Southwestern Brewery and Ice Co. Vs. Schmidt

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Court : US Supreme Court

Decided On : Dec-02-1912

Appeal No. : 226 U.S. 162

Appellant : Southwestern Brewery and Ice Co.

Respondent : Schmidt

Judgement :

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U.S. Supreme Court Southwestern Brewery & Ice Co. v. Schmidt, 226 U.S. 162 (1912)

Southwestern Brewery and Ice Company v. Schmidt

No. 55

Argued November 14, 15, 1912

Decided December 2, 1912

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ERROR TO THE SUPREME COURT

OF THE TERRITORY OF NEW MEXICO

SYLLABUS

A master may remain liable for a certain time for a failure to use reasonable care in furnishing a safe place for the servant to work, notwithstanding the servant's appreciation of the danger, if he induces the servant to keep on by a promise to remove the source of danger.

Even if it is open, it will require a strong case to induce the appellate court to review the discretion of the trial court in allowing leading questions; in this case, the witness being a foreigner who seemingly did not understand the English language, there is no ground for revision.

This Court will not go behind the decision of the supreme court of a territory upon a matter of local practice in order to reverse the judgment upon a technicality and an assumption contrary to a fact appearing in the record.

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In this case, the trial court appears to have properly instructed the jury in regard to damages to which the plaintiff was entitled for personal injury, and did not, as to future pain, etc., go beyond conservative rules laid down in such cases.

The court may, within conservative rules, instruct the jury that they may, in estimating the damages of a plaintiff in a personal injury suit, consider loss of time with reference to ability to earn money, temporary or permanent impairment of capacity to earn money, disfigurement and pain, past or reasonably certain to be suffered in the future. *See Chicago, Milwaukee & St. Paul Ry. Co. v. Lindeman,* 143 F. 946.

Where the charge directs that the jury deduct from damages amounts paid under a release executed by plaintiff, if the jury set the release aside, it is immaterial what the amounts so paid represented as the transaction was rescinded by the verdict.

15 N.M. 232 affirmed.

The facts, which involve the validity of a verdict for personal injuries, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action by a servant for personal injuries. The declaration alleged that it was the plaintiff's duty to cook brewer's mash in a cooker; that the cooker was so out of repair that the plaintiff was unwilling to use it, but that the defendant requested him to go on until it could be repaired, and promised that it should be within a very

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short time; that the plaintiff did go on, relying upon the promise, that the cooker gave way, and the plaintiff was badly scalded. The defendant denied the allegations and pleaded plaintiff's contributory negligence and a release. In a replication the plaintiff denied his mental capacity at the time the release was made. There was a verdict for the plaintiff, subject to special findings which by the law of New Mexico control (*Walker v. New Mexico & Southern Pacific R. Co.,* 165 U. S. 593), the defendant alleged exceptions. These were overruled by the supreme court of the territory, and the judgment affirmed.

The first point argued is that the defendant was entitled to judgment on the special findings because the fourth was that the cooker, at the time, was not in such a bad condition that a man of ordinary prudence would not have used the same. But the eleventh was that the defendant did not use ordinary care in furnishing the cooker and in having it repaired, and the sixth, that the defendant promised the plaintiff that the cooker should be repaired as an inducement for him to continue using it. So it is evident that the fourth finding meant only that the plaintiff was not negligent in remaining at work. Whatever the difficulties may be with the theory of the exception, 1 Labatt, Master & Servant, ch. 22, 423, it is the well settled law that, for a certain time, a master may remain liable for a failure to use reasonable care

in furnishing a safe place in which to work, notwithstanding the servant's appreciation of the danger, if he induces the servant to keep on by a promise that the source of trouble shall be removed. *Hough v. Texas & Pacific R. Co.,* 100 U. S. 213 .

Next it is argued that the judgment should be set aside because the court allowed somewhat leading questions to be asked to bring out the plaintiff's reliance upon the defendant's promise. If this matter is open, it is enough to say that the plaintiff is a German, and seemingly did not

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understand the questions put to him very well, and that it would require a very much stronger case than this to induce an appellate court to revise the discretion of the trial court and grant a new trial upon such a ground. *Northern Pacific R. Co. v. Urlin,* 158 U. S. 271 , 158 U. S. 273 . The next point, that there was no credible evidence to sustain the verdict, so far as it does not rest on the preceding one, was for the jury, not for this Court.

Fourthly, it is argued that the court erred in refusing to instruct the jury that the burden was on the plaintiff to prove his incompetence at the time of making the release. It seems from the record that an instruction to that effect was given, but that it was omitted from the bill of exceptions. The supreme court of the territory took notice of the fact, and we certainly should not go behind their decision upon a matter of local practice in order to reverse a judgment upon a technicality and an assumption contrary to the fact. *Santa Fe County v. Coler,* 215 U. S. 296 .

Finally it is said that the instructions as to the measure of damages were wrong. The court instructed the jury that they might consider the plaintiff's loss of time with reference to his ability to earn money, the impairment of his capacity to earn money, whether temporary or permanent, disfigurement, and pain, past or reasonably certain to be suffered in the future, and that they should deduct from the amount, if any, the disbursements made under the release which the finding of the jury set aside. It is objected that a part of the disbursements were wages

during the plaintiff's disability; but it did not matter whether they were or not if the transaction was rescinded. With regard to future pain, etc., the judge did not go beyond the conservative rule laid down in such cases as *Chicago, M. & St.P. Ry. Co. v. Lindeman,* 143 F. 946, 950. The rest of the argument is a discussion of evidence, with which we have nothing to do.

Judgment affirmed.