy's eyes during time he worked for him and remembers nothing about it that is significant.

Unfortunately we saw this witness last Sunday night and did not get a signed statement from him. It should be done and our attorneys in Bennettsville have agreed to do it. The importance of this witness' testimony is obvious. The plaintiff alleges he was young and inexperienced when E. W. Rowe hired him. This shows he worked at the station for over a year before E. W. Rowe took it over. He therefore was experienced. It also shows his brother, Carlisle, ran the station during 1927 and he first appeared there under his brother. The witness seems amiable enough and has no grudge against the Standard Oil Company as reported to us.

He also stated there were two pumps at this station and there was no trouble with the Esso pump. He said the hose used was known as a dry hose and had no clip at the nozzle. The leaks he refers to were at the slot or opening in the pump where the lever was let down. He said a repairman by the name of Jernigan from Florence used to come over and fix it.

He further stated this station was opened about August 1927 and was run by S. A. Townsend, who is a brother-in-law of plaintiff. He managed it until about November or December 1927 when it was transferred to W. L. Hunter. Hunter placed Carlisle Hubbard in charge of it and Carlisle was operating it

when this witness took it. While he stated he had not talked to plaintiff or his attorneys we are inclined to think he has. He, of course, should be of more benefit to us than plaintiff.

It is reiterated a signed statement should be secured from him by all means.

3. LUTHER RATOLIFFE (colored, about 30) - Bennettsville.

Witness was working at Standard Station under E. W. Rowe when seen. Commenced working at this station in the summer of 1929.

No statement was taken because our attorneys have already secured one.

Commenced working for Mr. Rowe the early part of 1929, about March, at the Broad Street Station. He said that Mr. Rowe operated both stations, one on Broad Street and the other on Main Street. Mr. Rowe ran the Broad St. station before he took over the station on Main St. At the Broad St. Station Ralph Morrison, Jim Lee and Jack Tyson worked. There was only Ed Rowe at the Main St. Station. Rowe quit operating the Broad St. Station about the summer of 1929 and was then operating only Main St. Station. He said he had never worked for Rowe around this filling station previous to 1929. Since that time he has worked steadily until present time. He could not remember anything about Hubbard as to whether his eyes bothered him prior to 1929. He said he was present when Slim Mathews drove up on Sunday and ordered some Esso gasoline. He says he thinks Coke Breeden was in the car, but did not get out. He is not sure. He is not sure as to the month or year or the day, nor is he sure as to the year when this happened. He

thinks it occurred about noon on Sunday some months ago. He is certain that Slim Mathews got out of the Ford car that he was driving and H. H. waited on him, and when Hubbard finished filling his tank and just as he was about to put up the hose, Mathews reached up and tried to turn on the gas again. Before H. H. could put up the hose the gasoline came through the nozzle and spurted into his face. He says that Eb Rowe washed Hubbard's face off in the station and that the nozzle has since been changed so that it is a different form of nozzle on the hose than there was at the time of the accident. He says he never noticed anything wrong with Hubbard's eyes afterwards.

Witness is a young negro and he would be unsatisfactory as a witness for either side. How he can remember the details regarding the accident is a little hard to explain due to the fact that he has probably filled hundreds of cars since then and he has never heard anything about this matter from that day to the time we talked with him. He also stated that Hubbard's attorney started investigation of this matter in the summer of 1932. He thought Mr. Rowe had talked with the attorneys, but he had never talked with with them.

4. AAREN NEWTON - Bennettsville. (Aged 22).

He was formerly a schoolmate of plaintiff and knew him intimately for several years. He is decidedly ^{very} friendly and arrogant. Located and interviewed Aaren Newton, Candy Kitchenk in Bennettsville. His attitude is extremely hostile and he refused to convey any information regarding the circumstances surrounding the accident. Said he intended to talk to no one. He said he had already given statement to attorneys Tison & Miller, and Edens. He further said that following the accident in August, 1929 and for a long period after that, the boy had

been treated by some doctor for his eyes. He further states that in his opinion Coke Breeden knew nothing about the accident; also that Slim Mathews had not told the truth. Also said that as far as he knew the boy had no sickness or nothing wrong with his eyes prior to August 1929. This witness is the most hostile witness we have talked to yet and unquestionably he has been carefully cultivated by plaintiff's attorneys.

8. J. H. JERNIGAN - Florence, S. C.

119 West Pine St.

This witness formerly employed by Standard Oil for 9 $\frac{1}{2}$ years resigning December 15, 1929. He was employed at Florence and was known as a "C. & B." pump mechanic.

His territory covered Bennettsville in 1927, 1928 and 1929. He remembers the Main St. Station in Bennettsville quite well. It had installed type T-177 Gilbert & Barker pump with what is known as a "dry" hose. That simply means a hose with no clip or cut-off at the nozzle. Those with a cut-off at the point where the hose joins the pump are known as "wet" hose because the gas remains in the hose after cutting off the quantity wanted.

This witness was described as probably hostile to the Standard Oil because it was said he was discharged. To the contrary, he was most pleasant and is quite anxious to assist us. He will give us a complete signed statement at any time. After describing the case a little to him, outlining the allegations of negligence, he pointed out that it was impossible for it to happen that way. He is willing to go into the case fully with our attorneys and it is suggested Attorneys Bennett & Carroll visit him when they go to see any of the doctors in Florence.

