

Defendant's Charge No. 2

I charge you, members of the jury, that the burden rests upon Benjamin L. Hamilton to prove to your reasonable satisfaction from all the evidence in this case all of the material allegations of his complaint, or at least one count thereof, and, if he has failed to prove all the material allegations of his complaint, or at least one count thereof, to your reasonable satisfaction, then you may not return a verdict in favor of Mr. Hamilton.

*Refused*  
*Jessie J. Maskeburn*  
*Judge*

Hamilton vs. Kinsey

Defendant's Charge No. 3

I charge you, members of the jury, that the burden rests upon Benjamin L. Hamilton to prove to your reasonable satisfaction, from all the evidence in this case, all of the material allegations of at least one of his claims against Edgar Eugene Kinsey and, if Mr. Hamilton has failed to prove all the material allegations of at least one of his claims to your reasonable satisfaction, then you may not return a verdict in his favor and against Edgar Eugene Kinsey.

*Given*  
*Jeffrey Marshall*  
*Judge*

Hamilton vs. Kinsey

Defendant's Charge No. 5

I charge you, members of the jury, that, unless you are reasonably satisfied from the evidence in this case that Edgar Eugene Kinsey failed to use ordinary care in the operation of his vehicle under the circumstances here presented, that is, that degree of care which an ordinarily prudent person would have used under the same or similar circumstances, then Mr. Hamilton has failed to meet the burden of proving negligence on the part of Mr. Kinsey and you cannot return a verdict against the said Mr. Kinsey under Mr. Hamilton's first claim.

Hamilton vs. Kinsey

*Refused  
J. J. Madison  
Judge*

Defendant's Charge No. 6

I charge you, members of the jury, with respect to the claims of Benjamin L. Hamilton, that if, after considering all of the evidence in this case, you are reasonably satisfied that the evidence leaves in doubt the liability of Edgar Eugene Kinsey, or the right of Benjamin L. Hamilton to recover, that is, if the evidence gives rise by equal import to a theory of liability as charged or no liability as charged, then Mr. Hamilton has failed to meet the burden of proof and you cannot return a verdict for him.

*Given,  
J. J. Hamilton  
Judge.*

Hamilton vs. Kinsey

Defendant's Charge No. 7

I charge you, members of the jury, with respect to the claims of Benjamin L. Hamilton, that if, after a full and careful consideration of all the evidence in this case, any individual juror is not reasonably satisfied from the evidence that Mr. Hamilton was injured and damaged as the proximate result of the negligence of Edgar Eugene Kinsey or as the proximate result of the wanton misconduct of Mr. Kinsey, then you cannot return a verdict for Mr. Hamilton against Mr. Kinsey.

Hamilton vs. Kinsey

*Refused  
J. J. Mason  
Judge*

Defendant's Charge No. 8

I charge you, members of the jury, that, unless you are reasonably satisfied from all the evidence in this case that Edgar Eugene Kinsey purposely and designedly, or with knowledge of the fact that Benjamin L. Hamilton might be hurt by his acts or omission to act, and yet with complete indifference to the possible consequences, nevertheless pursued a course of conduct or omitted doing some act which proximately resulted in his injuries, then you cannot find for Benjamin L. Hamilton under his second claim.

*Given,  
J. J. Hamilton  
Judge*

Hamilton vs. Kinsey

Defendant's Charge No. 9

I charge you, members of the jury, that, to constitute wantonness, the act done or omitted to be done, must have been done or omitted to be done with a present knowledge that injury would probably result. If any one of the jury is not reasonably satisfied, from all of the evidence in this case, that such was the case with Edgar Eugene Kinsey, at the time and place complained of, you cannot return a verdict for Benjamin L. Hamilton in this case under his second claim.

*Signed*  
*J. J. Wadsworth*  
*Judge*

Hamilton vs. Kinsey

Defendant's Charge No. 10

I charge you, members of the jury, that, in order for Benjamin L. Hamilton to recover under his second claim, all of the jury must be reasonably satisfied from the evidence that Edgar Eugene Kinsey was guilty of wantonness which proximately caused the accident complained of. To constitute wantonness, the act done or omitted must be done or omitted with the knowledge and certain consciousness that injury will probably result. To constitute wantonness, there must be a design, purpose or intent to do a wrong, or reckless indifference or disregard of the natural or probable consequences of the act done.

