

DUTY OF ADJOINING LANDOWNERS--NEGLIGENCE.

*Note Well:* This instruction is to be used only where plaintiff's alleged damage or injury occurred while he was on his own property and was caused by the negligence of the adjoining landowner.

This issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

A landowner has a duty to use and maintain *his* property in a reasonable manner so as not to [injure] [damage] any adjoining landowner<sup>1</sup> or otherwise interfere in a material or important way with the use and enjoyment of the adjoining property.<sup>2</sup> In other words, the law requires a landowner to use and maintain *his* property in the same manner as a reasonable and prudent person would under the same or similar circumstances.<sup>3</sup> A breach of this duty is negligence.<sup>4</sup>

A party seeking damages as the result of the negligence of another has

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<sup>1</sup>Adjoining landowners are owners whose lands share a common property line or are right across a street or other public right-of-way from each other. See generally Dobbs, *Trespass to Land in North Carolina* 47 N.C.L. Rev. 31 (Part I) and 334 (Part II).

<sup>2</sup>2 Am. Jur. 2d, Adjoining Landowners § 2.

<sup>3</sup>2 Am. Jur. 2d, Adjoining Landowners § 3.

<sup>4</sup>Johnson v. Winston-Salem, 239 N.C. 697, 708 (1954).

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the burden of proving not only negligence, but also that such negligence was a proximate cause of the [injury] [damage]. Proximate cause is a real cause--a cause without which the claimed [injury] [damage] would not have occurred, and one which a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following respects:

*(Read all contentions of negligence supported by the evidence.)*

The plaintiff further contends, and the defendant denies, that defendant's negligence was a proximate cause of plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

*(Give law as to each contention of negligence included above.)*

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.