

①

DEFENDANT'S JURY CHARGE NUMBER:

*Amelkin*

The Court charges the jury that the showing of an unfortunate result does not in and of itself raise an inference of negligence. The burden of proof is on the Plaintiff, if she is to recover, to establish to your reasonable satisfaction from the evidence, and if, after consideration of all of the evidence, you are satisfied that the Plaintiff's damages, if any, were the proximate result of an unavoidable accident, then your verdict must be for the Defendants.

*Refused*  
*W. H. G.*

②

DEFENDANT'S JURY CHARGE NUMBER:

*Amelkin*

It is the law of the State of Alabama that neither party to an automobile accident is liable for the injuries and damages where the accident is unavoidable. If you are reasonably satisfied from the evidence that the motor vehicle accident complained of in the Plaintiff's complaint was an unavoidable accident, then your verdict must be for the Defendants, Baldwin Transfer Company and Saul Samuel Amelkin, in this case.

*Referred  
Wil Hay*

2-A

DEFENDANT'S JURY CHARGE NUMBER:

It is the law of the State of Alabama that neither party to an automobile accident is liable for the injuries and damages where the accident is unavoidable. If you are reasonably satisfied from the evidence that the accident complained of in the Plaintiff's complaint was of an unavoidable accident, then your verdict must be for the Defendant, Saul Samuel Amelkin, in this case.

Refused  
W. L. H. J.

③

DEFENDANT'S JURY CHARGE NUMBER:

*Amelkin*

The Court charges the jury if you are reasonably satisfied from the evidence in this case that the Plaintiff, Josephine Arata, was damaged as a result of a mere accident without fault on the part of the Defendant, Saul Samuel Amelkin, then you cannot return a verdict against the Defendant, Saul Samuel Amelkin.

⑨

*Given  
with*

④

DEFENDANT'S JURY CHARGE NUMBER:

*Amelkin*

The Court charges the jury that the burden is on the Plaintiff, Josephine Arata, to establish negligence on the part of the Defendant, Saul Samuel Amelkin, to your reasonable satisfaction from the evidence, and if, after considering all of the evidence you are reasonably satisfied that the Plaintiff's damages, if any, were the proximate result of an unavoidable accident then your verdict must be for the Defendant, Saul Samuel Amelkin.

*Refused  
W. H. H.*

④ 4-A

DEFENDANT'S JURY CHARGE NUMBER:

Amelkin

The Court charges the jury that the burden of proof is on the Plaintiff, Josephine Arata, to prove to your reasonable satisfaction by the evidence, the truth of each and every material allegation in her complaint <sup>as alleged</sup> ~~is~~ against Saul Samuel Amelkin.

Referred  
W. C. Hay

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 1

I charge you, members of the jury, that negligence means the failure to exercise ordinary care; that is, such care as a reasonably prudent person would have exercised under the same or similar circumstances.

10  
Therefore, "negligence" is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or, the doing of something which a reasonably prudent person would not have done under the same or similar circumstances.

Given  
W. H. King

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 2

I charge you, members of the jury, that if a person, without fault of his own, is faced with a sudden emergency, he is not to be held to the same correctness of judgment and action as if he had time and opportunity to fully consider the situation, and the fact, if it be a fact, that he does not choose the best or safest way of escaping peril or preventing injury is not necessarily negligence, but that the standard of care required in an emergency situation is that care which a reasonably prudent person would have exercised under the same or similar circumstances.

*Given*  
*W. H. King*



JOSEPHINE ARATA,

Plaintiff

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 3

I charge you, members of the jury, that the burden of proof in this case with respect to the claims asserted by the plaintiff, Arata, against the three defendants is upon the plaintiff, Arata, to reasonably satisfy each and every one of you of the truth of the material allegations of her complaint, and this means that it is the responsibility of the plaintiff to reasonably satisfy each and every one of you from the evidence of the truthfulness of the matters and things claimed by her before she would be entitled to recover.

