

PLAINTIFF'S REQUESTED CHARGE NO. 1:

The Court charges the jury that if you are reasonably satisfied from the evidence in this case that the Defendant's wire was maintained in a dangerous condition and such condition existed for a considerable length of time, then the Defendant would be charged with constructive knowledge of such condition.

PLAINTIFF'S REQUESTED CHARGE NO. 2:

The Court charges the jury the rules of care required in the maintenance of electrical transmission wires have been thus stated: "Not only is the current deadly, but the ordinary person has no means of knowing whether any particular wire is carrying a deadly current or is harmless. Therefore, one who attempts to make use of such appliances is bound to see that no injury comes to persons rightfully in proximity to them and who are themselves guilty of no wrong."

PLAINTIFF'S REQUESTED CHARGE NO. 3:

The Court charges the jury that the duty of an electrical company in conveying a current of high potential, ^{is} to exercise commensurate care under the circumstances, and it is required to insulate its wires and to use reasonable care to have the same insulated wherever it may be reasonably anticipated that persons, pursuing business or pleasure, may come into contact therewith.

PLAINTIFF'S REQUESTED CHARGE NO. 4:

The Court charges the jury that the duty of reasonable care does not depend upon the number exposed to injury; it extends to the safeguarding of everyone, in person or property, at places where he or it may rightfully be.

PLAINTIFF'S REQUESTED CHARGE NO. 5:

The Court charges the jury that it is generally declared that in maintaining electrical lines reasonable care requires inspection such as reasonable prudence may suggest.

PLAINTIFF'S REQUESTED CHARGE NO. 6:

The Court charges the jury that if common experience has demonstrated that dangers lurk in the method adopted or in the instrumentality maintained by an electrical company, it rests under the obligation of ascertaining the peril and taking precautions to avoid injury therefrom.

PLAINTIFF'S REQUESTED CHARGE NO. 7:

The Court charges the jury that Ivy LaDonna Taylor at the time of the accident in this case was legally presumed to be incapable of contributory negligence.

PLAINTIFF'S REQUESTED CHARGE NO. 8:

The Court charges the jury that the Alabama Power Company was under a duty to make reasonable and proper inspections of the wire with which LaDonna Taylor came into contact and if you are reasonably satisfied from the evidence in this case that it failed to do so, then such failure constitutes negligence as a matter of law.

PLAINTIFF'S REQUESTED CHARGE NO. 9:

The Court charges the jury that the Defendant, Alabama Power Company, was under a duty to make reasonable and proper inspections of the wire with which LaDonna Taylor came into contact, and if you are reasonably satisfied from the evidence in this case that the Defendant failed to do so it would be guilty of negligence.

PLAINTIFF'S REQUESTED CHARGE NO. 10:

The Court charges the jury that notice of a dangerous condition imposing liability on an electric company need not be direct or express; it is enough that the dangerous condition has existed for such a length of time that it should have been known, and the presence of a conspicuously dangerous condition of an appliance which has existed for a considerable length of time will create a presumption of constructive notice thereof on the electric company.

PLAINTIFF'S REQUESTED CHARGE NO. 1:

The Court charges the jury that if you are reasonably satisfied from the evidence that the wire with which LaDonna Taylor came into contact remained uninsulated in a place where persons could reasonable be expected to come into contact with it for such a length of time that the Defendant could have discovered the same through a reasonable and proper inspection of its lines, and if you are further reasonably satisfied that the Defendant failed to make such reasonable and proper inspections, it would be guilty of negligence, even if the Defendant had no actual knowledge of the condition of said wire and tree.

PLAINTIFF'S REQUESTED CHARGE NO. 12:

The Court charges the jury that lack of actual notice by the Defendant, Alabama Power Company, of the condition of the tree and wire involved in this case will not relieve the Defendant of liability if the jury is reasonably satisfied from the evidence that such condition had existed for such a length of time that it should have been known to the Defendant.

PLAINTIFF'S REQUESTED CHARGE NO. 13:

The court charges the jury that it was the duty of the Defendant, Alabama Power Company, to make reasonable and proper inspections of the wire with which LaDonna Taylor came into contact.