He remembers some of the repairs he made and said his reports

Witness states all pumps develop some leaks around the cut-off but the leakage would be slow and would not fly in anyone's face.

Witness is unemployed at the present time.

Says the sliding slot would have to be held open for enough gas to run out to spill on a person. The handle automatically closes.

6. FRED SELLS - Bennettsville.

(White - aged 31).

Operates oil station for Standard on Broad St.

Came to Bennettsville October 16, 1929. He is not sure whether plaintiff ever worked at his station or not, but Carlisle Hubbard, his brother, did in 1929 and 1930.

The Standard Oil Company did not furnish uniforms but allowed 25¢ for cleaning them as part of the operating expense. It was the duty of the men to keep their own uniforms clean. Has had gasoline in his eyes and on his hands but never had any trouble.

Does not see how it can be avoided around station. Knows nothing of particular value to us.

7. W. L. HUNTER - Bennettsville.

Statement attached.

8. C. S. REDDING - Georgetown, Kentucky.

Witness was formerly coach of the football team and is now residing in Georgetown. We had to have him interviewed by an attorney in Lexington, Ky. and his statement is attached. It is far from satisfactory as to details.

9. CHARLESTON REFINERY - J. E. Lenhardt, manager.

At Charleston we conferred with Mr. Lenhardt and we desired the mixing records showing the amount of Tetra Ethyl fluid mixed with gasoline which would be shipped to Bennettsville

on or about August 1929. The record is herewith attached and shows a proportionate mixture of one to fifteen hundred. In other words, one cubic centimeter to fifteen hundred cubic centimeters of gasoline. In some instances there was not even this amount. In one gallon of gasoline there is approximately three thousand two hundred cubic centimeters of gasoline. Consequently, in some of these mixtures there was even less than one cubic centimeter of lead mixed. For instance the lead per gallon is shown as follows:

LEAD PER GALLON

.7550 cc

.7424 cc

.7509 cc

.7533 cc

1.3449 cc

1.8520 cc

This shows six different mixtures and assuming there are 3,200 cc of gasoline in one gallon the extremely small proportion of even less than one to sixteen hundred parts did not even exist.

Mr. Lenhardt informed me the laboratory man would be available as a witness to testify concerning these actual mixtures because it was under his direction and personal supervision that the lead fluid was mixed in these proportions.

Mr. Lenhardt during the course of the discussion said that gasoline in itself would burn ones eyes sufficiently to cause blindness.

We secured these records because we understand that Bennettsville Plaintiff's attorneys are having a chemical analysis made of esso gas.

SOME APPLICABLE SOUTH CAROLINA LAW

On the question of our right of removal because of a separable controversy 33 Fed. (2nd) 1010 - Sanders v. Atlantic Coast Line, et al. has

already been cited in the foreword. This is a decision by Judge Glenn of the federal district court for the eastern district South Carolina. Our removal petition will either be heard before him or Judge Cochrane.

In this case 33 Fed. (2nd) 1010 Judge Glenn exhaustively reviews the twelve grounds or rules which govern the right of removal. Each one of the twelve rules is thoroughly discussed and makes interesting reading.

In our petition we allege the joinder was fraudulent without stating facts to support it unless it is intended that our contract with Rowe permits the conclusion of fraudulent joinder. But in this respect the same Judge Glenn in Nims v. The Texas Co. settled that by saying it isn't enough. It is suggested the Sanders vs. A. C. L., Supra, be read.

Regarding the liability an interesting case is found in 55 South Carolina 483 Owings v. Moneynick Oil Mill. This case is still the law in South Carolina and is repeatedly cited as authority in later cases involving similar issues.

An extract from this case is as follows:

"A master is not required to notify a servant of the danger to which he is exposed when the servant knows the danger of the situation in which he is required to work.

In an action for damages for negligence in master sending a servant to work in a dangerous place without notice non-suit should be granted where the proof is that servant knew of the danger.

Where the servant knows the dangerous nature of the situation in which he is required to work or of the machinery or of the appliances which he is to use such warning would not only be useless but absurd.

For instance if a blacksmith is employed to do work incident to his calling it would be absurd to say that his employer is required to warn him that it is dangerous to allow a heated iron to come in contact with his hands or any portion of his body.

These principles are so well founded in reason and common sense that they need no authority to support them.

Further -

"As we have seen the negligence charged consists in the failure of the employer to give the warning to the employee; but if such warning was not shown to be necessary there was no duty on the part of the employer, and hence no negligence.

Plaintiff's own testimony shows he was aware of the danger of coming in contact with the wires and he was bound to know the wires were charged with electricity. Any warning which might have been given would have been entirely useless and defendant neglected no duty in failing to warn.

It was generally known in that community that electric wires were dangerous and that this presumption is well founded and fully shown is the explicit admission while on the stand that he knew."

A case with a well accepted rule of law is found in 160 S. C. - 541, 159 S. E. 390 - *Weston v. Hillyer*:

"Verdict for plaintiff cannot rest on guess or conjecture.

A servant cannot recover where it is merely a matter of conjecture, surmise speculation or supposition as to whether the injury is due to defendant's acts".

