

Hillsborough, }  
Nov. 4, 1908. }

## AHERN v. AMOSKEAG MANUFACTURING CO.

A master is under no obligation to protect his servants against a danger not reasonably to be anticipated, or to warn them of a peril concerning which their knowledge and appreciation are equal to his own.

CASE, for negligence. Trial by jury and verdict for the plaintiff. Transferred from the January term, 1908, of the superior court by *Plummer, J.*, on the defendants' exceptions to the denial of their motions for a nonsuit and the direction of a verdict in their favor.

The evidence tended to prove the following facts: The plaintiff was injured on December 26, 1905, in the defendants' finishing room where she was employed. She was intelligent, thirty-seven years old, and had been employed in the same room for eighteen months prior to the accident, during which period she had worked in the room 373 full days. About forty-five people worked in the room, which was 108 feet long and seventy feet wide. The room contained no machinery, but was equipped with rows of tables with passageways between them. Bolts of cloth were brought into the room on trucks and unloaded on the tables, where they were banded and papered, the latter operation consisting in wrapping them in paper to protect the cloth from dust. The cloth was then reloaded upon the trucks and removed. All the work was done in an orderly and systematic manner. There were places in the room to which the trucks were removed when empty. Trucks were used all about the room, but when empty they were not permitted to remain in the passageways. The rule required them to be removed to the place reserved for them, and it was not customary to leave them elsewhere. The room was lighted solely by incandescent electric lamps. On the day of the plaintiff's injury the light was turned on between two and three o'clock in the afternoon and was extinguished about twenty minutes before six o'clock by the melting of a fuse near the dynamo. The lamps on such a system are liable to be extinguished in this way, and these lights had failed twice before during the fall months. Such systems are in common use. The fuse is a safety device universally employed. When the location of a melted fuse is known, a new one can be substituted in a few minutes. The defendants had an available supply of fuses to replace any which might melt, and an employee whose duty it was to make the repair. There was no evidence of defect in the lighting system. The plaintiff was a

paperer. After the lights failed she remained at her table and papered a bolt of cloth. Thinking she would have time to go to the water closet, she started across the room for that purpose, and was proceeding through one of the passageways when she fell over a truck and received the injuries for which she seeks to recover.

*Branch & Branch and Michael F. Shea*, for the plaintiff.

*Taggart, Tuttle, Burroughs & Wyman*, for the defendants.

PARSONS, C. J. The defendants adopted for the illumination of the plaintiff's work-place a system of lighting commonly in use for such purposes so far as appears, perfect of its kind, but subject to occasional interruptions. They provided the proper means for restoring the action of the system when such interruptions should occur and a competent person to make the necessary repair. If it be conceded that it could be found it was the duty of the defendants to provide and have in operation a sufficient number of other systems of lighting, so that by no possibility could the work-place fail to be sufficiently lighted for a moment of time, the question would be whether the breach of this duty caused the injury. There was no machinery in the room. The plaintiff's work was the wrapping of bolts of cloth in paper, and there was light enough after the extinguishment of the artificial system for the plaintiff to continue at her work, which she did for a short time after the light failed. If the plaintiff had continued her work or remained in her place, no injury would have resulted. The sudden failure of light did not cause the injury.

For a proper purpose, the plaintiff left her place to cross the room, and was injured by falling over a temporary obstruction in her path, for the existence of which at that place it is conceded the defendants were not responsible. When she left her place the plaintiff knew of the absence of light; but she says that the defendants, having adopted a system of lighting which was liable to fail at times, should have promulgated a rule requiring the various employees to remain in their places in case the lights failed, and that such rule was required because of the danger that employees might be injured by others moving about. There was evidence of the absence of such a rule formally made, though whether at the time the employees were directed by the person in charge of the room to remain in their places was in dispute. The plaintiff testified that she did not hear such direction. Whether the other employees were directed to remain in their places, or not, they did not remove from them to the plaintiff's injury.

