SPADRA COAL COMPANY *v.* WHITE.

4-3260

Opinion delivered January 15, 1934.

1. MASTER AND SERVANT—SAFE PLACE TO WORK.—The law imposes on a master the duty, not to furnish an absolutely safe place to work, but to use ordinary care to do so.
2. TRIAL—CONFLICTING INSTRUCTIONS.—An erroneous instruction that a master is required to furnish a servant with a reasonably safe place to work was not cured by a correct instruction on the subject.
3. APPEAL AND ERROR—SUFFICIENCY OF GENERAL OBJECTION.—A general objection to an instruction that the master is bound to furnish the servant with a safe place to work is sufficient since the instruction was inherently erroneous.
4. APPEAL AND ERROR—NECESSITY OF OBJECTION TO INSTRUCTIONS.—Objections to instructions not saved in motion for new trial will not be noticed on appeal.

Appeal from Johnson Circuit Court; *A. B. Priddy,* Judge; reversed.

STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment for damages for personal injuries to appellee, an employee, in appellant's coal mine, sustained while he was engaged as helper in operating a coal-cutting machine.

The complaint alleges negligence of the defendant in the following particular: "Plaintiff states that his injuries were caused by and through the negligence and carelessness of the plaintiff, its servants, agents and employees in sending him into a room that was unsafe; that it was the duty of the plaintiff to have said room in a safe condition for the machine runner, and this plaintiff, and that he did not know, and by the exercise of ordinary care could not know, that said place was unsafe."

The answer denied all the allegations of negligence on the part of the defendant, and pleaded assumption of risk and contributory negligence in bar of plaintiff's cause of action.

It appears from the record that the rooms and walls thereof where the machine was to be operated were prepared by the miners and put in readiness for the machines

to cut the coal therein. Appellee was a helper on one of the coal-cutting machines and went to work at 4 o'clock in the afternoon of the day on which he was injured and worked until about 12 o'clock midnight, when he was hurt. It was his duty to help the operator of the machine in the various rooms that had been prepared for the coal-cutting machine and inspected by the pit boss and face boss to ascertain their readiness for the machine. Tom McKinney, the face boss, told the machine operator that all the rooms had been inspected and were ready to cut, and he was further advised by Dave McKinney, the pit boss, to cut all the rooms that were ready, that they had been passing up too many of them.

It was the duty of the miners to prepare the rooms for the machine, and the pit boss was the first boss to inspect them to see that they were ready and safe for the operation of the machine. The rooms found by the pit boss to be safe were marked on a bulletin board, and a list thereof given to the machine operator, who was expected to cut all the rooms marked up.

This particular room was marked safe, and the machine operator, under whom appellee worked, was given instructions to cut it. The machine operator and appellee, his helper, entered the room where the injury occurred, and, while making preparations for cutting said room, a large rock fell from the roof of the room of said mine, striking appellee, rendering him unconscious, fracturing his skull, injuring his left eye, causing it to become crossed, crushing his pelvis bone and inflicting various other cuts and bruises.

Appellee remained in the hospital two or three weeks, was confined to his home three months, and his injuries are permanent. He was 21 years of age at the time of the injury, strong and able to perform any kind of labor, and was earning $6 per day. He had worked in and about the mine 55 days before the injury.

The court instructed the jury, giving over appellant's objection appellee's requested instruction No. 5, which reads as follows: "You are instructed that a coal mining company is not an insurer of the safety of its employees, but it is obligated to furnish them a reason-

ably safe place to do their work, and, if they fail to do that, they are guilty of negligence, and if their negligence proximately causes the injury they are responsible in damages to the plaintiff, unless you find that plaintiff assumed the risk or was guilty of contributory negligence as defined in these instructions."

The jury returned a verdict in favor of appellee, and, from the judgment thereon, this appeal is prosecuted.

J. H. Brock and *Patterson & Patterson,* for appellant.

J. J. Montgomery and *Reynolds & Maze,* for appellee.

KIRBY, J., (after stating the facts). Appellant contends that the court erred in giving said requested instruction No. 5, set out above, and the contention must be sustained. This instruction requires a higher degree of responsibility from employers than the law warrants, placing on the master in effect the absolute duty to furnish a safe place for his servant to work, while under the law he is only bound to the exercise of ordinary care to provide a reasonably safe place in which to work. It was so held by this court in the case of *Fort Smith-Spadra Mining Company* v. *Shirley,* 178 Ark. 1007, 13 S. W. (2d) 14, wherein an instruction almost identical with the one here was condemned and held to be erroneous.

The error in giving appellee's instruction No. 5 was not cured by the giving of a correct instruction on the point for appellant, said correct instruction necessarily being in conflict with, and contradictory of, said erroneous instruction of appellee's. *St. Louis-San Francisco Ry. Co.* v. *Horn,* 168 Ark. 191, 269 S. W. 576; *Bullman Furniture Co.* v. *Schmuck,* 175 Ark. 422, 299 S. W. 738. "Separate and disconnected instructions, each complete and irreconcilable with each other, cannot be read together so as to modify each other and present a harmonious whole" *Temple Cotton Oil Co.* v. *Skinner,* 176 Ark. 17, 2 S. W. (2d) 676.

Neither was appellant required to make a specific objection to the instruction, as it was inherently erroneous; a general objection being sufficient to reach the defect. *First National Bank* v. *Peugh,* 160 Ark. 517, 255 S. W. 4.

There are some other objections to the instructions which we do not notice, since they do not appear to have been preserved in the motion for a new trial.

For the error committed in the giving of appellee's requested instruction No. 5, the judgment is reversed, and the cause remanded for a new trial.