

DEFENDANT'S REQUESTED JURY CHARGE NO. 4

THE COURT CHANGES THE JURY THAT EVERY PERSON HAS A DUTY TO EXERCISE REASONABLE OR ORDINARY CARE FOR THEIR OWN SAFETY. IF YOU ARE REASONABLY SATISFIED BY THE EVIDENCE IN THIS CASE THAT THE PLAINTIFF FAILED TO EXERCISE REASONABLE OR ORDINARY CARE FOR HIS OWN SAFETY HE WOULD BE GUILTY OF CONTRIBUTORY NEGLIGENCE. IF YOU ARE FURTHER REASONABLY SATISFIED THAT SUCH CONTRIBUTORY NEGLIGENCE ON THE PART OF THE PLAINTIFF CONTRIBUTED TO HIS ALLEGED INJURIES AND DAMAGES IN THE SLIGHTEST DEGREE YOU MUST RETURN A VERDICT FOR THE DEFENDANT.

~~For~~  
Refused  
Jeffrey J. Masterson  
Judge

DEFENDANT'S REQUESTED JURY CHARGE NO. 5

THE COURT CHARGES THE JURY THAT CONTRIBUTORY NEGLIGENCE IS A COMPLETE DEFENSE TO THIS ACTION. IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE PLAINTIFF WAS GUILTY OF CONTRIBUTORY NEGLIGENCE IN THE SLIGHTEST DEGREE WHICH PROXIMATELY CONTRIBUTED TO HIS INJURIES AND DAMAGES THEN YOUR VERDICT MUST BE FOR THE DEFENDANT.

*Refused*  
*DeForest J. Markham*  
*Judge*

DEFENDANT'S REQUESTED JURY CHARGE NO. 6

THE COURT CHARGES THE JURY THAT THE MERE FACT THE PLAINTIFF  
WAS INJURED AND DAMAGED IS NOT PROOF OF NEGLIGENCE ON THE PART OF  
THE DEFENDANT.

*Given  
Jurying. Master  
Judge.*

PLAINTIFF'S REQUESTED CHARGE NO. 1

The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Jack Sellers was injured as a proximate result of the negligence of the Defendant without any contributory negligence on his part and if you are further satisfied from the evidence in this case that such injury aggravated a pre-existing condition Jack Sellers had at the time of such injury, then the Defendant would be liable to Jack Sellers for all injuries and damages proximately resulting from the injury, even though a normal person's injuries would have been much less severe.

*J. Sellers*  
*Jelfair A. Madelbun*  
*Judge*

PLAINTIFF'S REQUESTED CHARGE NO. 2

The Court charges the jury that if you are reasonably satisfied from the evidence in this case that Jack Sellers was not guilty of any contributory negligence, and that he was injured as a proximate result of the negligence of the Defendant, in such a manner as to aggravate a pre-existing condition, the Defendant is liable for all injuries proximately resulting therefrom, even though a normal person's injuries would have been less severe.

*Refused  
Telford J. Markham  
Judge.*

PLAINTIFF'S REQUESTED CHARGE NO. 3

The Court charges the jury that it was the duty of Frank Patterson to know that the way was clear of pedestrians, including Jack Sellers, before backing his automobile, and if you are reasonably satisfied that Frank Patterson failed in such duty, such failure constitutes negligence on the part of the Defendant.

*Done*  
*Jessie J. Marlburn*  
*Judge.*

PLAINTIFF'S REQUESTED CHARGE NO. 4

The Court charges the jury that the impossibility of definitely measuring the damages for pain and suffering by a money standard, when pain and suffering is claimed as an element of damages, is no ground for denying pecuniary relief for pain and suffering, if the jury believe Plaintiff is entitled to recover in this case.

*Richard*  
*F. J. M.*

PLAINTIFF'S REQUESTED CHARGE NO. 5

The Court charges the jury that there can be no proof in dollars and cents of the value of mental and physical pain and suffering, but the damages for these, if the Plaintiff is entitled to recover, is within the sound discretion of the jury, but cannot exceed the amount claimed in the complaint.