This rule of course is indelibly impressed into the common law of all the states but it is mentioned here to show it is not obsolete in South Carolina and there is still a ray of hope and justice for law abiding tort feasers there. It is not yet "no man's land" in the domain of justice and jurisprudence.

The syllabus in *Brewer v. Brooklyn Cooperage Co.* - 166 S. E. 85 decided by Supreme Court of South Carolina on Oct. 5, 1932 is as follows:

"When master employs competent servants to notify other servants of dangers from appliances they are "fellow servants" and master is not responsible for their failure to give such notice."

On the first allegation of negligence we will be able to show conclusively plaintiff was employed for over one year around the station before E. W. Rowe took charge in March 1929. He even worked under his brother Carlisle in 1927 when his brother ran the station for Hunter. E. W. Rowe therefore did not employ an inexperienced boy and as gasoline is so well known and so commonly in use its dangers are commonly known.

The same set of facts answers negligence #2.

As to #3 we admit the dry hose did not have a cut-off at the nozzle. But that fact alone did not cause the emersion in August 1929.

As to #4 we did not furnish the garments. This was a part of the obligation of the employe to provide himself with proper dress. If he took the soiled clothing saturated with gasoline it was obvious to him at the time and it would be clearly his option to refuse to put it on. He cannot maintain that we required him to work in gasoline soaked clothing. This is too absurd to consider.

On the law and the facts the plaintiff is on thin ice but is is very doubtful that the Federal Court will hold the case unless of course the plaintiff fails to move to remand. The filing of our answer in the state court if done before the petition for removal was filed might also bar our removal right because it amounts to a waiver, and an acceptance of the state court jurisdiction. Ordinarily the petition for removal must be the first step. Our attorneys of course have considered these angles but for the purposes of completeness this subject is discussed.

COMMENT

Obviously there are some important angles to be developed. The tonsillectomy following the rheumatic trouble in 1923 is important and should be traced further.

Dr. Leache who made the survey in 1925 for the United States Public Health Service Bureau under Dr. Cummings concerning the dangers to

public health in the use of Tetra Ethyl Lead Gasolina should be conferred with and if possible he should be asked to confer with Dr. Lucas of Florence and Dr. Smyser. The problem of lead poisoning from the use and handling of Esso was carefully studied by him in 1925 and he finally recommended its general sale because there was little or no possibility of poisoning. The relative proportion of the lead fluid of one to fifteen hundred makes the amount of lead infinitesimal. We do not have a picture of lead poisoning in this case because the health of the plaintiff seemed to be at its best in the years of 1930 and 1931. There is no picture of deterioration.

The rheumatic affliction in 1923 was severe and lasting. He even had a bad temperature of 104 in August 1922 almost one year before. This according to his own family Doctor May.

The plaintiff's eye condition of 20/70-2 right eye and 20/20 left eye is nothing unusual or uncommon. In examining the cards of the students at the Murcheson School we were surprised to find the large number of children with 20/70; 20/40 ; 20/60 and 20/80 sight.

The cause of iritis are many and are listed as follows:

"Depending upon its etiology, it may be classified as (1) Syphilitic, (2) Rheumatic, (3) Gouty, (4) Gonorrhoeal, (5) from Septic Infection, (6) Diabetic, (7) Scrofulous, (8) Tuberculous, (9) Traumatic, (10) Sympathetic, and (11) Idiopathic.

Iritis has also been divided according to the nature of the products of inflammation into plastic, serous, spongy, purulent, nodular, etc.; but this classification is unsatisfactory because one type merges into the other."

Iritis may be acute and run its course in several weeks; or it may be chronic and last a number of months. In great many cases terminate favorably, especially when subjected to proper treatment early; the exudation becomes absorbed, and the iris returns to a normal condition with no evidences or mere traces of former inflammation. On the other hand, serious complications and disastrous sequelae may arise; hence the prognosis should be guarded. Chronic cases present very mild

inflammatory symptoms, or the latter may be entirely absent. Certain forms of iritis have a tendency to recur. Iritis may involve one or both eyes; when both eyes are attacked, the second usually is affected a short time after the first.

EXUDATIVE OR NON-SUPPURATIVE CHOROIDITIS is classified, according to the location of the foci of inflammation, into the following principal forms: (1) Diffuse, (2) Disseminated, (3) Circumscribed, (4) Anterior, (5) Central, (6) Syphilitic, and (7) Myopic. It is of frequent occurrence and is observed at all ages; it is usually chronic in its course, though occasionally with acute onset.

The objective symptoms show no external signs, but the ophthalmoscope reveals a well-marked picture. There are patches of exudation varying in size, shape, and position. At first these areas are yellowish (sometimes greenish-gray) in color, with ill-defined margins; the retinal blood-vessels are seen to be lifted and to pass over them. Later, after several weeks or months, the exudation becomes absorbed, leaving patches of choroidal atrophy; the latter appear as whitish areas (the sclera showing through) often presenting distinctly visible choroidal vessels, and marked with more or less pigment, especially at their margins. Usually the vitreous is involved, and then there are opacities of this medium. Very often the retina becomes atrophied opposite the patches just described. The optic disc may participate and be hyperaemic at first and later present a dirty yellowish-red color with blurred margins, a condition often spoken of as "choroiditic atrophy."

