

11

DEFENDANT'S CHARGE NO. 1

The Court charges the jury that contributory negligence is negligence on the part of the plaintiff that proximately contributed to the alleged injury.

Refused,
Deafour J. Washburn
Judge

DEFENDANT'S CHARGE NO. 2

The Court charges the jury that your verdict must represent the considered judgment of each juror, and in order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

*Refused,
Jeffery J. Markham
Judge*

DEFENDANT'S CHARGE NO. 3

The Court charges the jury that in awarding damages in any case, your verdict must not be based upon mere speculation or guesswork but must be based upon the evidence and the just and reasonable inferences shown thereby.

Given
Jeffrey J. Marshall
Judge

DEFENDANT'S CHARGE NO. 4

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff was guilty of contributory negligence, you may not return a verdict in favor of the plaintiff.

Refused
Jeffery M. Sullivan
Judge

DEFENDANT'S CHARGE NO. 5

The Court charges the jury that a deposition is the testimony of a party or witness taken before trial in writing, under oath or affirmation, before some judicial officer, in answer to oral questions. The deposition of the witness W. L. Parker has been offered and has been received in evidence. The testimony of this witness by deposition is evidence in the cause just as if the witness had appeared and testified in person. During your deliberations you should consider this testimony along with all other evidence material to the issues.

Refused
Jeffrey J. Marshall
Judge

DEFENDANT'S CHARGE NO. 6

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff was guilty of contributory negligence as claimed by the defendant, the plaintiff would not be entitled to recover.

Refused
Jeffery J. Madburn

DEFENDANT'S CHARGE NO. 7

The Court charges the jury that the driver of a motor vehicle upon the public highway is under a duty to exercise reasonable care to avoid inflicting damage upon others who may be lawfully using the same highway.

Reasonable care means such care as a reasonably prudent person would exercise under the same or similar circumstances.

Given
Jeffrey J. Madhoun
Judge.

DEFENDANT'S CHARGE NO. 8

The Court charges the jury that the failure to observe a duty imposed by positive mandatory statute is negligence per se.

Refused,
Debra J. Madelbaum
Judge

DEFENDANT'S CHARGE NO. 9

The Court charges the jury that negligence per se is conduct which because it is in violation of a duty imposed by positive mandatory statute that it can be said without hesitation or doubt that no careful person would have been guilty of it.

Refused
Jeffrey J. Mallestrom
Judge

DEFENDANT'S CHARGE NO. 10

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff was guilty of negligence per se, you may not return a verdict in favor of the plaintiff.

Refused
Jeffrey J. Mankiewicz
Judge.

DEFENDANT'S CHARGE NO. 11

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff failed to observe a duty imposed by a positive mandatory statute in the operation of her vehicle at the time and place in question, then you may not return a verdict in favor of the plaintiff.

Refused
Jelaine J. Maddison
Judge

DEFENDANT'S CHARGE NO. 12

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff's own negligence proximately contributed to cause the plaintiff's injuries, even in the slightest degree, then you cannot return a verdict in the favor of the plaintiff.

*Given
J. J. Mableson
Judge*

DEFENDANT'S CHARGE NO. 13

The Court charges the jury that you have the right to weigh all of the evidence in this case in the light of your common knowledge, common sense and common experience and you are instructed to consider the evidence in this case in the light of your knowledge in arriving at your verdict.

Swer,
J. J. Mable
Judge

DEFENDANT'S CHARGE NO. 14

The Court charges you that in determining the rights of the parties, you take the evidence as given you from the witness stand and apply it to the issues in determining the rights of these parties. If you cannot reconcile the testimony of the witnesses so as to make all of them speak the truth, then it is for you to say whom you are going to believe and whom you won't believe in a lawsuit, and in determining the weight you will give any witnesses' testimony, you may take into consideration any interest the witness may have in the result of the lawsuit, the demeanor of the witness on the witness stand, or any interest or bias the witness may show by his or her own testimony.

Refused
Joseph J. Madoleburn
Judge

DEFENDANT'S CHARGE NO. 15

The Court charges the jury that before the plaintiff can recover in this case she must prove to the reasonable satisfaction of each and every juror each and every material allegation of her complaint.

Refused
Jeffrey J. Madaleno
Judge

DEFENDANT'S CHARGE NO. 16

The Court charges the jury that the plaintiff had the duty to exercise reasonable care for her own safety.