*Given*

*W. H. Day*

JOSEPHINE ARATA,

Plaintiff

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 4

I charge you, members of the jury, that the burden of proof in this case, with respect to the claims asserted by the Alabama Power Company against Baldwin Transfer and Amelkin is upon the cross plaintiff, Alabama Power Company, to reasonably satisfy each and every one of you of the truth of the material allegations of its cross claim, and this means that the burden is upon the Power Company to reasonably satisfy you by the evidence of the truthfulness of the matters and things claimed by it before it would be entitled to recover.

*Referred  
with*

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 7

13  
I charge you, members of the jury, that the proximate cause of an injury is that cause which in the natural and probable sequence of events, and without the intervention of any new or independent cause, produces the injury and without which such injury would not have occurred.

*Given*  
*W. L. Hays*

JOSEPHINE ARATA,  
Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 9

14  
Evidence has been introduced in this case about the expense of repairs to the personal property of the plaintiff and the personal property of the cross plaintiff. This evidence may be considered by you in determining the extent of damage suffered by the plaintiff and cross plaintiff and as going to the question of market value.

If that property could be restored to its former condition at a reasonable expense which would not exceed its reasonable market value at the time of its damage as found by you from the evidence, such reasonable repair expense would represent the damage which the plaintiff would be entitled to recover.

If that property was so damaged that it could not be restored to its former condition at a reasonable expense equal to or less than its reasonable market value at the time of its damage as found by you from the evidence, the plaintiff and cross plaintiff would only be entitled to recover its reasonable market value, less any salvage value as found by you from the evidence.

*Gwin*  
*W.E. King*

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 10

15  
I charge you, members of the jury, that in awarding damages in this case, should you decide that the plaintiff or cross plaintiff are entitled to any damages, your verdict must not be based on mere speculation, guess work, surmise or conjecture but must be based upon the evidence and the just and reasonable inferences shown thereby.

Given  
W. L. H. —

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 11

16  
I charge you, members of the jury, that it is the duty of one damaged to exercise ordinary care to reduce her or its damages: she or it is bound to exercise such care as a reasonably prudent person or reasonably prudent company would exercise under like circumstances to reduce or mitigate the damages. She or it can recover only such damages as would have been sustained had such care been exercised.

Given  
W. K. King

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 14

17 I charge you, members of the jury, that witnesses have testified in this case as experts and have been permitted to express opinions or draw conclusions. In passing upon the facts you are not required to accept the conclusions or expressed opinions of expert witnesses, but must determine for yourselves the weight to be given to such testimony when considered in connection with all the other evidence material to the issues.

*Conion*  
*Wetkey*

JOSEPHINE ARATA,

Plaintiff,

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 15

18  
I charge you, members of the jury, that you are the sole judges of the evidence and of the credibility of the witnesses. You may accept or reject any part of the testimony of any witness and you should accept only the testimony you consider worthy of belief. In determining the weight to be accorded the testimony of any witness, you may consider the demeanor of the witness while on the witness stand; his apparent candor or evasion or the existence or non-existence of any bias or interest.

*Given*

*W. K. Hayes*



IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

JOSEPHINE ARATA, )  
 )  
Plaintiff, )  
 )  
v. )  
 ) CIVIL ACTION NO. 14,315  
BALDWIN TRANSFER COMPANY, )  
INC., ALABAMA POWER COMPANY, )  
ET AL., )  
 )  
Defendants. )

WRITTEN REQUESTED CHARGES BY  
THE DEFENDANT AND CROSS-CLAIMANT

Comes the defendant and cross-claimant, Alabama Power Company, and requests the Court to instruct the jury as follows:

*This one*  
1. I charge you that the burden of proof of this case is upon the plaintiff, Josephine Arata, to reasonably satisfy you as to every material allegation of the Complaint, and unless the plaintiff meets this burden, your verdict should be for the defendant, Alabama Power Company.

*This one*  
2. 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.

