

LARRY BRADLEY vs. ERVIN ZINK, INC.

Case Number 9705

Defendant's Requested Charge Number 1

The court charges the jury that you must find
for the defendant, Ervin Zink, Inc.

*Refused,
Jefair G. MacLennan
Judge.*

BRADLEY VS. ERVIN ZINK, INC.

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Defendant's Requested Charge Number 2

The Court charges the jury that if you believe the
evidence in this case you must find for the defendant,
Ervin Zink, Inc.

Refused
Selma J. Masliah
Judge

LARRY BRADLEY VS. ERVIN ZINK, INC.

DEFENDANT'S REQUESTED JURY CHARGE NUMBER 3

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The Court charges the jury that you cannot find
for the plaintiff, under Count One of the plaintiff's
complaint.

*Refused
J. Fair J. Maslowski
Judge.*

LARRY BRADLEY VS. ERVIN ZINK, INC.

DEFENDANT'S REQUESTED JURY CHARGE NUMBER 4

CASE NUMBER 9705

The Court charges the jury that you cannot find for
the plaintiff, under Count Two of the plaintiff's complaint.

Refused
Seafair J. Haskins
Judge

LARRY BRADLEY VS. ERVIN ZINK, INC.

REQUESTED DEFENDANT'S CHARGE NUMBER 5

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The Court charges the jury that if you believe the evidence in this case you cannot find for the plaintiff, under Count One of the plaintiff's complaint.

*Refused
Jeffrey G. Madaleno
Judge.*

LARRY BRADLEY VS. ERVIN ZINK, INC.

DEFENDANT'S REQUESTED JURY CHARGE NUMBER 6

CASE NUMBER 9705

The Court charges the jury that if you believe the evidence in this case you cannot find for the plaintiff under Count Two of the plaintiff's complaint.

*Refused,
Jeffrey M. Mason
Judge.*

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DEFENDANT'S REQUESTED CHARGE NO. 7

The Court charges the jury that you may not award the plaintiff punitive damages against the defendant, Ervin Zink, Inc.

*Refused;
J. J. Maslany
Judge*

LARRY BRADLEY, ET AL. vs. ERVIN ZINK, INC., CASE NUMBER 9705

DEFENDANT'S REQUESTED CHARGE NO. 8

I charge you, members of the jury, that you may not return
any verdict for the plaintiff in this case based upon sympathy.

Given
Jeffrey G. Madlison
Judge

LARRY BRADLEY, ET AL., vs. ERVIN ZINK, INC., CASE NUMBER 9705

DEFENDANT'S REQUESTED CHARGE NO. 8-A

I charge you, members of the jury, that, if you properly observe your sworn duty as jurors, you, in rendering your verdict, will be governed alone by the legal evidence given to you and by the charge and instructions of this Court. This is the requirement of your oath and you must weigh the evidence impartially in order that you may arrive at the facts and render a conscientious verdict. Anything less than this in any jury trial is a palpable wrong, a mockery of justice and a disgrace to the administration of the law. Natural persons and corporations, the richest and poorest, the highest and the most humble, are alike equal before the law, have the same and only the same rights, and are under the same and only the same liabilities. There is no room or place in the jury box for partiality.

*Ervin,
Defendant's Motion
Judge*

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DEFENDANT'S REQUESTED CHARGE NO. 10

The Court charges the jury that the burden of proof under Count One of the plaintiff's complaint in this case is not on the defendants to acquit themselves of negligence, but the burden of proof under said count is upon the plaintiff to prove to your reasonable satisfaction from all of the evidence in this case that Stephen Stine, the deceased operator of the defendant's truck, did some act on the occasion complained of which an ordinarily prudent man under the same or similar circumstances would not have done or that he failed to do some act which an ordinarily prudent man would have done under the same or similar circumstances, which act or omission proximately caused the injuries and damages complained of by the plaintiff, and unless the plaintiff has met this burden, you may not return a verdict in

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DEFENDANT'S REQUESTED CHARGE NO. 11

I charge you, members of the jury, that the burden of proof is upon the plaintiff under Count Two of the plaintiff's complaint to show that the proximate cause of the injuries and damages complained of was the wanton act of an agent, servant or employee of the defendant, Ervin Zink, Inc., acting in the line and scope of his employment as such, and that if you are not reasonably satisfied from all of the evidence that this was so, then you may not return a verdict for the plaintiff and against the defendant, Ervin Zink, Inc., under Count Two of the plaintiff's complaint.

