MCGOWAN *v.* LA PLATA MINING & SMELTING CO.

Circuit Court, D. Colorado. January 11, 1882.

1. MASTER AND SERVANT.

A master is bound to inform his servant of facts within his knowledge affecting the safety of the servant in the service to be performed, when the matter is ignorant of them.

2. PRESUMPTIONS.

The law will not presume that men of ordinary intelligence know the explosive power of hot slag when thrown into water.

On Motion for a New Trial.

J. D. Murphy and *T. A. Green*, for plaintiff.

J. F. Frueauff, for defendant.

HALLETT, D. J. That a master is bound to inform his servant of facts within his knowledge affecting the safety of the servant in the service to be performed, when the latter is ignorant of such facts, seems to be conceded.

A lot-owner employed a carpenter to build for him, but did not inform the carpenter that his title to the lot was contested. The carpenter, pursuing his labor on the lot without suspicion of danger, was attacked by the parties claiming adversely to the employer, and severely injured. On this the employer was held liable in damages for his omission to notify his servant of the danger impending. *Baxter* v. *Roberts*, 44 Cal. 187.

A miner employed to sink a shaft was not informed of a crack or opening in the side of the shaft, of which his employer had knowledge. The shaft caved in and injured the miner, and his employer was held liable for his negligence in not giving notice of the crack in the shaft. *Strahlendorf* v. *Rosenthal*, 30 Wis. 675.

But it is contended that the rule cannot be applicable to the case at bar, as it relates only to *facts* withheld from the servant, and not to instruction in the principles of natural philosophy. The water in front of the furnace, and the act of overturning the hot slag, may 862 have come of the negligence of the plaintiff. Indeed, the evidence points to that conclusion, and the explosion which followed was the natural result, of which plaintiff should have been informed; or, at all events, defendant was under no duty to inform him. This is the argument against the verdict. And certainly, within limits, the law will assume that every one has knowledge of destructive forces in the world and the powers of the earth and air. Of such is the knowledge that comes to every man of sound mind, in the ordinary course of his life, that fire will burn; that water will drown; that one may fall off a precipice; and the like. Recently in this court it was said of one who mounted a push car on a railroad, and went down a steep grade, to his hurt, that, knowing the grade, it was his own folly not to heed the law of gravitation; because it is known to all men of sound mind and of all degrees of intelligence that wheeled vehicles go down hill with increasing speed if left to themselves. And in this case the jury was told that the plaintiff could not have recovered for a burn caused by spilling the slag on himself. But the explosive power of hot slag when cast into water is not within the intelligence of ordinary men. It is doubtful whether many people of education know the force and violence of such an explosion; and, if fully informed, how many of them, when put to service at a smelting furnace, would recall their learning without a suggestion from some source.

What the law will presume as to the knowledge of men in matters of this kind, may, in some instances, be a question of difficulty, and certainly it would not be easy to lay down a general rule on the subject. In the face of the plaintiff's testimony, however, to the effect that he had no knowledge or information of the danger to which he was exposed, it would be manifestly unjust in this instance to hold, as matter of law, that he had notice of it.

After all, it is not so much a question whether the party injured has knowledge of all the facts in his situation, but whether he is aware of the danger that threatens him. What avails it to him that all the facts are known if he cannot make the deduction that peril arises from the relation of the facts? The peril may be a fact in itself of which he should be informed. So, in *Coombs* v. *New Bedford Cordage Co.* 102 Mass. 573, the machinery which caused the injury was open to view, and probably it was seen by the party injured. But the danger of the position was not explained, as was necessary for the protection of one who had no knowledge of it. In another case in the same court the rule was applied to an adult person who 863 had full knowledge of all the facts out of which danger arose, but the danger itself was not pointed out to him. *O'Connor* v. *Adams*, 120 Mass. 427. The correct rule as to defendant's liability was announced at the trial, and as to the damages the amount is not so large as to challenge the attention of the court. To one in plaintiff's situation the sum is considerable, without doubt, but the injury was great and the suffering intense. It is impossible to say the jury acted from prejudice or passion, or that they passed the limits of fair discretion on the evidence.

The motion for a new trial will be denied.