The complications to be seen from this show that neighboring structures are frequently implicated: Iris, retina, optic nerve, vitreous, and sclera; choroiditis may also cause posterior polar cataract.

The Etiology is that frequently some constitutional disease, or septic infection from the teeth, oral and nasal cavities.

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Dr. Lucas described the exudative choroditis in this case was diffuse.

The plaintiff will have considerable trouble hurdling the fact his defect in his right eye increased to 20/200 after the accident.

Exudative choroditis is very rarely, if ever, the result of trauma, according to Dr. Lucas.

Viewing the case from all of its angles it does seem to be one to be tried.

We are taking this opportunity of expressing our appreciation of the hearty cooperation and able assistance rendered by attorneys Bennett and Carroll and Attorney McGowan. All have done everything possible to make the author's work easier. Without the wide acquaintanceship which attorneys Bennett and Carroll enjoy and their high standing in Bennettsville vicinity, little of this work could have been successfully accomplished. Attorney Carroll worked night and day to get at the facts. There was lots of hard work which was cheerfully performed and there is still lots to be done to gather in all the loose ends of the case.

Respectfully submitted,

United States Casualty Company.

ARTICLE COPIED FROM THE FEE DEE ADVOCATE, PUBLISHED
BENNETTSTOWN, S. C., THURSDAY, OCTOBER 15, 1951.

" STAR FOOTBALL PLAYER IN FLORENCE HOSPITAL "

[REDACTED], Jr., star tackle of the Green Wave football team, is in a Florence Hospital suffering from a broken nose received in scrimmage here last week. [REDACTED] nose had been treated by doctors here but the bleeding could not be stopped. Tuesday morning he was rushed to the Florence Hospital, where a blood transfusion was necessary. Coach Redding and several members of the team went to Florence yesterday to have blood tests made for further transfusions, if necessary.

[REDACTED] was one of the stars of last season and was showing up well this year. His nose was broken just before the game with Lakeview last Friday and he was not able to take part in that game. His many admirers of the school and town wish for him a speedy recovery.

ARTICLE COPIED FROM THE PEE DEE ADVOCATE, PUBLISHED
BENNETTSVILLE, S. C., THURSDAY, OCTOBER 22, 1931.

" YOUNG FOOTBALL PLAYER IMPROVES AT HOSPITAL "

[REDACTED], local football player, is rapidly improving at the Florence Infirmary, where he was taken last week because of the loss of blood from a broken nose. Two transfusions were necessary. Charles Redding, football coach, gave almost a quart of blood Wednesday afternoon of last week, and W. W. Via, local teacher, gave a pint Tuesday afternoon.

Sometime ago [REDACTED]'s nose was broken in football practice and the doctors were unable to stop the bleeding. He has now partly regained his strength but the doctors gave the transfusion Tuesday so the bandages could be removed from the nose.

Many of his school mates and friends throughout the county have visited him at the infirmary. Several members of the football team offered their blood to the weak lad and A. C. Green, another member of the Green Wave has been staying with [REDACTED] part of the time. He returned to the city Wednesday morning and reports [REDACTED] condition as quite satisfactory.

LINWOOD ROWE

5-21-33.

I was born August 1911 and "H. H." was born September 20th, 1911.

I first knew [redacted] just after they moved to town from the farm. I was six or seven years old. Was just before war. H. H. was always behind me in school - I was always ahead of H. H., but can't remember definite date that far back. I remember when he was out of school for a long time. I remember seeing him sick for long time. We didn't think he would get well. Do not remember any doctor but May. They may have carried him to Fayetteville or Florence. My brothers and Rogers boys went to see him. He was in bed, his legs were swollen and he was helpless. His hands may have been affected. After they put him in dark room. I didn't see him any until he got well. His brothers made fun of him and said he was crazy. I can't remember definitely about the glasses. He told me who took out tonsils but I can't remember definitely. After he went back to school, he was in and out. Miss Norma Rose was teacher. Seems like I remember him putting on glasses for a while just after he got out of bed.

About 1927-28 H. H. started going around with Puddin Pond. Don't remember wreck they had - Someone in family always going over to Florence to see doctor. After moving away from Roper House, they always had lot of old junked cars. He worked under the cars, often in dirty, greasy overalls.

I think he started work at filling station about time he moved to country. He worked for Nip Rowe before he started work for E. W. Rowe, who took it over about first part of 1929. I was working at Broad Street station before then. H. worked for Nip some time at Main Street station.

He didn't work for E. W. Rowe much, very irregularly, in afternoon, some Saturdays and on Sundays when open. Newton, Ratcliffe, Whitner, and I worked there. I never saw H. H. work any where else. Never saw him work for Sells Broad Street Station - Hunter Lee, Sells and others.

Usually H. H. wore overalls furnished by M. W. Rowe. Never saw overalls with gasoline on them. Sometimes Oil. No stipulated rate of pay except Sunday. H. H. did not work every Sunday open, sometimes he worked at Broad Street station, possibly with Morrison or Osmon Brown.