*Refused  
J. J. Moore  
Judge*

Hamilton vs. Kinsey

Defendant's Charge No. 11

The Court charges the jury that any person using the highways of the State of Alabama has the right to presume that any operator of a motor vehicle on such public highway will operate the same in accordance with the existing laws and rules of the road until such fact is first brought to the attention of any operator. At the time and place charged in the complaint of the Plaintiff, Hamilton, the Court charges the jury that Defendant, Kinsey, had the right to presume that the automobile in which the Plaintiff, Hamilton, was riding as a passenger would be operated lawfully and in accordance with the State statutes and municipal ordinances then in effect regulating and governing traffic on Alabama Highway No. 59 at the intersection of Twentieth Avenue.

*Given,*  
*Jefferson G. Washburn*  
*Judge.*

Defendant's Charge No. 12

I charge you, members of the jury, that, under the law of Alabama, contributory negligence is a complete defense to any right of recovery of Benjamin L. Hamilton for simple initial negligence, and, if you are reasonably satisfied from the evidence in this case that Benjamin L. Hamilton was guilty of negligence and that his negligence proximately contributed to the accident of which he complains, even in the slightest degree, then Benjamin L. Hamilton cannot recover under his first claim.

Hamilton vs. Kinsey

*Siven,  
Judge of the Court*

Defendant's Charge No. 13

I charge you, members of the jury, that, even if you should be reasonably satisfied from all the evidence in this case that Edgar Eugene Kinsey was negligent in some way, yet if you should further be reasonably satisfied that Benjamin L. Hamilton did not exercise such reasonable care for his own safety as would be exercised by an ordinarily prudent person under the same or similar circumstances, and that his failure to exercise such care contributed to the accident complained of in the complaint, even in the slightest degree, then you cannot return a verdict for Mr. Hamilton under his first claim.

Given,  
J. J. Masburn  
Judge.

Defendant's Charge No. ~~16~~ 14

I charge, you, members of the jury, that a duty rested upon Benjamin L. Hamilton, as a passenger in the automobile driven by Charlotte Eich, to exercise ordinary or reasonable care under the circumstances for the protection of his own welfare, health, and safety, which duty, if violated, would constitute negligence on his part, and, if proximately contributing to the accident which is the basis of this lawsuit, even in the slightest degree, would completely bar any right of recovery on the part of Benjamin L. Hamilton under his first claim.

*Benjamin L. Hamilton*  
*Judge*

Hamilton vs. Kinsey

Defendant's Charge No. ~~17~~ 15

I charge you, members of the jury, that Benjamin L. Hamilton, as a passenger in the motor vehicle driven by Charlotte Eich was not absolved from all personal care for his own safety, but was under the duty of exercising reasonable or ordinary care to avoid injury, that is, such care as an ordinary prudent person would exercise under like or similar circumstances, which duty, if violated would constitute negligence on his part, and, if proximately contributing to the accident which is the basis of this lawsuit, even in the slightest degree would completely bar any right of recovery on the part of Benjamin L. Hamilton under his first claim.

*Refused*  
*Jessie M. Maslbaum*  
*Judge*

Hamilton vs. Kinsey

Defendant's Charge No. ~~19~~ 16

I charge you, members of the jury, that, if you are reasonably satisfied from all of the evidence in this case that Benjamin L. Hamilton failed to use due care on the occasion complained of in that he took passage with a driver known to him, or who in the exercise of reasonable care should have been known to him, to be intoxicated and a careless, incompetent, and reckless driver, and that his failure to use such due care proximately contributed to the accident complained of, then I charge you that you cannot return a verdict for the plaintiff in this case under his first claim.

Given,  
Jefferson Washburn  
Judge

Hamilton vs. Kinsey

Defendant's Charge No. 20

I charge you, members of the jury, that you are not entitled to indulge in speculation or conjecture or surmise as to any element of the injuries and damages, if any, Benjamin L. Hamilton, may have sustained as a proximate result of the accident complained of and, if it is necessary for you to indulge in speculation or conjecture or surmise as to whether the plaintiff in fact sustained any such element of injury or damage, then the plaintiff has failed to meet the burden of proof in this regard, and you cannot award the plaintiff any recovery for the purpose of compensating him for any such element of injury or damage.

*Refused,  
Jefery Washburn  
Judge*

Defendant's Charge No. 14

I charge you, members of the jury, that you are not entitled to indulge in speculation or conjecture or surmise as to the amount of lost income, if any, Benjamin L. Hamilton might have sustained as a proximate result of the accident complained of and, if it becomes necessary for you to indulge in speculation or conjecture or surmise to determine what that amount might be, if anything, then Benjamin L. Hamilton has failed to meet the burden of proof in this regard, and you cannot award him any recovery based thereon.