*Given*

*W. H. H. F.*

*Given*

*W. H. H. F.*

①

②

*This one*  
3. 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.

*Given*  
*W. L. Hays*

*This one*  
4. 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 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.

*Given*  
*W. L. Hays*

*This one*  
5. I charge you that, if you believe from the evidence in this case that the defendant and cross-claimant, Alabama Power Company, operated its electric distribution facility as a reasonable and prudent electric utility would under the same or similar circumstances, then your verdict should be for Alabama Power Company.

*W. L. Hays*

*No.* 6. The Court charges the jury that the plaintiff cannot recover damages in this case if, after a fair consideration of all of the evidence, any individual juror is reasonably satisfied from the evidence in this case that the plaintiff, Josephine Arata, ought not to recover any damages.

*No* 7. I charge you that, unless you are reasonably satisfied from the evidence that the plaintiff has established in evidence all the material averments of her Complaint, then you cannot find for the plaintiff in this case.

*This one*  
5 8. I charge you that the plaintiff, Josephine Arata, had the legal duty to minimize her damages, if there were any, and the plaintiff is not entitled to recover for damages where she has failed to minimize her damages where possible.

*This one*  
9. I charge you that you cannot award any damages to the plaintiff for the purpose of punishing the defendant.

<sup>NO.</sup> ~~10.~~ I charge you that, if you believe the evidence in this case, you cannot award any damages to the plaintiff for the purpose of punishing the defendant.

*Withdrew*

*This one*  
6  
11. I charge you that you cannot award any damages to the plaintiff for punitive damages.

*Given*  
*W. H. H.*

*This one*  
12. The Court charges you that, if you are reasonably satisfied from the evidence that the defendant's electric distribution system was being operated on the occasion complained of with the degree of care that a reasonably prudent person or public utility would have employed under the same or similar circumstances, then in that event, you cannot find for the plaintiff against the defendant.

*Withdrew*

*NO.* ~~13.~~ *W. H. H.*  
The Court charges the jury that, if you are reasonably satisfied from the evidence in this case that the plaintiff, Josephine Arata, on the occasion complained of, was guilty of any negligence which proximately contributed to her injuries and damages, then you cannot return a verdict for the plaintiff and against the defendant.

*Then on*

7

14. I charge you that, if you are reasonably satisfied from the evidence in this case that the plaintiff, Josephine Arata, was negligent, even in the slightest degree, and that such negligence proximately contributed to her injuries and damages, then you cannot return a verdict for the plaintiff and against the defendant.

*Gier*  
*W. L. Hay*

*No* 15. I charge you that, if you are reasonably satisfied from all the evidence in this case that the damages and injuries complained of by the plaintiff were the result of an unavoidable accident or failure of a piece of equipment owned or operated by Josephine Arata, then you cannot find for the plaintiff and against the defendant, Alabama Power Company.

*No* 16. I charge you that, if you believe from the evidence in this case that the plaintiff in this cause has suffered no damages, then the plaintiff is not entitled to recover any damages other than nominal damages, such as \$1.00.

*This one*  
17. I charge you that the defendant and cross-claimant, Alabama Power Company, is not responsible for the operation or the maintenance of the electric wiring or equipment in the night club belonging to the plaintiff in this cause.

*Refused*  
*Will Hay*

*This one*  
18. I charge you, ladies and gentlemen of the jury, that, while it is the duty of an electric utility to exercise the degree of care commensurate with the danger involved, it is not an insurer, nor is the electric company under an obligation to so safeguard its electric lines that by no possibility can damages result therefrom.

*Given*  
*Will Hay*

*No. 19*  
19. The Court charges the jury that to constitute actionable negligence, if any, on the part of the defendant and cross-claimant, Alabama Power Company, there must be not only causal connection between the negligence, if any, and the damages of the plaintiff, Josephine Arata, but the connection must be by natural and unbroken sequence without intervening efficient cause; so that, but for such negligence of the defendant and cross-claimant, Alabama Power Company, the plaintiff's injuries 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 complained of. The Court further charges the jury that, if you are reasonably satisfied from the evidence that the negligence of the defendant and cross-claimant, Alabama Power Company, if there was any such negligence, was not the proximate cause of the injuries and damages of Josephine Arata in this case, then you cannot return a verdict for the plaintiff and against the defendant and cross-claimant, Alabama Power Company.