Given
Sefer J. Marshall
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 12

The Court charges the jury that if you must resort to guess work, speculation, conjecture or surmise as to the cause of this accident, then the plaintiff has failed to meet the burden of proof assumed by the bringing of this action and you may not return a verdict in his favor.

*Refused,
Jeffrey M. Maslowski
Judge*

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DEFENDANT'S REQUESTED CHARGE NO. 13

I charge you, members of the jury, that not every accident that occurs gives rise to a cause of action upon which the party injured may recovered damages from someone.

*Given
Debra J. Maslowski
Judge*

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DEFENDANT'S REQUESTED CHARGE NO. 14

I charge you, members of the jury, that the law recognizes what is called a mere accident or unavoidable accident, which simply means an accident which occurred and is not proximately caused by the negligence or wantonness or other wrongful act or omission of anyone; and if you are reasonably satisfied from the evidence in this case that the damages complained of by the plaintiff proximately resulted from a mere or unavoidable accident, then, and in that event, you may not return a verdict in favor of the plaintiff.

Given,
Jeffrey J. Marshall
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 15

I charge you, members of the jury, that the law does not require that a truck driver operate a truck in a perfect and faultless fashion under all conditions, but only that he operate the truck as a reasonably prudent person, under the same or similar circumstances, would operate it.

*Signed,
Jeffrey J. Mashburn
Judge*

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DEFENDANT'S REQUESTED CHARGE NO. 16

I charge you, members of the jury, that contributory negligence, if proven to your reasonable satisfaction by all of the evidence in this case, is a complete defense of the plaintiff's claim under Count One of the plaintiff's complaint, and if you are reasonably satisfied from all of the evidence that, at the time and place complained of, the plaintiff did himself so negligently operate the bus that he was driving as to proximately contribute to the accident and to the injuries and damages complained of by him, then you may not return a verdict in favor of the plaintiff and against the defendant, Ervin Zink, Inc., under Count One of the plaintiff's complaint.

*Refused
Superior J. MacLennan
Judge*

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DEFENDANT'S REQUESTED CHARGE NO. 17

I charge you, members of the jury, that if you are reasonably satisfied from all of the evidence in this case that the plaintiff was himself guilty of the slightest degree of negligence which proximately contributed to the accident and to the injuries and damages complained of by him, then you cannot return a verdict in favor of the plaintiff and against the defendant, Ervin Zink, Inc., under Count One of the plaintiff's complaint.

Given
Jeffrey A. Marshall
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 18

I charge you, members of the jury, that under Count One of the plaintiff's complaint, if you are reasonably satisfied from all of the evidence in this case, that if the plaintiff had operated the bus which he was driving as a reasonably prudent person under the same or similar circumstances would have done, he could have avoided the accident described in his complaint, but that he negligently did not do so and that this negligence on his part proximately contributed to the injuries and damages of which he complains, then you cannot return a verdict in favor of the plaintiff, and against the defendant, Ervin Zink, Inc., under Count One of the plaintiff's complaint.

Refused
Sejour J. Mashegan
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 21-A

The Court charges the jury that wantonness has been defined as the conscious doing of some act or the omission of some duty under a knowledge of existing conditions and with a consciousness that from the doing of such act or from the omission of such duty injury will likely or probably result. Before a party can be said to be guilty of wanton conduct, it must be shown that, with reckless indifference to the consequences, he consciously and intentionally did some wrongful act or omitted some known duty which produced the injury.

Refused
Jeffrey J. Madaleno
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 23

I charge you, members of the jury, that, in weighing the evidence of any witness in this case, you may consider his or her demeanor upon the stand, as well as his testimony as a witness; and, if, after considering all of the evidence in this case you are reasonably satisfied that he or she is contradicted as to material matters in the case by other evidence, and that he or she has sworn to any one or more material facts in this case falsely, and that this was willfully done by him or by her, then, if you see proper to do so, you may disregard his or her entire testimony in this case.

Refused
Jeffrey J. Madaleno
Judge

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REQUESTED DEFENDANT'S CHARGE NUMBER 24

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The Court charges the jury that if you are reasonably satisfied from all of the evidence in this case that the proximate cause of the accident in question was the breaking of the strut or spacer bar on the right rear of the defendant's trailer due to a defect in said strut or spacer bar, and that said defect was latent and concealed and could not have been discovered by a reasonable inspection, then you may not return a verdict in favor of the plaintiff and against the defendant Ervin Zink, Inc.