Dejean
Jeffrey J. Middleberry
Judge

DEFENDANT'S CHARGE NO. 17

The Court charges the jury that if after considering all the evidence in this case your minds are left in a state of reasonable uncertainty as to whether or not the plaintiff is entitled to recovery, you cannot find a verdict for the plaintiff.

Given
Jeffrey J. Mathison
Judge

DEFENDANT'S CHARGE NO. 18

The Court charges the jury that the following is a correct definition of primary or contributory negligence and may be used by you in your deliberations: Negligence is the doing of an act that a reasonable and prudent person would not do under the same or similar circumstances or the failure to do an act that a reasonable and prudent person would do under the same or similar circumstances.

Refused
Jeffrey G. Masterson
Judge

DEFENDANT'S CHARGE NO. 19

The Court charges the jury that contributory negligence is negligence on the part of the plaintiff that proximately contributed to the alleged injury.

Given
Jeffrey J. Macleburn
Judge

DEFENDANT'S CHARGE NO. 20

The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff was guilty of contributory negligence, the plaintiff cannot recover for any initial simple negligence of the defendant.

Refused
Jeffrey J. Mandelbaum
Judge

DEFENDANT'S CHARGE NO. 21

The Court charges the jury that there can be no recovery for an injury proximately caused by the mutual fault of both parties. If the plaintiff by the exercise of ordinary care under the circumstances might have avoided the consequences of the defendant's negligence, but did not, the case is one of mutual fault, and the law will neither cast all the consequences upon the defendant, nor will it attempt any apportionment thereof.

Refused
Jeffrey J. Mandelbaum
Judge

DEFENDANT'S CHARGE NO. 22

The Court charges the jury that the Alabama Rules of the Road consists of a number of statutes enacted into law by your legislature regulating the flow of traffic upon the highways of this State.

The violation of certain sections of these Rules of the Road by persons using the public highways is prima facie negligence only. This means that the violation of such a rule is presumed to be negligence but such violation is not under all circumstances negligence, and it is a jury question whether such a violation in a particular case is negligence. Should you determine that the violation of such a statute is negligence, such negligence in order to be a defense on the part of the defendant must proximately cause or proximately contribute to the injuries complained of by the plaintiff. I will now read certain of these statutes to you. The fact that I read these statutes is no indication that any of these statutes has been violated or that such violation is negligence, or that any such violation proximately caused or proximately contributed to the injury complained of by the plaintiff. It is for you to decide whether or not the statutes are applicable, whether or not they have been violated, and whether or not such violation is negligence, and whether or not any such violation proximately caused or proximately contributed to the injury complained of by the plaintiff, depending on what you find the facts to be.

Code of Alabama, Title 36, Section 12(a). The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle.

Code of Alabama, Title 36, Section 5(a). Any person driving a vehicle on a highway shall drive the same at a careful and prudent speed not greater than is reasonable and

proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing and no person shall drive any vehicle upon a highway at such speed as to endanger the life, limb, or property of any person.

Given
Jeffery, Madison
Judge

DEFENDANT'S CHARGE NO. 23

I charge you that in no case can negligence be assumed from the mere fact of injury, and the burden of proving the negligence alleged rests upon the plaintiff.

Given
Jeffrey G. Matheson
Judge

DEFENDANT'S CHARGE NO. 24

The Court charges the jury that in awarding damages, if any, in this case, your verdict must not be based upon mere speculation or guesswork but must be based upon the evidence and the just and reasonable inferences shown thereby and in awarding damages in this case, if any, you must not engage in mere speculation or guesswork as to whether or not the damages claimed by the plaintiffs ~~or either of them~~ ^{WERE} the result of the collision between the plaintiff, Delores Rodreguez, and the State Trooper, William Lewis Parker, or were the result of the collision between the plaintiff and the defendant in this case, but only award plaintiffs' ~~or either of them~~ damages which ~~he~~ ^{HAS} ~~or she~~ have reasonably satisfied you from the evidence were the proximate result of the collision complained of in the plaintiffs' ^o complaint.

*Given
J. J. Madison
Judge.*

DEFENDANT'S CHARGE NO. 25

The Court charges the jury that if after considering all of the evidence in this case your minds are left in a state of reasonable uncertainty as to whether or not the damages complained of by the plaintiffs were the result of the collision between the plaintiff, Delores Rodreguez, and the State Highway Patrolman, William Lewis Parker, or were the result of the collision between the plaintiff, Delores Rodreguez, and the defendant in this case, you cannot find a verdict for the plaintiffs.

*Refused,
Telfair J. Maddison
Judge*