*No* ~~20~~. The Court charges the jury that where electrical appliances on private property are owned or controlled by the owner or occupant of the premises, a public utility which merely furnishes electricity for such appliances is not responsible for their condition and is not liable for any injuries, caused by a defective condition in those appliances, to the owner.

*This one* 21. The Court charges the jury that if you are reasonably satisfied from the evidence that the plaintiff, Josephine Arata, owned or controlled the electrical appliances located on its property, and you are further reasonably satisfied from the evidence that Alabama Power Company merely furnished electricity for such appliances, then in

such event, Alabama Power Company is not responsible for the condition of said electrical appliances and is not liable for injuries caused by a defective condition, to the owner.

*Referred  
Wil Hay*

*NO* 22. The Court charges the jury that no duty of inspection rests upon a public utility supplying electricity from the mere fact of rendering such electric service to the customer owning or controlling the electrical equipment.

*This one* 23. I charge you that if you are reasonably satisfied from the evidence in this case that the defendant, Saul Samuel Amelkia, was operating his vehicle in a negligent manner, and that as a result of such negligence the utility poles and their attachments belonging to Alabama Power Company were damaged, then you must return a verdict against Mr. Amelkia and in favor of Alabama Power Company.

*Referred  
Wil Hay*

*This one* 24. I charge you that if you are reasonably satisfied from the evidence in this case that the defendant, Baldwin Transfer Company, was operating their vehicle in a negligent manner, and that as a result of such negligence the utility poles and their attachments belonging to Alabama



Power Company were damaged, then you must return a verdict against Baldwin Transfer Company and in favor of Alabama Power Company.

*Refused  
Wilkey*

*This one*

25. I charge you that if you are reasonably satisfied from the evidence in this case that either of the defendants, Mr. Amelkia or the Baldwin Transfer Company driver, Mr. Austin, was operating his vehicle in a negligent manner, and that such negligence resulted in the damages to the Alabama Power Company utility poles and their attachments, then you must return a verdict in favor of Alabama Power Company and against the operator of the vehicle or vehicles being negligently driven.

*Refused  
Wilkey*

*This one*

26. I charge you that the defendant, Alabama Power Company, had a right to maintain its poles at a point alongside the margin of the highway provided that said poles were not at a place where they interfered with the usual customary use of the highway by the public and not located in the traveled portion of the highway and that the location of such poles by Alabama Power Company is not negligence.

*Refused  
Wilkey*

*This one*  
27. I charge you that a user of vehicles is not entitled to the entire highway from property line to property line. The highway not only serves the needs of the traveling public, but serves also the purpose of furnishing the public with conveniences of public utilities, and further, that the location of defendant's poles situated outside of the traveled way of the street was not negligence on the part of Alabama Power Company.

*Refused*

BALCH, BINGHAM, BAKER, HAWTHORNE,  
WILLIAMS & WARD

By *Lawrence J. Hallett Jr.*  
Lawrence J. Hallett, Jr.

Attorneys for Defendant,  
Alabama Power Company

JOSEPHINE ARATA,

Plaintiff

vs.

CIVIL ACTION NO. 14,315

BALDWIN TRANSFER COMPANY,  
INC., et al

Defendants

BALDWIN'S REQUESTED CHARGE NO. 12

I charge you, members of the jury, that should you determine that the plaintiff, Arata, is entitled to recover of one or more of the defendants, then she would be entitled to recover for the loss of use of the structure in question, only for such a period of time that would reasonably be required for the repair of the damage in question.

*Refused*  
*W. H. Kay*