PLAINTIFF'S REQUESTED CHARGE NO. 14 :

The Court charges the jury that it was the duty of the Defendant, Alabama Power Company, in this case to make reasonable and proper inspections of the wire with which LaDonna Taylor came into contact and to maintain the same in a reasonably safe condition.

PLAINTIFF'S REQUESTED CHARGE NO. 15:

The Court charges the jury that the Defendant, Alabama Power Company, in conveying a current of high potential was under a duty to exercise commensurate care under the circumstances and was required to insulate its wires and to use reasonable care to keep the same insulated, whenever the Defendant may reasonably anticipate that persons, pursuing business or pleasure, may come in contact with said wires.

PLAINTIFF'S REQUESTED CHARGE NO. 16:

The Court charges the jury that if you are reasonably satisfied from the evidence that the Defendant, Alabama Power Company, maintained an uninsulated, highly-charged wire, without any warning of the danger, in a place where LaDonna Taylor or other persons lawfully climbing the tree through which the wire passed could reasonably have been expected to come into contact with it, the Defendant, Alabama Power Company, would have been guilty of negligence.

PLAINTIFF'S REQUESTED CHARGE NO. 17:

The Court charges the jury that it was the duty of the Defendant, Alabama Power Company, to know that small children are in the habit of climbing trees filled with abundant branches reaching close to the ground.

PLAINTIFF'S REQUESTED CHARGE NO. 18:

The Court charges the jury that it was the duty of the Defendant, Alabama Power Company, in this case to insulate the wire with which LaDonna Taylor came into contact if it could be reasonably anticipated that LaDonna Taylor or other members of the general public in pursuing business or pleasure would likely come in contact with the same.

PLAINTIFF'S REQUESTED CHARGE NO. 19:

The Court charges the jury that at the time of the accident in this case, Ivy LaDonna Taylor was presumed legally incapable of contributory negligence which would bar her recovery under the Defendant's Plea Three.

PLAINTIFF'S REQUESTED CHARGE NO. 20 :

The Court charges the jury that unless you are reasonably satisfied that at the time of the accident in this case Ivy LaDonna Taylor had the mentality, maturity and judgment of a child over the age of fourteen years and further reasonably satisfied that being possessed of such mentality, maturity and judgment, she was guilty of contributory negligence which proximately caused or contributed to her injuries and damages, you cannot find for the Defendant under the Defendant's Plea Three.

PLAINTIFF'S REQUESTED CHARGE NO. 21:

The Court charges the jury that the knowledge of the Defendant necessary to establish wanton conduct need not be shown by direct proof; it may be made to appear, like any other fact, by showing circumstances from which the fact of actual knowledge is a legitimate inference.

PLAINTIFF'S REQUESTED CHARGE NO. 22 :

The Court charges the jury that wantonness may arise from knowledge that persons, though not seen, are likely to be in a position of danger, and with conscious disregard of known conditions of danger and in violation of the law, the Defendant brings on the disaster.

PLAINTIFF'S REQUESTED CHARGE NO. 23:

The Court charges the jury that to show wanton conduct a reckless indifference to consequences need not be shown by direct proof, but may be made to appear by showing circumstances from which fact of actual knowledge is legitimate inference.

PLAINTIFF'S REQUESTED CHARGE NO. 24:

The Court charges the jury that an intent to injure
is not necessary to constitute wantonness.

PLAINTIFF'S REQUESTED CHARGE NO. 25:

The Court charges the jury that to constitute wantonness, it is not essential that the defendant should have entertained a specific design or intent to injure the Plaintiff's intestate. A willful or intentional act may not necessarily be involved in wantonness. It may consist of an inadvertent failure to act by a person with knowledge that someone is probably imperiled and the act or failure to act is in reckless disregard of the consequences.

PLAINTIFF'S REQUESTED CHARGE NO. 26:

The Court charges the jury that wantonness is the conscious doing of some act or omission of some duty under knowledge of existing conditions and conscious that from the doing of some act or omission of such duty, injury will likely or probably result.

PLAINTIFF'S REQUESTED CHARGE NO. 27:

The Court charges the jury that it is negligence to maintain an uninsulated, highly-charged wire, without any warning of the danger, in any place where persons may reasonably be expected to come into contact with it.