On August Sunday, 1929, I was at Beach, heard about H. H. getting gasoline on head. I heard he left hose turned on, and spilled - Pump had never leaked at anytime. Has been one year since hose was changed- Sometimes hoses would get wrung loose at top, but never leaked bad. Gas would not fly in your face.

In 1930, after he got gasoline in face he worked at station again. I think he went to Navy in 1928 or 1929. H. and Arrent Newton told me they were going to join Navy. One couldn't get in, and other wouldn't. I never heard H. H. complain about his eyes until in school in 8th. Grade. Probably after 1929 - Later he went to Fletcher Memorial.

When he would go to read he would stop and stutter, we thought he was dumb, he said it was his eyes. I know that in Grammar school he could not read.

One day Walser Edens, last summer, rode in station and Eb was busy. He asked me questions about Eb making me work in dirty overalls.

Meachum says Edens was always after him, said he was going to get Esso. The day after complain was served, Meacham came in and started crying because his own brother in law was trying to put him out of a job. They gave Meacham a paper too. Sheriff had a paper for head of Standard Oil. Last complaint served on Eb.

When he played football he looked very strong.

Don't remember H. getting hit by drunk.

Brother told me about wreck on way home. Wreck was not serious.

H.'s father's Ford was torn up one time.

-3-

In his junk car work, he wore dirty, greasy clothes and had buckets of gasoline to wash hands in. Have never seen him do this. He always used it for this. Cars never used mufflers. On cars - usually then took off exhaust pipe, sometimes had short pipe.

May 17th, 1933.

My name is Polly Johnson and I live on the Cook Farm. I worked on the premises [redacted] family about ten or twelve years ago and I remember when [redacted] Junior was awfully sick. He was kept in a dark room for a long time. His feet, hands and arms were badly swollen for a long time. He had to wear glasses and was attended by Dr. May. He was so bad he could not use his legs and arms. His right arm was the worst. They put poluses on the arms and legs. I saw him wearing glasses for some time. His sister Edith would tell me he had to wear them because his eyes were so bad. Arthur Johnson, whose wife's name is Arrilla saw the boy continuously and knows all I know. This man is still here and now working on Frank Rogers farm. He had a nephew who worked with him. Austin Townsend and his wife used to come over all the time and could tell the same thing. The doctor used to say it was his kidneys and rheumatism. He was so sick they thought he was going to die. They thought he got sick from the water in the creek back of the place. His hands were so bad he could not hold his hands up. When he was lying down he could not eat with his hands. He just grabbed at his food. It was so bad his head would jerk. He could not walk and he had to be lead around and helped.

He was in a terrible condition. Speck Rowe used to come over and sit with him. He knows about this sickness. He was about 12 years old at this time. I used to see him once or twice a week. Sometime I would be there every day. Sometimes I would stay all week.

Refused to sign.

This is said and given in the presence of

J. F. McLaurin.

(Signed) J. F. McLaurin.

May 18, 1933.

I worked for [REDACTED] for eighteen years or so. I recall that around 1923, young [REDACTED] Jr. was sick. I remember that his Father told me that little [REDACTED] had rheumatism. He was awfully sick about two years before his father became sick around 1925, as I recall it.

The boy was sick for a long time, I would say a good many months. His joints were all swollen up. I saw him in the house, in bed.

I do not remember his wearing glasses after or before his sickness, but he could have done so without my knowing it and I would not say he did not wear them.

Jim Peat worked on a farm too. He would go up to the house to see Mr. [REDACTED]. He lives at Breeden's siding now. Another colored boy worked around the house.

I heard Mr. [REDACTED] saw that the boy was about to die. He said he was in really bad shape with rheumatism.

(Signed) Oscar Johnson.

May 23, 1933

At time [redacted] was living in Bennettsville, I lived in country. I began going with him around 1926 or 1927 a great deal.

[redacted] did no repair work on cars that I know of. William Weatherly, Sport Weatherly, Duck Hollis and others went in swimming with him.

Miss Benning, Rose, Pant, Fur, Lipscomb, Berry, Hargrove (7th) taught me. I don't remember any eye trouble. I saw him in classroom. Never heard his poor reading was because of eyes.

Kenneth was the mechanic, not H. H. I rode around with him at times. I never was in an auto accident. Don't recall accident when I supposedly set up about.

He played right guard, I think, when I played. He had rheumatism some time back, before he played football. I don't think he wore glasses earlier. He was a good player, strong and husky. He was supposed to be one of the best players on the team.

I started playing football in the 7th. Grade. Sometime around 1924 to 1926. H. had pains in knees and could not go about with rest of boys. I attributed this to rheumatism which he had earlier, and which kept H. out for a whole season. I used to wrestle with him in Grammar school.

He was working for the Standard station at the corner of Parsonage and Main Streets when I was working for Hunter.

When he was sick, it was the last year that they lived in the Powers house. Then he was still sick after reaching the Moore house. His legs were almost useless.

I used to put gas in underground tank at Ab Lowe's. I knew nothing about the tanks above ground or their condition.

(Signed: Clyde Bond.

May 22, 1933.

STATEMENT OF COKE BREEDEN.