Revised
Debra J. Mascherum
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 24-A

I charge you, members of the jury, that if you are reasonably satisfied from the evidence in this case that the proximate cause of this accident was the breaking of a strut or spacer bar on the trailer owned by the defendant, Ervin Zink, Inc., as a result of a defect in said strut or spacer, then I further charge you if you are reasonably satisfied from the evidence in this case that the defect in this strut or spacer bar was not visible and was concealed and could not have been discovered by the defendant, Ervin Zink, Inc., in the exercise of a reasonable care and by a reasonable inspection of said trailer, then you may not return a verdict for the plaintiff and against the defendant, Ervin Zink, Inc.

*Given
Defendant's motion
Judge*

his favor and against the defendant, Ervin Zink, Inc., under
Count One of the plaintiff's complaint.

Refused,
Jeffrey J. Madaleno
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 25

I charge you, members of the jury, that if, after a fair consideration of all of the evidence, your mind is left in a state of confusion as to whether or not the plaintiff is entitled to recover from the defendant, Ervin Zink, Inc., you cannot find for the plaintiff and against the defendant, Ervin Zink, Inc.

*Given
Deafair J. Madaleno
Judge*

Defendant's "A"

I charge you, members of the jury, that the driver of a motor vehicle who drives or gets on the wrong side of the highway, not as the proximate result of any negligence on his part, but as the proximate result of an emergency which he did not contribute to or cause, is not guilty of negligence as a matter of law simply by virtue of being on the wrong side of the highway.

*Given
Defendant's motion
judged*

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DEFENDANT'S REQUESTED CHARGE NO. 19

I charge you, members of the jury, that you cannot return a verdict for the plaintiff under Count Two of the plaintiff's complaint unless you are reasonably satisfied from the evidence in this case that on the occasion complained of Stephen Stine, while driving the truck he was operating, was conscious of his conduct and was conscious from his knowledge of existing conditions that injury would likely or probably result from his conduct.

Given
Seafair J. Washburn
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 20

I charge you, members of the jury, that wanton misconduct implies mental action and that before a party can be found to be guilty of wanton misconduct, the jury must be reasonably satisfied from all of the evidence that, with reckless indifference to the consequences, he consciously and intentionally did some wrongful act or omitted some known duty which produced the injury or damage complained of.

Ervin
Defendant J. W. Madison
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 21

The Court charges the jury that wantonness is considered
as the legal and moral equivalent of an intentional act.

Ervin
Ervin J. Maslerson
judge

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DEFENDANT'S REQUESTED CHARGE NO. 9

I charge you, members of the jury, that you may not re-
turn any verdict for the plaintiff in this case based upon
guess, speculation or surmise.

Ervin
Jeffrey J. Maslowski
Judge

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DEFENDANT'S REQUESTED CHARGE NO. 22

I charge you, members of the jury, that if you are reasonably satisfied from all of the evidence in this case that there is only a possibility and not a probability that the plaintiff, Larry Bradley, will, in the future, develop any arthritic condition in his hip as a result of the accident complained of, then you may not award the plaintiff any damages based upon the assumption that he will, in the future, actually have such arthritis.

John J. Madaleno
Judge

D-1

The Court charges the jury that if you believe
the evidence in this case, you must find for the Defendants.

Refused
Jeffery M. MacBrien
Judge.

The Court charges the jury that if you believe the evidence in this case you can not find in favor of the Plaintiff and against the Defendants.

Refused
Jesse J. Madala
Judge

The Court charges the jury that unless you believe from the evidence in this case that the Defendant, E. B. Gwin, Jr., the agent, servant or employee of the Defendant, Bedsole Trading Company, Inc., acted with malice toward the Plaintiff then you can not find in favor of the Plaintiff and against the Defendants.

*Refused,
J. Fair J. Marshall
Judge*

The Court charges the jury that you can not find in favor of the Plaintiff in this case and against the Defendants unless you are reasonably satisfied from the evidence that the Defendant, E. B. Gwin, Jr., acted maliciously toward the Plaintiff.

Gwin
Jeffrey J. Marshall
Judge

D-5

The Court charges the jury that if you believe from the evidence in this case that the Defendant, E. B. Gwin, Jr., relied upon the advice of Arrie S. Godwin, a Justice of the Peace in Fairhope, Alabama, in instituting criminal proceedings against the Plaintiff, then your verdict should be for the Defendants.

