

*Crossing - L & L*

In Needham vs. L. & N. R. R. Co., 3 S. W. 796, the court at page 800 shows from a number of Kentucky cases that where there is conflicting evidence as to the degree of negligence it is for the jury and not the court to decide the degree.

Upon the same subject, 29 Cyc 645, says:

"Invasion of Privilege of Jury. (a) Acts or Omissions Constituting Negligence. The existence of negligence should be passed upon by the jury as any other fact, and it is improper to instruct that a certain fact or group of facts amount to negligence per se, unless such acts are declared by law to be negligence per se, or are such as to induce an inference of negligence in all reasonable minds. At most the jury should be instructed that such facts, if established by a preponderance of the evidence, are properly to be considered in determining the existence of negligence.

(b) Acts or Omissions Constituting Contributory Negligence. Subject to the same exceptions stated in the preceding section, an instruction which stated as a rule of law what facts would constitute contributory negligence is erroneous and properly refused."

In McHenry Coal Company vs. Sneddon, 34 S. W. 228, the court said, in discussing when punitive damages could be allowed, said:

"We are satisfied, however, that it is not a case for punitive damages; and while it is difficult to establish any certain rule by which trial courts are to be controlled in this class of cases, and the instructions must be governed by the facts of each case, it is, nevertheless, well settled that it is not ~~xxx~~ every case of gross negligence where punishment in the way of damages may be inflicted. Where the facts conduct to show reckless, willful or malicious conduct on the part of the party charged with the wrong, exemplary damages may be awarded. There is no evidence of the presence of malice or reckless conduct on the part of the superintendent, as indicating a purpose to have the appellee injured, or a reckless disregard of the safety to his person, and therefore the instruction as to punitive damages should have been refused. The instruction should have confined the jury, if they returned a verdict for the plaintiff, to compensatory damages only."

On proper instructions as to measure of damages for personal injuries being such sum as would fairly and reasonably compensate plaintiff for his physical<sup>pain</sup> and suffering, if any or either, for his loss of time, if any, the reasonable expense, if any, in the matter of bills incurred by him or for his permanent impairment or ability to earn money. See South Covington Railway Co., vs. Nelson 89 S. W. 201 where the court held that it was improper to separate the different items any further than as is above indicated.