PLAINTIFF'S REQUESTED CHARGE NO. 6

The Court charges the jury that the duty of care and of abstaining from injuring another is owed to the weak, the sick, the infirm, equally with the healthy and strong; and when that duty is violated, the measure of damage is the injury inflicted, even though that injury might have been aggravated, or might not have happened at all, but for the peculiar physical condition of the person injured.

*Given*  
*Jeffery M. Masterson*  
*Judge*

PLAINTIFF'S REQUESTED CHARGE NO. 7

The Court charges the jury that the impossibility of definitely measuring damages for pain and suffering by a money standard, when pain and suffering is claimed as an element of damages, is no ground for denying pecuniary relief for pain and suffering, if the jury believe Plaintiff is entitled to recover for such damages in this case.

*Referred  
J. G. M.*

PLAINTIFF'S REQUESTED CHARGE NO. 8

The Court charges the jury that if you are reasonably satisfied from the evidence that the Plaintiff is entitled to recover for pain and suffering, you may award him such damages for his pain and suffering as, in your sound discretion, you think he is entitled to, not to exceed, however, the amount claimed in the complaint.

*J. G. Madison*  
*Judge*

PLAINTIFF'S REQUESTED CHARGE NO. 9

The Court charges the jury that the law has no fixed monetary standard to compensate for 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 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, you should award a sum which will reasonably and fairly compensate him for such pain, suffering, or mental anguish already suffered by him, and for any pain, suffering or mental anguish which you are reasonably satisfied from the evidence that he is reasonably certain to suffer in the future.

~~Walter~~ Refused  
J. J. Washington  
Judge

PLAINTIFF'S REQUESTED CHARGE NO. 10

The Court charges the jury that it is for you to determine from the evidence the nature, extent and duration of Jack Sellers' injuries. If you are reasonably satisfied from the evidence that he has suffered permanent injuries, and that such injuries proximately resulted from the wrongs complained of without contributory negligence on the part of Jack Sellers, then you should include in your verdict such sum as you determine to be reasonable compensation for such injuries.

*Refused*  
~~*[Signature]*~~  
*D. J. M.*

PLAINTIFF'S REQUESTED CHARGE NO. 11

The Court charges the jury that if you find for the Plaintiff, he would be entitled to recover for all damages which are the proximate result of Defendant's negligence, including damages for the aggravation of any injury or condition which may have existed at the time of the incident made the basis of Plaintiff's complaint.

~~Done~~ Refused  
Jelfair J. Washburn  
Judge

PLAINTIFF'S REQUESTED CHARGE NO. 12

The Court charges the jury that the measure of damages for medical expenses is all reasonable expenses necessarily incurred for doctors' and medical bills which the Plaintiff has paid or become obligated to pay, and the amount of the reasonable expenses of medical care, treatment and services reasonably certain to be required in the future. The reasonableness of, and the necessity for, such expenses are matters for your determination from the evidence.

*Refuse*  
*J. J. M.*

PLAINTIFF'S REQUESTED CHARGE NO. 13

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 the injury, his inability to pursue his occupation, and determine what he was reasonably certain to have earned during the time so lost, had he not been disabled.

~~Given~~ Refused  
Jefair J. Mashek  
Judge.



PLAINTIFF'S REQUESTED CHARGE NO. 14

The Court charges the jury that in arriving at the amount of your award for any loss of future earnings or earning capacity, you should consider what the Plaintiff's health, physical ability and earning power or capacity were before the accident and what they are now; the nature and extent of his injuries, and whether or not they are reasonably certain to be permanent; or if not permanent, the extent of their duration; all to the end of determining, first, the effect, if any, of his injury upon his future earnings or earning capacity, and second, the present cash value of any loss of future earnings or earning capacity which you are reasonably satisfied from the evidence in the case that Plaintiff is reasonably certain to suffer in the future, as a proximate result of the injury in question.

*Refused*  
*Jesse D. Washburn*  
*judge*

PLAINTIFF'S REQUESTED CHARGE NO. 15

The Court charges the jury that "Mortality tables" are a means of ascertaining the probable number of years a person of a given age and of 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. Such tables are not binding upon you, and are not conclusive.