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PLAINTIFF'S REQUESTED CHARGE NO. 28:

The Court charges the jury that you cannot find for the Defendant under the Defendant's Plea Three.

IVY LaDONNA TAYLOR, a minor
ten years of age, who sues by
and through her mother and
next friend, CHERRY ANN
McCORMICK,

Plaintiff,

v.

ALABAMA POWER COMPANY,

Defendant.

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) Civil Action No. 10802

CHERRY ANN McCORMICK,

Plaintiff,

v.

ALABAMA POWER COMPANY,

Defendant.

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) Civil Action No. 10803

DEFENDANT'S WRITTEN REQUESTED CHARGES

Comes now the defendant, Alabama Power Company, in the above-
styled causes which have been consolidated for trial and moves the
Court to give the following written requested charges to the jury:

Refused
J. J. Madison
Judge

1. I charge you that you cannot return a verdict for the plaintiffs against the defendant, Alabama Power Company.

2. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company.

3. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company, under Count One of the Complaint.

4. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company, under Count Two of the Complaint.

5. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company, under Count Three of the Complaint.

6. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company, under Count Four of the Complaint.

7. I charge you that if you believe the evidence in this case, you cannot return a verdict in favor of the plaintiffs and against the defendant, Alabama Power Company, under Count Five of the Complaint.

8. I charge you that if you are reasonably satisfied from the evidence in this case that any witness in this case has willfully and corruptly sworn falsely as to any material fact in this case, you are authorized in your sound discretion to disregard and ignore the entire testimony of that witness.

9. I charge you that you should not let sympathy for any party influence your verdict, but that your verdict should be based solely upon the law and the evidence in this case.

10. I charge you that neither by these instructions nor by any word uttered by the Court during the trial does or did the Court intend to or mean to give, or wish to be understood as giving, any opinion as to what the truth is or is not, or what the facts are in this case.

11. I charge you that in no case can negligence be assumed from the mere fact of injury. The burden of proving the negligence alleged against the defendant, Alabama Power Company, rests upon the plaintiffs.

12. I charge you that in no case can wantonness be assumed from the mere fact of injury. The burden of proving wantonness alleged against the defendant, Alabama Power Company, rests upon the plaintiffs.

13. I charge you that while it is the duty of an electric company to exercise the degree of care commensurate with the danger involved, it is not an insurer, nor is it under an obligation to so safeguard its electrical lines that by no possibility can injuries result therefrom.

14. The Court charges the jury that there is no duty upon an electric company with reference to insulating or safeguarding its wires from contact at a point where it cannot be reasonably anticipated that any person would likely or probably come in contact therewith or be injured thereby.

15. I charge you that after a full and careful consideration of all the evidence in this case any individual juror is not reasonably satisfied from the evidence that Alabama Power Company or its agents, servants or employees was negligent as charged in Count One of the Complaint and that such negligence proximately caused the injuries of Ivy LaDonna Taylor, then you cannot find for the plaintiffs and against the defendant, Alabama Power Company, under Count One of the Complaint.

16. I charge you that after a full and careful consideration of all the evidence in this case any individual juror is not reasonably satisfied from the evidence that Alabama Power Company or its agents, servants or employees was negligent as charged in Count Two of the Complaint and that such negligence proximately caused the injuries of Ivy LaDonna Taylor, then you cannot find for the plaintiffs and against the defendant, Alabama Power Company, under Count Two of the Complaint.

17. I charge you that after a full and careful consideration of all the evidence in this case any individual juror is not reasonably satisfied from the evidence that Alabama Power Company or its agents, servants or employees was negligent as charged in Count Three of the Complaint and that such negligence proximately caused the injuries of Ivy LaDonna Taylor, then you cannot find for the plaintiffs and against the defendant, Alabama Power Company, under Count Three of the Complaint.

18. I charge you that after a full and careful consideration of all the evidence in this case any individual juror is not reasonably satisfied from the evidence that Alabama Power Company or its agents, servants or employees was negligent as charged in Count Four of the Complaint and that such negligence proximately caused the injuries of Ivy LaDonna Taylor, then you cannot find for the plaintiffs and against the defendant, Alabama Power Company, under Count Four of the Complaint.

