

ELIE JACKSON, JR., a minor suing *
by his father, and next friend, *
ELIE JACKSON, SR. *

Plaintiff, *

vs. *

ALTON SCHERMER; SCHERMER PECAN *
COMPANY, a Corporation; ALFRED *
JAMES, JOHN DOE, ABC, persons, *
firms or corporations, whose *
true names are otherwise unknown *
but will be added by amendment *
when ascertained, jointly and *
separately. *

Defendants. *

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 10,428

CERTIFICATE OF SERVICE OF WRITTEN JURY CHARGES

I, the undersigned Augustine Meaher, III, hereby certify
that in open Court on this 4 day of April, 1977, I did
deliver a copy of each of the attached jury charges to the
attorneys representing all parties in this litigation.



AUGUSTINE MEAHER, III

The court charges the jury that in considering the question of negligence, if any, of the Dr. A. P. D. Senior & Allen Schuman, you may properly consider the manner in which the vehicle involved was operated.

given

Wm J. Walters, Jr. Judge

As to the issue of subsequent
negligence that is really ^{an} ~~the~~ issue
for you to decide as to whether ~~the~~
or not the defendants, their employers,
agents, ~~or~~ servants, or individuals within
their control were guilty of subsequent
negligence at the time ~~of~~ his injury
was sustained. (1) Any negligence
that occurred after the defendants,
~~its employees, agents,~~ or any employee,
agent, servant, or person within their
control realized or recognized that there
was impending peril to the plaintiff in this
cause, and such ~~employee, agent, servant, or~~
~~person within their control~~ failed to use the
necessary due care and diligence so as to

avoid such impending peril of either party, then that would be subsequent negligence.

refused
by Walter
Gibbs

Schermer No. 7

The Court charges the jury that the burden of proof is on the Plaintiff in this case to reasonably satisfy your minds from the evidence of the truth of the material allegations of the Plaintiff's Complaint, and I charge you that unless the Plaintiff has met this burden then you cannot return a verdict in favor of the Plaintiff.

Refuse
W. W. Witter
Judge

Schermer No. 8

The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Plaintiff's injuries and damages were the proximate result of a mere accident, then you cannot return a verdict in favor of the Plaintiff.

Refuse
H. J. Walters
Judge

Schermer No. 9

I charge you members of the jury that if you are reasonably satisfied from the evidence in this case, that at the time and place complained of Elie Jackson, Jr., was guilty of negligence which was the sole proximate cause of his injuries and damages, then you cannot return a verdict in favor of the Plaintiff against the Defendants.

Refuse
Walter J. Judge

Schermer No. 10

I charge you members of the jury that if you are reasonably satisfied from the evidence that at the time and place complained of Elie Jackson, Jr., was guilty of negligence which proximately contributed to his own injuries and damages, and that neither Alton Schermer nor any agent, servant or employee of Alton Schermer was guilty of any subsequent negligence, then you cannot return a verdict in favor of Plaintiff against Alton Schermer.

James
Walter
Judge

✓

Schermer No. 11

I charge you members of the jury that if after considering all of the evidence in this case the mind of any one or more of the jury is not reasonably satisfied from the evidence that Plaintiff is entitled to recover, then you cannot return a verdict in favor of Plaintiff.

Refuse
H. J. Wilt
Judge

Schermer No. 12

The Court charges the jury that if you are reasonably satisfied from the evidence that Elie Jackson, Jr., knew and appreciated the danger of falling and being run over by a truck while attempting to climb onto a moving truck, and if you are further reasonably satisfied from the evidence that at the time and place of this accident, Elie Jackson, Jr., assumed the risk of injury due to falling and being run over by a truck while attempting to climb onto a moving truck, and if you are further reasonably satisfied from the evidence that Elie Jackson, Jr., fell and was run over by a truck while attempting to climb onto a moving truck, then you cannot return a verdict in favor of Plaintiff.

Richard J. Witt
Judge

✓

Schermer No. 13-A

The Court charges the jury that if you are reasonably satisfied from the evidence that Alfred James was an independent contractor for the gathering of potatoes at the time and place of the accident made the basis of this suit, and if you are further reasonably satisfied that Joe Jordan was an employee of Alfred James at the time of this accident, and if you are further reasonably satisfied from the evidence that Alton Schermer had no reserved right of control over the employees of Alfred James, then you cannot return a verdict in favor of the Plaintiff against Alton Schermer.

James
Walter
Judge

Schermer No. 14

The Court charges the jury that Count 1 of Plaintiff's Complaint avers that the driver of the truck involved in this accident was an employee of Alton Schermer, and the Court further charges the jury that the burden is on the Plaintiff to prove this allegation. The Court charges the jury that if you are reasonably satisfied from the evidence that the driver of the truck involved in this accident was not an employee of Alton Schermer then you cannot return a verdict in favor of the Plaintiff against Alton Schermer under Count 1 of the Complaint.

Refused
Judge

✓

Schermer No. 15

The Court charges the jury that unless you are reasonably satisfied from the evidence that the driver of the truck involved in this accident was an agent, servant or employee of Alton Schermer, then you cannot return a verdict in favor of Plaintiff against Alton Schermer.