There was no evidence that the truck was put where the plaintiff collided with it after the lights went out, or that it was not at that point when darkness intervened where the rule invoked would have required it to remain. If a rule was required for the reason suggested, the plaintiff was not injured by the action of other employees. So far as she is concerned, the argument is that if such rule had been communicated to her she could and would have obeyed it, and remained in her place and avoided the injury. It is not contended that the purpose for which she was leaving the room was of such pressing necessity that she would have been justified in disregarding the rule. So far as the plaintiff is concerned, the only office of a rule would be to warn her of the danger that some of the trucks upon which the cloth was brought into the room and moved to and from the various tables might at the moment of darkness be in a passageway through which in the course of business they were moved.

If there are cases where the risk of injury is so concealed, or so serious, that warning is not a sufficient performance of the master's duty, and only a positive rule forbidding the dangerous course of conduct will excuse him, this case is not of that character. There is nothing unfamiliar about the inability to perceive in the dark obstructions to the course of one who walks without light. If there may be obstructions whose presence cannot be ascertained by the eye, due care requires the use of some other sense to detect them. The evidence is uncontradicted that the plaintiff, relying upon her familiarity with the room, was hurrying through the passage without care as to any temporary obstruction in her path, and was injured because of the unexpected presence of the truck. If it can reasonably be found that the plaintiff was without fault in not anticipating the possible presence of the truck in her path, can it be found that the defendants were in fault for not anticipating the same thing and warning the plaintiff of the danger? Whether they can, or cannot, depends upon the answer to the inquiry, whether upon the evidence it could reasonably be found that the defendants' knowledge of the existence of the danger causing the injury was, or ought to have been, superior to the plaintiff's. *Gaudette v. Railroad*, 74 N. H. 597; *Dube v. Gay*, 69 N. H. 670; *Collins v. Car Co.*, 68 N. H. 196.

It is conceded that the defendants supplied suitable instrumentalities—work-room, co-employees, and method of business. A place in the room was set apart where the trucks were kept when not in use. The plaintiff was an intelligent adult. During the preceding year and a half she had worked 373 full days in the room. She knew, as well as the defendants could have known, how the work was done. If it was probable a truck might be in

her path, she was as capable of judging the danger as any one could be. If the presence of the truck was so unusual, unexpected, and improbable that she was not in fault for not taking care to guard against it, the defendants cannot be found in fault for not warning her of the unusual, not-to-be-expected, and improbable danger. It cannot reasonably be found that of two persons of equal knowledge and of equal ability to appreciate and understand a danger, one is in fault for not apprehending the danger and the other is not. The defendants were under no obligation to warn the plaintiff of a danger they were not bound to anticipate. If they should have anticipated it, on the evidence so should the plaintiff, and her fault precludes a recovery. The fact that one person is injured and the other is not—that one is employer and the other employee—will not authorize the imposition of different rules of care as to matters of common knowledge about which each has equal information.

*Exception sustained: verdict and judgment for the defendants.*

PEASLEE, J., did not sit: the others concurred.

Hillsborough, }  
Nov. 4, 1908. }

LANE, *Adm'r*, v. MANCHESTER MILLS.

The fact that a servant was young and inexperienced may warrant a finding that he did not intelligently assume the risk of dangers to which he was exposed, especially when there is evidence that the peril was abnormal and not readily apparent to his understanding.

Where after the denial of a motion for a nonsuit in an action by a servant for personal injuries, the defendant introduces evidence upon the theory that the place was not an unsafe one for the plaintiff to work in, the jury may infer therefrom that the defendant did not inform the plaintiff of the danger.

An argument of counsel, that changes made in machinery subsequently to an accident are proof of its prior dangerous character, is merely the assertion of an erroneous rule of law; and in the absence of a special request for instruction as to the legal bearing of the evidence, it is presumed that the prejudicial effect of the statement was neutralized by proper charge of the court.

CASE, for negligently causing the death of the plaintiff's intestate. Trial by jury and verdict for the plaintiff. Transferred from the January term, 1908, of the superior court by *Plummer, J.*