19. I charge you that if, after full and careful consideration of all the evidence in this case, any individual juror is not reasonably satisfied from the evidence that Alabama Power Company or its agents, servants or employees was guilty of wanton conduct as charged in Count Five of the Complaint, and that such wanton conduct proximately caused the injuries of Ivy LaDonna Taylor, then you cannot find for the plaintiffs and against the defendant, Alabama Power Company, under Count Five of the Complaint.

20. The Court charges the jury that to constitute actionable negligence, if any, on the part of the defendant, Alabama Power Company, there must not only be causal connection between the negligence, if any, and the injuries of Ivy LaDonna Taylor, but the connection must be by natural and unbroken sequence without intervening efficient cause; so that, but for such negligence of the defendant, her injury would not have occurred. It must not only be a cause, but it must be the proximate cause, that is, the direct and immediate, efficient cause of the injuries and damages. The Court further charges the jury that if you are reasonably satisfied from the evidence that the negligence of the defendant, Alabama Power Company, if there was any such negligence, was not the proximate cause of the injuries of Ivy LaDonna Taylor in this case, then you cannot return a verdict for the plaintiffs and against the defendant, Alabama Power Company, under Count One of the Complaint.

21. The Court charges the jury that to constitute actionable negligence, if any, on the part of the defendant, Alabama Power Company, there must not only be causal connection between the negligence, if any, and the injuries of Ivy LaDonna Taylor, but the connection must be by natural and unbroken sequence without intervening efficient cause; so that, but for such negligence of the defendant, her injury would not have occurred. It must not only be a cause, but it must be the proximate cause, that is, the direct and immediate, efficient cause of the injuries and damages. The Court further charges the jury that if you are reasonably satisfied from the evidence that the negligence of the defendant, Alabama Power Company, if there was any such negligence, was not the proximate cause of the injuries of Ivy LaDonna Taylor in this case, then you cannot return a verdict for the plaintiffs and against the defendant, Alabama Power Company, under Count Two of the Complaint.

22. The Court charges the jury that to constitute actionable negligence, if any, on the part of the defendant, Alabama Power Company, there must not only be a causal connection between the negligence, if any, and the injuries of Ivy LaDonna Taylor, but the connection must be by natural and unbroken sequence without intervening efficient cause; so that, but for such negligence of the defendant, her injury would not have occurred. It must not only be a cause, but it must be the proximate cause, that is, the direct and immediate, efficient cause of the injuries and damages. The Court further charges the jury that if you are reasonably satisfied from the evidence that the negligence of the defendant, Alabama Power Company, if there was any such negligence, was not the proximate cause of the injuries of Ivy LaDonna Taylor in this case, then you cannot return a verdict for the plaintiffs and against the defendant, Alabama Power Company, under Count Three of the Complaint.

23. The Court charges the jury that to constitute actionable negligence, if any, on the part of the defendant, Alabama Power Company, there must not only be causal connection between the negligence, if any, and the injuries of Ivy LaDonna Taylor, but the connection must be by natural and unbroken sequence without intervening efficient cause; so that, but for such negligence of the defendant, her injury would not have occurred. It must not only be a cause, but it must be the proximate cause, that is, the direct and immediate, efficient cause of the injuries and damages. The Court further charges the jury that if you are reasonably satisfied from the evidence that the negligence of the defendant, Alabama Power Company, if there was any such negligence, was not the proximate cause of the injuries of Ivy LaDonna Taylor in this case, then you cannot return a verdict for the plaintiffs and against the defendant, Alabama Power Company, under Count Four of the Complaint.

24. The Court charges the jury that before a party can be said to be guilty of wanton conduct it must be shown that the party charged therewith was conscious of its conduct, and conscious, from its knowledge of the existing conditions, that injury would likely or probably result from its conduct, and that, with reckless indifference to the consequences, it consciously and intentionally did some wrongful act, or omitted some known duty which produced the injury.

25. I charge you that if you are reasonably satisfied from the evidence in this case that the plaintiff, Ivy LaDonna Taylor, on the occasion complained of was guilty of any negligence which proximately contributed to her injuries, and further, that Ivy LaDonna Taylor was a child of such intelligence and understanding who could appreciate the danger of touching an electric wire and the likelihood of injury resulting therefrom, then you cannot return a verdict for the plaintiffs against the defendant, Alabama Power Company, under Count One of the Complaint.