*W. W. Jelfson*  
*W. W. Jelfson*  
*Judge*

DEFENDANT'S CHARGE NUMBERED

1

The Court charges you that unless you are reasonably satisfied from the evidence that Mr. Patterson did or omitted something on the occasion complained of which a reasonably prudent person similarly situated would not have done and that this proximately caused injury to the Plaintiff, your verdict should be in favor of the Defendant, First Alabama Bank of Baldwin County, N.A.

*Refused.*  
*F. A. M.*

DEFENDANT'S CHARGE NUMBERED 2

The Court charges the Jury that the fact of the Plaintiff's alleged injury does not of itself give him a right of recovery. To recover the Plaintiff must show that the Defendant was guilty of a breach of some duty that it owed Plaintiff. If the jury believes from the evidence that Defendant was not guilty of a breach of any duty owing to Plaintiff, but that the injury to Plaintiff was the result of an accident or misadventure, then Plaintiff cannot recover.

*Refused.*  
*D. J. M.*

DEFENDANT'S CHARGE NUMBERED

3

The Court charges the jury that the fact of the Plaintiff's alleged injury does not of itself give him a right of recovery. To recover the Plaintiff must show that the Defendant was guilty of a breach of some duty that it owed Plaintiff. If the jury believes from the evidence that Defendant was not guilty of a breach of any duty owing to Plaintiff, then Plaintiff cannot recover.

*Brown*  
*Jefferson D. Washburn*  
*judge*

# Plaintiff's Requested Charge No. 16

The Court charges the Jury that if your verdict is in favor of the Plaintiff, then it is your duty to award the Plaintiff such sum as will fairly and reasonably compensate him for all the damage suffered by him which proximately resulted from the negligence of the Defendant. You are further instructed that absolute certainty of prospective continuation of any injury need not necessarily be established. It is sufficient if the probability of that damage continuing is reasonably certain, in which event allowance should be made therefor.

In fixing the amount of the award to the Plaintiff, you will consider the elements of damage I will now mention:

- A. The reasonable value, not exceeding the costs to the Plaintiff, of the examinations, tests, attention and care by physicians and surgeons, reasonably required and actually given in the treatment of the Plaintiff, ~~and the reasonable value of any further treatment that you find from the evidence is reasonably certain to be required;~~
- B. The reasonable value, not exceeding the cost to the Plaintiff, of hospital accommodations and care, medication, and ~~orthopedic appliances, reasonably required and actually given or used in the treatment of the Plaintiff;~~
- C. Such sum as will reasonably compensate him for the pain, discomfort, and mental anguish that under the evidence was shown to have been suffered by him as a proximate result of the injuries in question and for such pain, discomfort and mental anguish that you may find under the evidence he is reasonably certain to suffer in the future from the same cause;
- D. The reasonable value of time lost by the Plaintiff since his injuries when he has been unable to pursue his usual occupation. In determining this amount, you should consider the evidence of the Plaintiff's earning capacity, his earnings, and the manner in which he ordinarily occupied his time before the injury and find what he was reasonably certain to have earned in the time lost, had he not been disabled;
- E. Such sum as will reasonably compensate him for any loss or diminution of earning power occasioned by

Given  
J. J. Maskeham  
Judge

the injuries in question, from which you find under the evidence that he has suffered and is reasonably certain to suffer in the future. In this connection, you are instructed that earning power is related to capacity to do work and earn money. In fixing this amount you may consider such factors as the Plaintiff's health, physical ability, and earning power before the accident; the nature and extent of his injuries, whether or not they are reasonably certain to be permanent, or if not permanent, the extent of their duration. You may also consider the Plaintiff's age, life expectancy, occupation, talents, skill, experience, training, and industry, all to the end of determining the effect of his injuries upon his earning capacity to date and in the future;

- F. Such sum as will reasonably compensate him for the extent to which the injuries received by him have impaired and deprived him of, and which you will find from the evidence will in the future impair and deprive him of, the ability to engage in and enjoy the non-occupational activities and pleasures in which he formerly engaged.