My name is Coke Breeden and I run a gas station on State Route #9, Bennettsville to Cheraw. If I was present in August, 1929, with Slim Mathews, I don't remember anything about it. I don't think I was there. I have know [REDACTED] over since he was a boy and I think he had trouble with his eyes a long time before he got this gas in his eyes in August, 1929. I remember when he had rheumatism and I know he was sick for about a year. I think he went to Florence at that time. It seems to me at that time he had rheumatism he had weak eyes. I saw him about two weeks ago when he drove up to my house at which time he had on green glasses.

(Signed) C. B. Breeden.

STATEMENT OF W. L. HUNTER.

Carlisle Hubbard worked under me for several weeks when I had the Parsonage Street Standard Station under my control. Carlisle was in charge.

Carlisle had help under him. I paid only Carlisle. I do not know whether Carlisle used [REDACTED] or not, I have seen [REDACTED] around the station while Carlisle was managing it, but I don't know whether Carlisle employed him.

I do not know of any defect in the Esso pump. I did not notice any such defect while I was in charge of the Parsonage Street station and I never heard of any such defect later. The boys were changed very often.

I was manager of the stations in this County at the time of the sudden dashing of gasoline into [REDACTED] eyes. I heard nothing about that accident, however, until the news of the law suit was published.

As manager, I always warned my agents about the danger of handling gasoline carelessly. I remember warning Carlisle Hubbard. I was in charge of all the Standard stations in 1928, 1929 and up to June, 1930.

I think there was some trouble after Eb Rowe's time with the gasoline pump next to main street, but I do not recall any defect in the Esso pumps. The gasoline pump was repaired soon.

I've never heard of any auto accidents involving E. H. Hubbard, Jr. I seem to have a very slight impression that he tried to join the Navy, but I could not say so.

I handled gas for 12 years, working for the Standard Oil Co. I was getting gas and oil on my hands and body constantly. I never suffered any ill effects whatever. I got myself especially dirty and greasy.

I have never heard of anyone getting lead poisoning or any

Hunter.

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as much gas on me as H. H. Hubbard.

I never recall seeing [REDACTED] wearing greasy or saturated uniforms. I noticed the condition of employees uniforms too, because that was part of my job. My position was that of general manager of all the Standard Oil stations in the Bennettsville district.

I think [REDACTED] began working probably when his brother Carlisle managed the Parsonage station under me.

In all my experience with gasoline, I have never heard of any person suffering ill affects of any nature from coming in contact with it.

(Signed) M. L. Hunter.

May 22nd, 1933.

STATEMENT OF LACY JACKSON

I played football on the same team with [REDACTED] in the fall of 1929 and the fall of 1930. I graduated from the High School in June 1931.

When [REDACTED] played with me he was as good a tackle as I ever played with. He had no trouble with his eyes to my knowledge. His physique was very good, and he was a fine player.

The first I heard about his eye trouble my father told me that [REDACTED] had filed suit against the Standard Oil. I did not see glasses on him before that to my recollection. When he was in the hospital, I gave blood, but I heard nothing about eye trouble.

I remember nothing about his being in an automobile accident. I knew very little about him before he reached high school, and I do not recall anything about his health in grammar school. He was healthy so far as I know.

(Signed) Lacy Jackson.

May 22nd., 1935

STATEMENT OF ODELL MATHEWS

I don't remember when [REDACTED] t glasses on. I know he wore them in latter part of high school, but when he began to wear them I don't know.

Richard Hallum, to the best of my recollections, was at my house one day and, if I recall correctly, stated that H. H.'s nose was made worse by a blow which was dealt it by someone out in the country. It seemed that some woman asked H. H. to help her get another boy or man away from the house and it doing so, H. H. received a blow on the nose. But I may be wrong, this being only an impression.

[REDACTED] was wearing glasses one day when he came to the schoolhouse. Someone asked him, I think, if he was eligible to play football. This was about the fall of 1931, I think.

Charleston, S. C.

May 23, 1933.

The following is the information in connection with shipment of Esso to Cheraw, S. C., requested by Mr. Arthur B. Reid, Attorney for the United States Casualty Company:

CARS OF ESSO SHIPPED CHERAW, S. C. PRIOR TO

AUGUST 26, 1929

<u>DATE</u>	<u>CAR NUMBER</u>
Feb. 18, 1929	34365
April 9, 1929	16390
May 10, 1929	24293
July 5, 1929	11193
July 31, 1929	24371

ESSO GASOLINE MIXTURES MADE AT THE CHARLESTON

REFINERY FROM WHICH ABOVE CARDS WERE SHIPPED

<u>Certificate No.</u>	<u>Date</u>	<u>Gallons Mixed</u>	<u>Quantity of Lead</u>
2013	June 21, 1929	278,153	2 Drums @ 105,000 cc - 210,000
2015	July 2, "	282,877	2 " @ 105,000 cc - 210,000
2016	July 12, "	279,682	2 " @ 105,000 cc - 210,000
2018	July 24, 1929	278,765	2 " @ 105,000 cc - 210,000
2020	Aug. 14, "	325,225	5 " @ 120,000 cc - 600,000
2021	Aug. 22, "	368,802	6 " @ 120,000 cc - 720,000

Lead Per Gallon

.7550 cc

.7424 cc

.7509 cc

.7533 cc

1.8449 cc

1.8520 cc

We understand from our Columbia Office that the Esso sold at Bennettesville, S. C. was supplied from Cheraw, S. C.