26. I charge you that if you are reasonably satisfied from the evidence in this case that the plaintiff, Ivy LaDonna Taylor, on the occasion complained of was guilty of any negligence which proximately contributed to her injuries, and further, that Ivy LaDonna Taylor was a child of such intelligence and understanding who could appreciate the danger of touching an electric wire and the likelihood of injury resulting therefrom, then you cannot return a verdict for the plaintiffs against the defendant, Alabama Power Company, under Count Two of the Complaint.

27. I charge you that if you are reasonably satisfied from the evidence in this case that the plaintiff, Ivy LaDonna Taylor, on the occasion complained of was guilty of any negligence which proximately contributed to her injuries, and further, that Ivy LaDonna Taylor was a child of such intelligence and understanding who could appreciate the danger of touching an electric wire and the likelihood of injury resulting therefrom, then you cannot return a verdict for the plaintiffs against the defendant, Alabama Power Company, under Count Three of the Complaint.

28. I charge you that if you are reasonably satisfied from the evidence in this case that the plaintiff, Ivy LaDonna Taylor, on the occasion complained of was guilty of any negligence which proximately contributed to her injuries, and further, that Ivy LaDonna Taylor was a child of such intelligence and understanding who could appreciate the danger of touching an electric wire and the likelihood of injury resulting therefrom, then you cannot return a verdict for the plaintiffs against the defendant, Alabama Power Company, under Count Four of the Complaint.

29. The Court charges the jury that the burden of proof is on the plaintiff, Ivy LaDonna Taylor, to reasonably satisfy you that the proximate cause of the injuries and damages alleged in the Complaint was the negligence of the defendant. Verdicts cannot rest upon guess, speculation or conjecture; and for the jury to find a verdict against the defendant under Count One of the Complaint, you must be reasonably satisfied from the evidence that the defendant was negligent and that such negligence proximately caused the injuries and damages alleged in the Complaint.

30. The Court charges the jury that the burden of proof is on the plaintiff, Ivy LaDonna Taylor, to reasonably satisfy you that the proximate cause of the injuries and damages alleged in the Complaint was the negligence of the defendant. Verdicts cannot rest upon guess, speculation or conjecture; and for the jury to find a verdict against the defendant under Count Two of the Complaint, you must be reasonably satisfied from the evidence that the defendant was negligent and that such negligence proximately caused the injuries and damages alleged in the Complaint.

31. The Court charges the jury that the burden of proof is on the plaintiff, Ivy LaDonna Taylor, to reasonably satisfy you that the proximate cause of the injuries and damages alleged in the Complaint was the negligence of the defendant. Verdicts cannot rest upon guess, speculation or conjecture; and for the jury to find a verdict against the defendant under Count Three of the Complaint, you must be reasonably satisfied from the evidence that the defendant was negligent and that such negligence proximately caused the injuries and damages alleged in the Complaint.

32. The Court charges the jury that the burden of proof is on the plaintiff, Ivy LaDonna Taylor, to reasonably satisfy you that the proximate cause of the injuries and damages alleged in the Complaint was the negligence of the defendant. Verdicts cannot rest upon guess, speculation or conjecture; and for the jury to find a verdict against the defendant under Count Four of the Complaint, you must be reasonably satisfied from the evidence that the defendant was negligent and that such negligence proximately caused the injuries and damages alleged in the Complaint.

33. The Court charges the jury that in order for you to award the plaintiffs injuries and damages against the defendant, you must be reasonably satisfied from the evidence, without guess, speculation, or conjecture, that the injuries and damages alleged in the Complaint were proximately caused by the negligence of the defendant.

✓34. The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Ivy LaDonna Taylor, prior to her injuries, knew the nature and characteristics of electricity and appreciated the danger arising from contact with an electrical wire; then, the Court charges you that Ivy LaDonna Taylor was, at the time and place referred to in the Complaint in this case, under a duty to exercise reasonable care commensurate with such danger to avoid being injured by contacting Alabama Power Company's said electrical wire, and if you are further reasonably satisfied from the evidence that Ivy LaDonna Taylor negligently failed to exercise such reasonable care and that such failure on her part proximately contributed to her injuries and damages, then the Court charges you that you cannot return a verdict for the plaintiffs against Alabama Power Company under Count One of the Complaint.

