FIELD v. GAZETTE PUBLISHING COMPANY.

4-2834

Opinion delivered March 27, 1933.

1. LIMITATION OF ACTIONS—ACCRUAL OF RIGHT OF ACTION.—A cause of action for injuries to an employee of a corporation began to run from the date of the negligent act complained of and not from the time the full extent of the injury was ascertained.
2. MASTER AND SERVANT—NEGLIGENCE—LIMITATION.—The three years statute relating to injury to a corporate employee (Crawford & Moses' Dig., § 714-8), *held* applicable to an action for injuries resulting from lead poisoning.

Appeal from Pulaski Circuit Court, Third Division; *Marvin Harris*, Judge; affirmed.

STATEMENT BY THE COURT.

On June 10, 1929, appellant, Fred Marshall Field, brought this suit in the Pulaski Circuit Court against the Gazette Publishing Company, appellee in this court, to compensate an alleged injury which occurred some time prior to the filing of the suit. Several amendments were filed to the complaint, but when boiled down to issuable facts they were in effect that defendant was negligent in furnishing plaintiff an unsafe and dangerous place in which to work. The case was tried to a jury and resulted in a verdict and judgment in favor of the defendant, the appellee here.

The uncontradicted facts upon which the case was submitted to the jury were, in effect, as follows:

Plaintiff began working for the defendant, Gazette Publishing Company, on January 4, 1924, as a linotype operator, and was at that time an experienced operator; he continued in this employment until April, 1926, at which time the appearance of the malady, from which he afterwards suffered, first appeared; appellant was first treated by physicians in Little Rock in April and May, 1926, and thereafter took a course of baths at Hot Springs and was under the treatment of physicians there. The malady from which plaintiff suffered persistently grew worse and worse, and prior to the filing of this suit he had undergone some five or six major operations to remove infected parts from his legs. It was plaintiff's contention in the lower court that he had contracted lead poisoning during his employment with the Gazette Publishing Company which was the proximate cause of his very serious injuries.

According to plaintiff's testimony, in the early part of May, 1926, a small sore developed on the top of the second toe of the right foot, whereupon he was examined by a physician, and his treatment continued until October, 1926, when it became necessary to amputate this toe; that the flaps on the amputation would not heal and the sore began spreading, and in November, 1926, the right foot was amputated just above the ankle. About the first of February, 1927, appellant had sufficiently recovered to resume his work with the appellee and continued in this employment until September, 1927, when he again laid off and underwent an operation on September 5, 1927, when he suffered the removal of his left foot. In December, 1927, he again resumed his labor with the defendant and continued in the employment until July, 1928, when the stump of the left leg began to necrose, when he discontinued his services and suffered another operation in July, 1930, for the removal of an additional portion of his leg.

The defendant, Gazette Publishing Company, defended the action on the theories that plaintiff was not suffering from lead poisoning contracted during the time

of his employment; secondly, that its printing plant in Little Rock where the plaintiff was employed possessed the most modern machinery and appliances known to the trade; third, that any injury, if any suffered by the plaintiff, occurred prior to June 10, 1926, and it therefore pleaded especially the three-year statute of limitations in bar of plaintiff's right to recover.

As we understand the record, plaintiff admits that, if the trial court gave correct declarations of law in reference to the statute of limitations, the case should be affirmed. On the question of the statute of limitations, the trial court instructed the jury as follows:

"If you find that the plaintiff contracted the malady of which he complains previous to June 10, 1926, then you will find for the defendant."

Any injury suffered by appellant by or through any negligent act of the appellee after June 10, 1926, was submitted to the jury for their consideration in the following instruction:

"Although you may believe that before June 10, 1926, the plaintiff was suffering from disease, still, if you find from the preponderance of the testimony that the plaintiff, while in the exercise of due care for his own safety, did after June 10, 1926, absorb lead poison from fumes or lead dust, negligently let into the place of work by the defendant, and that the absorption of said fumes or lead dust augmented the existing diseased condition of plaintiff and caused him to suffer pain or the loss of his foot, or portions of his legs, if any, then you will find for plaintiff and assess his damages at a sum commensurate with the pain and loss or losses, if any, thus occasioned, and provided, as said before, that he be not guilty of having assumed the risk of absorbing any such poison, is not estopped because of his own conduct and knowledge of the danger of absorbing such, and is not barred by the statute of limitations."

Horace Chamberlin, for appellant.

Cockrill & Armistead and *Owens & Ehrman,* for appellee.

JOHNSON, C. J., (after stating the facts). From the above statement of facts it will be seen that the trial

court made application of the three-year statute of limitations in bar of appellant's alleged right of recovery. (Crawford & Moses' Dig., § 7148).

It is conceded on behalf of appellant that, if the trial court was correct in instructing the jury that, "if you find that the plaintiff contracted the malady of which he complains previous to June 10, 1926, then you will find for the defendant," this case should be affirmed.

It is the contention of appellant that the three-year statute of limitations was tolled or held in abeyance until appellant, or his physicians, determined the specific malady from which he was suffering and that this information was not obtained until sometime in 1928.

Volume 17 R. C. L., entitled, "Limitation of Actions," § 30, page 765, in part, reads as follows:

"*Negligence Actions.* In applying these general principles in negligence actions it has been held that the statute as to actions for personal injuries begins to run at the time the injuries are sustained although their results may not be then fully developed."

In Wood on Limitation of Causes, vol. 2, page 844, the author announces the rule as follows:

"In actions from injuries resulting from the negligence or unskillfulness of another, the statute attaches and begins to run from the time when the injury was first inflicted, and not from the time when the full extent of the damages sustained has been ascertained. The gist of the action is the negligence or breach of duty and not the consequent injury resulting therefrom."

As we view the situation, the great weight of American authority is to the effect that the cause of action arises and the statute of limitations begins to run from the date of the negligent act and not from the time the full extent of the injury may be ascertained. *Cappusi* v. *Barone,* 266 Mass. 578, 165 N. E. 653.

The court has reached the conclusion that the lower court made correct application of the three-year statute of limitations and therefore did not commit error in giving the instructions complained of.

As we understand this record, appellant does not contend that the appellee fraudulently concealed any facts

with reference to his injuries, and he does not contend that the appellee had knowledge of facts or information other than those well known to appellant.

The trial court submitted to the jury the question as to whether or not appellant suffered any injury after June 10, 1926, by or through the negligent act of the appellee, and the jury, by its verdict, has found against him on this issue. The verdict of the jury necessarily found that appellant's injury was inflicted prior to June 10, 1926.

It is the conclusion of this court that the trial court was correct in declaring that appellant could not recover for any injury suffered prior to June 10, 1926, and that the jury has found from the testimony that he suffered no injury at the hands of the appellee after June 10, 1926.

Therefore the judgment should be affirmed.

BUTLER, J., disqualified and not participating.