Mr. Reid requested that this information be forwarded to you.

Very truly yours,

J. I. Lenhardt

EXCERPTS TAKEN FROM THE SOUTH EASTERN REPORTER # 167, page 826.

"TATE V. CLAUSSEN-LAWRENCE CONST. CO. et al. No. 13576."

SUPREME COURT OF SOUTH CAROLINA.

Feb. 7, 1933.

The cardinal question which confronts us at the threshold of the case is this: Does the contract between the refining company and C. A. Dixon alone determine the relationship between them, and does it show as a matter of law that the refining company is the employer and C. A. Dixon is an independent contractor for the sale and distribution of the products of the company? An allied question is: May that relationship be shown by evidence independently of the contract, or supplemental of the contract? In other words, may the plaintiff show that while the written contract may fix the relationship of employer and independent contractor between the refining company and Dixon in regard to the selling and distribution of the products of the company, nevertheless it is competent to show by other evidence that there are other contracts and connections between the parties which create in regard thereto the relationship of principal and agent.

The appellant the refining company has planted itself squarely upon the decision of this court in the case of Sams v. Arthur, 135 S. C. 125, 133 S. E. 205, in which the court construed a contract somewhat similar in its terms to that introduced in this case, and held that it established between the Gulf Refining Company and Arthur the the relationship of employer and independent contractor, and that it being the duty of the court to construe the written instrument, it was error not to grant the motion for directed verdict made in behalf of Gulf Refining Company.

In our case the trial judge refused to grant such a motion, but in charging the jury he gave this defendant the full benefit of the doctrine of the Sams Case by charging the jury in these words: " I charge you as to this Memorandum of Agreement between Gulf Refining Company and C. A. Dickson - I charge you if that is all - if this contract is the only thing - if this contract, this writing, is the

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only thing you find upon which to base liability against the Gulf Refining Company in the case, you find a verdict for the Gulf Refining Co. (Exhibiting Exhibit "4") This paper here - you take that paper in the room with you - if that is all that the plaintiff has - if that paper is all that the plaintiff has against the Gulf Refining Company, you find for the Gulf Refining Company. If there is no other evidence in the case to connect the Gulf Refining Co., with this case, except that, you find a verdict for the Gulf Refining Company."

Manifestly his honor recognized the controlling force of the Sams Case, supra, and gave this appellant the full benefit of it. But manifestly, too, he thought there was evidence in this case, aside from the contract, which made it his duty to send the case to the jury on the question whether the driver of the truck, by whose negligence in placing the gasoline in the tank it is alleged the vaporized gasoline came in contact with the flambeau and caused the fire, was the agent or servant of the refining company, even though it appeared that he was immediately employed by Dixon.

It would not have been proper for the court to state what the evidence was which in his opinion showed a relationship other than that fixed by the written contract; that might be held to be a charge on the facts.

It would appear that the case of Sams v. Arthur, supra, turned and was decided solely upon the construction of the contract. The record does not disclose that any other evidence of the relationship between the Gulf Refining Company and Arthur was offered in the case, except that it appeared: "That the business of Arthur was handled by him according to his own methods, except as modified by the contract. The truck belonged to him and the driver was employed and directed solely by him. The company had absolutely nothing to do with either."

Is there evidence in this present case, outside the written contract, which distinguished it from the case of Sams?

(1) There was introduced in evidence, over the objection of the defendant the Gulf Refining Company, a written contract of lease

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of the garage premises by J. V. Tate to the Gulf Refining Company, and written contract of lease from the refining company to A. L. McLanahan of the same premises. It was competent to show the ownership of the property, and the proceedings by which McLanahan was in possession of it. If the contract between the refining company and McLanahan contained anything which threw light on the relationship between the refining company and Dixon, which would tend to show that when Dixon sent, on the evening of the fire, gasoline to McLanahan in his own truck driven by his own driver, he was acting in obedience to instructions from the refining company and as its agent, then the contract was competent and relevant and was properly admitted in evidence. Does it contain such evidence?

(2, 3) The contract states that the refining company does thereby appoint McLanahan its commission agent to sell its products on commission through the service station leased by it (the refining company) in the town of Calhoun Falls. The refining company contracts to consign to McLanahan such quantities of gasoline, lubricating oil, kerosene, and other products of its goods as in its judgment will be necessary to supply the trade; and that it would exercise reasonable diligence to keep McLanahan supplied with the commodities as his trade may require. A. L. McLanahan testified that when he began business under that contract they (Gulf Refining Company) put in a quantity of gasoline, oil, etc., and instructed him that when he wanted gasoline "notify Mr. Story, their agent," and he would bring it down. That Mr. Story was succeeded by Mr. Dixon. Clearly, the contract was competent and relevant. The jury might well deduce from this evidence that in delivering this gasoline, Dixon, through the agency of his truck and his driver was carrying out the refining company's contract to keep McLanahan supplied with gasoline and in so doing he was acting as the company's agent. And it is true as to the courtesy card given by the refining company to Mr. Tate and for which collection was made by Dixon; there is nothing in the written contract to require Dixon to make such collections, and the jury would be justified in the conclusion that Dixon was the agent of the company in all of its business.