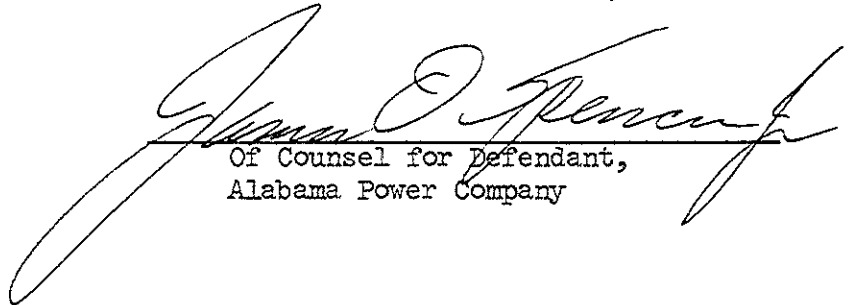
35. The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Ivy LaDonna Taylor, prior to her injuries, knew the nature and characteristics of electricity and appreciated the danger arising from contact with an electrical wire; then, the Court charges you that Ivy LaDonna Taylor was, at the time and place referred to in the Complaint in this case, under a duty to exercise reasonable care commensurate with such danger to avoid being injured by contacting Alabama Power Company's said electrical wire, and if you are further reasonably satisfied from the evidence that Ivy LaDonna Taylor negligently failed to exercise such reasonable care and that such failure on her part proximately contributed to her injuries and damages, then the Court charges you that you cannot return a verdict for the plaintiffs against Alabama Power Company under Count Two of the Complaint.

36. The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Ivy LaDonna Taylor, prior to her injuries, knew the nature and characteristics of electricity and appreciated the danger arising from contact with an electrical wire; then, the Court charges you that Ivy LaDonna Taylor was, at the time and place referred to in the Complaint in this case, under a duty to exercise reasonable care commensurate with such danger to avoid being injured by contacting Alabama Power Company's said electrical wire, and if you are further reasonably satisfied from the evidence that Ivy LaDonna Taylor negligently failed to exercise such reasonable care and that such failure on her part proximately contributed to her injuries and damages, then the Court charges you that you cannot return a verdict for the plaintiffs against Alabama Power Company under Count Three of the Complaint.

37. The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Ivy LaDonna Taylor, prior to her injuries, knew the nature and characteristics of electricity and appreciated the danger arising from contact with an electrical wire; then, the Court charges you that Ivy LaDonna Taylor was, at the time and place referred to in the Complaint in this case, under a duty to exercise reasonable care commensurate with such danger to avoid being injured by contacting Alabama Power Company's said electrical wire, and if you are further reasonably satisfied from the evidence that Ivy LaDonna Taylor negligently failed to exercise such reasonable care and that such failure on her part proximately contributed to her injuries and damages, then the Court charges you that you cannot return a verdict for the plaintiffs against Alabama Power Company under Count Four of the Complaint.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's
Written Requested Charges has been served upon Mr. Richard Bounds of
Cunningham, Bounds & Byrd, 1601 Dauphin Street, P. O. Box 4486, Mobile,
Alabama 36604, attorneys of record for the plaintiffs, by personally
delivering the same to him in open court on this the 14th day of January,
1974.


Of Counsel for Defendant,
Alabama Power Company

Plaintiffs' Requested Charge No. 1A.

In constructing and maintaining a line for transmitting the subtle agency of electricity, no one may with impunity totally disregard the natural habits and childish inclinations of children at play to climb the dooryard shade trees.

Refused in Bulk
Superior J. maximum
judges

Plaintiffs' Requested Charge No. 2A.

The habit of small children to climb trees filled with abundant branches reaching to the ground is a habit which corporations stretching their wires over such trees must take notice of.

Plaintiffs' Requested Charge No. 3A.

The court charges the jury you must find for the Plaintiffs' under Count I of the complaints.

Plaintiffs' Requested Charge No. 4A.

The court charges the jury you must find for the Plaintiffs' under Count II of the complaints.

Plaintiffs' Requested Charge No. 5A.

The court charges the jury you must find for the Plaintiffs' under Count III of the complaints.