*Given  
Jefery Madison  
Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 1

The Court charges the jury that the mortality tables are a means of ascertaining the probable number of years that a person of a given age and ordinary health will live, and the mortality table may be used by you as an aid in computing damages if you are reasonably satisfied from the evidence that the injuries sustained by the plaintiff are permanent.

*Given*  
*Stephen J. Waddeburn*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 2

The Court charges the jury that even if you believe from the evidence that the driver of the automobile in which the plaintiff, Benjamin Hamilton, was riding was guilty of contributory negligence, that negligence cannot be imputed to the plaintiff, Benjamin Hamilton, in the absence of evidence that Benjamin Hamilton had authority over the movement of the automobile.

*Refused*  
*Dufan J. Madison*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 4

The Court charges the jury that a passenger in an automobile cannot be guilty of contributory negligence unless it is proven that the passenger had control over the movement of the automobile.

*Refused*  
*J. J. Maslin*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 6

The Court charges the jury that if you believe from the evidence that the defendant, Edgar Eugene Kinsey, violated a State Statute concerning the Rules of the Road then the defendant is prima facie guilty of negligence.

*Given,*  
*J. J. Maskeham*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 7

The Court charges the jury that if you believe from the evidence that the defendant, Edgar Eugene Kinsey, violated a State Statute regarding unlawful speed then the defendant is guilty of negligence per se.

~~Edgar Eugene Kinsey~~  
~~Defendant~~  
Edgar Eugene Kinsey  
Defendant  
Judge

PLAINTIFF'S REQUESTED JURY CHARGE NO. 8

The Court charges the jury that the suggestion of counsel in argument of a mathematical formula to compensate the plaintiff for pain and suffering is proper and can be used by the jury to help arrive at your verdict provided your verdict is based upon the evidence and not speculation or conjecture.

*Done,*  
*Jefair J. Marshall*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 9

The Court charges the jury that in determining the amount of damages for loss of earnings you should consider any evidence of the plaintiff's earning capacity, his earnings, the manner in which he ordinarily occupied his time before his injury, his inability to pursue that occupation and to determine what he was reasonably certain to have earned during a time so lost had he not been disabled.

*J. J. ...*  
*Seafair J. Mathison*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO.     

The Court charges the jury that the plaintiff, Benjamin Hamilton, in this case claims that after the occurrence of his initial injury, he incurred or suffered an aggravation by way of increased discomfort and pain and disability as a result of or as an incident of a disease which disease was proximately caused by the initial injury made the basis of the plaintiff's complaint. If you are reasonably satisfied from the evidence of the truthfulness of the plaintiff's contention in this regard, you may award the plaintiff such damages as will reasonably compensate him for the whole of his damages with due regard for such aggravation.

*Sween,*  
*J. J. Mosleburn*  
*Judge.*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 12

The Court charges the jury that the law has no fixed monetary standards to compensate for <sup>S</sup> physical pain and mental anguish. This element of damage is left to your good, sound judgment and discretion as to what amount would reasonably and fairly compensate the plaintiff for such physical pain and mental anguish as you find from the evidence that the plaintiff did suffer. If you are reasonably satisfied from the evidence that the plaintiff has undergone or will undergo, pain and suffering or mental anguish as a proximate result of the injury in question, then you should award the sum which will reasonably and fairly compensate for such pain and suffering or mental anguish which you are reasonably satisfied from the evidence that he is reasonably certain to suffer in the future.

*J. J. Mason*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 13

The Court charges the jury that the purpose for awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury sustained. These damages are intended as money compensation to the party wronged to compensate him for his injury and other damages which have been inflicted upon him as a proximate result of the wrong complained of.

*Refused*  
*Jeffery M. Madelbaum*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 14

The Court charges the jury that it is for you to determine from the evidence the nature, extent and duration of the plaintiff's injuries and if you are reasonably satisfied from the evidence that the plaintiff suffered permanent injuries and that such injuries were proximately caused by the wrongs complained of, then you should include in your verdict such sum as you determine to be reasonable compensation for such injuries.

*W. W. W.*  
*Joseph J. Markham*  
*Judge*

PLAINTIFF'S REQUESTED JURY CHARGE NO. 15

The Court charges the jury that drinking which has no effect on the senses or judgement of a driver is not intoxication.

Refused  
Jeffery M. Striber  
Judge

PLAINTIFF'S REQUESTED JURY CHARGE NO. 16

The Court charges the jury that intoxication alone is not proof of negligence in a civil action.

*Given*  
*Frederic J. Marshall*  
*Judge*