(4) There is other evidence from which the jury might infer that the driver of the truck which delivered the gasoline when the fire occurred was the agent of the refining company. In placing the gasoline in the tank he was using a funnel and hose which were the property of the refining company. Under the contract Dixon was required to furnish all of the implements and utensils with which he conducted his business; the jury might well ask why on this particular occasion he should be using the utensils of the refining company. If it was the duty of Dixon as agent of the refining company to supply gasoline to McLanahan when he needed it, and in doing so he employed his own driver and that driver was negligent, that negligence was attributable to the refining company.

It appears further that by a rider to the original contract between the refining company and Dixon which appears in a communication from the company to Dixon, that with reference to the distributor's contract between him and the company "the following circuit points will be made by you * * * Lowndesville, Mt. Carmel, Hester and Lanier." It is a legitimate inference in the light of the evidence that the refining company had established filling stations at these points under contracts similar to that with McLanahan; by which it had bound itself to keep these agencies supplied with gasoline and oil, and by this rider was instructing its agent, Dixon, to serve them, just as he served McLanahan.

The warehouse from which Dixon operated was rented by the refining company. On it is a sign with these words: "Distributing Agency, Gulf Refining Company, Kerosene and High Grade Gasoline." The bills for goods sold from this place of business were made on billheads of the Gulf Refining Company.

All these things cited had some probative bearing on the question of the agency of Dixon and made it the duty of the court to submit it to the jury.

(5) These contracts are artfully drawn with a view to relieve the corporation of any liability of any sort arising from any

cause, and they carefully declare that there is no contract of agency between the parties. But that mere declaration does not make the contract something other than agency if a proper construction of its terms shows that the relation is one in fact of principal and agent. In the case of *McNeill v Electric Storage Battery Co.* 109 S. C. 326, 96 S. E. 134, 135, the court said: "It is true the contract provided that the relation of principal and agent should not exist, but when the provisions of a contract make a contract of agency then it is a contract of agency, and it makes no difference by what names the parties call themselves."

(6) It may well be doubted if there is not in the contract between the refining company and Dixon intrinsic evidence of a relationship of principal on the part of the refining company and agent on the part of Dixon, and if there is not sufficient difference between this contract and that in *Sams v. Arthur*, supra, to justify the court in declaring that this case is not controlled by that. However, it is not necessary to do so. There is evidence dehors that contract which properly took the case to the jury.

In 14 R. C. L. at page 76 it is stated, quoting from section 13: "While in all ordinary transactions the existence of the relation of contractor as between two given persons excludes that of principal and agent, or master and servant, there is not necessarily such a repugnance between them that they cannot exist together, and an employee may be an independent contractor as to certain work and yet be a mere servant as to other work for that same employer. Thus an independent contractor for the construction of a railroad may be a mere servant of the company as to the putting in of crossings; or a contractor for the carpenter work of a house may be a servant as to the residue of the work. Nor does the fact that there may be intimate business relations between the contractor and employer and that the former is the latter's servant in other matters necessarily establish the dependency of the contractor in a particular case." *Standard Oil Company v. Parkinson* (C.C.A.) 152 F. 681, 683.

STATE OF SOUTH CAROLINA ;

COUNTY OF MARLBORO ;

Personally appeared before me Edmund Lee who, being sworn,
made the following statement:

I am twenty-three years old. During the year 1933 I was employed by E. W. Rowe, manager of a filling station in Bennettsville. I was employed at the same time as [REDACTED] the plaintiff in a present action against the said E. W. Rowe, was employed. I was fully conversant with the condition of the gasoline pumps at Mr. Rowe's filling station, and made frequent use of the same since I was employed to dispense gasoline and so-call Esso for Mr. Rowe. The mechanical condition of all the gasoline pumps was good. The pump which dispensed Esso was in perfect condition so far as I could ascertain; I never noticed any defect in it whatsoever. It was my duty to use this pump and the others located on the premises, and if there had been any defect in the said Esso pump, I should have noticed it.

I am aware of no defect whatsoever in the slide gauge or knob control of the Esso pump, and can state as a matter of personal observation that there was nothing wrong with that Esso pump during the entire time that I was employed by Mr. Rowe at that station. I never heard any complaint from any person regarding the pumps.

I was employed by Mr. Rowe at the time of the alleged accident to [REDACTED] I was not present at the time of the supposed occurrence, but I used the Esso pump both before and after the alleged occurrence and can state as a matter of personal experience that there was no defect in the said pump to my knowledge.

Mr. Rowe made it plain to me that I was employed by him personally and not by the Standard Oil Company or any other parties whatever. So far as I know this same understanding was given to every other employee by Mr. Rowe. I never heard any suggestion from any employee that he was working for the Standard Oil Company.

During the time that I was employed by Mr. Rowe I was never required or asked to wear clothing which was saturated with gasoline or in unsanitary condition. To the contrary, I was always provided with clean uniforms and so far as I could observe, the other employees were likewise given clean clothing.

Prior to the time that I worked for Mr. Rowe, I worked at another filling station run by Mr. C. L. McCormack. There was no nozzle cut-off at Mr. McCormacks station and there still is none at his station, though Mr. Rowe has installed this device.

Sworn to before me this 1st. day
of May, 1933.

Norary Public for South Carolina.