Refused
W. J. Williams, Jr.
Judge

✓

DEFENDANT ALFRED JAMES' CHARGE NO. 1

The Court charges you, Ladies and Gentlemen of the Jury,
that if the plaintiff, Eli Jackson, Jr., suffered the injuries
and damages complained of in this cause as a result of his own
negligence, then you must find for the defendant, Alfred James.

GIVEN _____;

REFUSED ✓

W. J. Williams
Judge

DEFENDANT ALFRED JAMES' CHARGE NO. 2

The Court charges you, Ladies and Gentlemen of the Jury, that if the plaintiff, Eli Jackson, Jr., suffered the injuries complained of in this cause as a result of his own contributory negligence, then you must find for the defendant Alfred James.

GIVEN _____;

REFUSED _____

W. J. Winters, Jr.
Judge

DEFENDANT ALFRED JAMES' CHARGE NO. 3

The Court charges you, Ladies and Gentlemen of the Jury,
that even if you believe Alfred James, or those in his employment
were negligent, you cannot find for the plaintiff if his own
negligence contributed to his injuries and damages.

GIVEN _____;

REFUSED ✓ _____

W. J. Williams
Judge

DEFENDANT ALFRED JAMES' CHARGE NO.

4

The Court charges you, Ladies and Gentlemen of the Jury, that if negligence for which plaintiff is responsible is sole proximate cause of plaintiff's injury, there can be no recovery because there is no actionable negligence on part of the defendant.

GIVEN _____:

REFUSED ✓

Henderson vs. So. Ry Co.
191 So 234; 238 Ala 356

W. J. Walters, Jr.
Judge

DEFENDANT ALFRED JAMES' CHARGE NO. 5

The Court charges you, Ladies and Gentlemen of the Jury, that whenever it appears that the negligence of the plaintiff was the proximate cause of his injury, negligence of the defendant then ceases to be the proximate cause thereof.

GIVEN _____ :

REFUSED ✓ _____ :

W. J. Williams, Jr.
Judge

Ala. Steel & Wire Co. vs. Tallant
51 So 835, 165 Ala 521

DEFENDANT ALFRED JAMES' CHARGE NO. 6

The Court charges you, Ladies and Gentlemen of the Jury,
that one complaining of injury who has through want of ordinary
care or attention contributed approximately to injury he complains
of is not entitled to recover.

GIVEN _____ :

REFUSED ✓ _____ :

L & N Ry Co. vs. Richard
(14 So 2d 564)

W. J. Williams
Judge

DEFENDANT ALFRED JAMES' CHARGE NO.

7

The Court charges you, Ladies and Gentlemen of the Jury,
that one sustaining an injury from a known peril to which he
voluntarily continued to expose himself may not recover therefor.

GIVEN _____ :

REFUSED  _____ :

Republic Iron & Steel Co. vs. Fuller,
60 So 475



DEFENDANT ALFRED JAMES' CHARGE NO. 8

The Court charges you, Ladies and Gentlemen of the Jury,
that contributory negligence is a defense to action for simple
negligence.

GIVEN _____ :

REFUSED  _____ :

Shafer vs. Myers, 112 So 230
215 Ala 678


Judge

Plaintiff's Requested Charge No. _____

The Court charges the jury that the following is the law of the State of Alabama:

"OBSTRUCTION TO DRIVER'S VIEW OR DRIVING MECHANISM

(a) No person shall drive a vehicle when it is so loaded ... as to obstruct the view of the driver to the front or sides of the vehicle, or as to interfere with the driver's control over the driving mechanism of the vehicle.

Ala. Code, Title 36, § 58(30)(a), (1940) (Recomp. 1958).

Refuse
Walter D.

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The Court charges the Jury that an employer's right to control, and not the actual exercise thereof, determines the relationship of master and servant.

Accordingly, you should consider whether Alton Schermer retained the right to control the work performed in his fields.

Refuse
W. J. Waters, Jr.
Judge

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The Court charges the Jury that in considering whether a person is an "employee" or an "independent contractor" you should consider whether the person for whom an individual is working has control over the means and agencies by which the work is done.

Refused
L. J. Walters
Judge

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The Court charges the Jury that in considering the question of the existence of the relationship of an independent contractor, it is the reserved right of control, rather than its actual exercise, that furnishes the true test of whether the relation between parties is that of an "independent contractor" or of employer and "employee".

Refuse
W. J. Williams
Judge

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The Court charges the Jury that in determining whether the relation between Alton Schermer and Alfred James was that of independent contractor or of employer and employee you may consider whether Alton Schermer had the right to discharge any of the workers in the field, if he saw fit, and whether the workers fully recognized Alton Schermer's right to make suggestions and requests with regard to the manner in which the work was to be performed.

*Refused
by J. Witter*

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The essential test by which to determine whether the relation between a workman and those for whom he is rendering service is that of "employee" or of "independent contractor" is dependent upon the extent of control or right of control which the so-called employer is to exercise over his so-called employee.

Refused
[Signature] *[Signature]*

PLAINTIFF'S REQUESTED CHARGE NUMBER _____

The Court charges the Jury that the distinction between a "servant" and an "independent contractor" may be determined by whether the person for whom one is working has control over the means and agency by which the work is done, or by which the result is produced, and for one to be a "servant" the other party must retain the right to direct the manner in which the work shall be done as well as the result to be accomplished.

Refused
Walter, J.