Refused
Jefery M. Madsen
Judge

D-6

The Court charges the jury that if you believe from the evidence in this case that the Plaintiff, Shirley Ann Hall was actually guilty of the act charged against her in the criminal proceedings instituted against her in the Justice of the Peace Court of Arrie S. Godwin, even though the proceedings terminated in her favor, then your verdict should be for the Defendants.

Refused
Seymour J. Maslibera
Judge

The Court charges the jury that if you believe from the evidence in this case that at the time the Plaintiff, Shirley Ann Hall, gave to the Defendant, Bedsole Trading Company, Inc., the check which has been introduced into evidence, there were not sufficient funds in the Bank on which the check was drawn to cover said check upon due presentment; and if you further believe from the evidence that the Plaintiff, Shirley Ann Hall, knew or had reason to believe that such was the case, then your verdict should be for the Defendant.

Refused
Jeffrey J. Maslowski
judge

The Court charges the jury that in order for the Plaintiff to recover from the Defendants, or either of them, in this case that you must be reasonably satisfied from the evidence that the action or prosecution instituted by the Defendant, E. B. Gwin, Jr., against the Plaintiff, was maliciously instituted; and unless you are so reasonably satisfied, then your verdict should be for the Defendants.

Seppin
Seppin J. Maslibum
Judge

The Court charges the jury that in an action for malicious prosecution before the Plaintiff is entitled to recover, it must be shown to the reasonable satisfaction of the jury that the Defendants acted with malice. In this regard, the Court charges the jury that the malice requisite to justify a recovery in an action for malicious prosecution is defined as the existence of an evil or sinister purpose, a depraved, wicked or mischievous intention or motive, or a wilful, wanton, reckless and oppressive disregard of the rights of the Plaintiff.

Refused
Jeffrey J. Manselhorn
Judge

D-10

The Court charges the jury that the malice essential to the maintenance of an action for malicious prosecution is what is called actual malice, or malice in fact, by which is meant that such act of malice is dependent upon the existence of an evil, wrongful or improper motive.

Given
Jesse J. Marshall
Judge.

D-11

The Court charges the jury that the conviction of the Plaintiff in the Justice court of Arrie S. Godwin of the charge of worthless check is ~~prima~~ facie evidence that the Defendants had probable cause to believe that the Plaintiff was guilty as charged.

Given
Deputy J. Madison
Judge

D-12

The Court charges the jury that the burden of proving the lack of probable cause for the prosecution of the Plaintiff is on the Plaintiff. If you are reasonably satisfied from the evidence that the Plaintiff has not fulfilled the burden, then you must return a verdict for the Defendants.

*Given,
Jeffrey J. Mathis
Judge*

I Charge the jury that
An owner or operator of a ^{PMV}
motor vehicle who has
knowledge of its defective
conditions must inspect it
before using it on the highways.

Refused,
J. Fair J. Maskebury
Judge

Plaintiff's charge Number ONE (1)
Larry Bradley v. Ervinz, INC

I charge the Jury that it is
negligence to use an instrumentality
which is known or should be
known to be so defective that its
use will cause an unreasonable
risk of harm to others unless
it is in good condition, the
user must take reasonable
care to ascertain its condition
by inspection

Given
Jury of 12 members
Judge

Plaintiff's "Charge Number Two (2)
Larry Bradley v. Ervin Zink

Charge 3 for Plaintiff

I charge the jury that the negligent operation ~~and~~ of a motor vehicle includes improperly maintaining a vehicle so that the vehicle would constitute a menace to others on the highway

Dixon

Debra J. Morrison
Judge

Charge 4 for Plaintiff

I charge the jury that if you believe from the evidence that the Defendant improperly maintained or repaired its tractor or trailer so that either constituted a menace to others on the highway that the Defendant is guilty of negligence.

Refused
Jeffery M. Osborne
Judge

I CHARGE YOU MEMBERS OF THE JURY, THAT IF THE DEFENDANT ENTRUSTED IN ANOTHER THE REPAIR OF ITS VEHICLE, AND THAT OTHER, INWHOM THE REPAIR OF THE SAID VEHICLE WAS ENTRUSTED, IMPROPERLY AND DEFECTIVELY REPAIRED THAT SAID VEHICLE, SO THAT THE VEHICLE BECAME A MEANACE TO OTHERS ON THE HIGHWAY, THAT THE DEFENDANT IS GUILTY OF NEGLIGENCE.

PLAINTIFF'S CHARGE NUMBER 5

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~~Given~~, Refused
Jeffrey J. M. DeBevoise
Judge