GREENE v. WESTERN UNION TEL. CO.

(Circuit Court, D. Minnesota. March 11, 1892.)

MASTER AND SERVANT—ASSUMPTION OF RISKS—TELEGRAPH LINEMAN.

A "lineman" engaged, as one of a crew, in repairing a telegraph line, under the immediate charge of a foreman having power to hire and discharge the men, assumes the risk of the falling of an insufficiently guyed "gin pole" (one guyed for the purpose of setting other poles), which he ascends by order of the foreman.

This was an action by John C. Greene against the Western Union Telegraph Company to recover damages for personal injuries received while in its employment. Defendant moved the court to direct a verdict in its favor.

Erwin & Wellington, for plaintiff.

Ferguson & Kneeland, for defendant.

Before NELSON, District Judge, and a jury.

Plaintiff was in the employ of defendant as a lineman, and was one of a crew engaged in repairing its telegraph lines, under the immediate charge of a foreman, who had authority to hire and discharge men, and direct them where and how to work. He was ordered by the foreman to climb a certain "gin pole," which had been erected by other members of the crew; and while climbing said gin pole, pursuant to such order, the pole fell, apparently because not sufficiently guyed, and plaintiff was injured. This action is to recover damages sustained, claiming that the foreman was a vice principal, for whose negligence in the erection of said pole, and ordering plaintiff to climb the same, defendant is liable. Upon motion of defendant's attorneys for an instruction to the jury to return a verdict for defendant, the court, after hearing the respective counsel, granted the motion, as follows:

The Court: I think this was a risk that the plaintiff assumed when he was hired. It was a part of his duty. He was not only to help erect and climb poles and string wires, but to help put up those gin poles. While the business may have been a hazardous one, he assumed the ordinary risks incident thereto, and among them that of a pole not being properly guyed, owing to negligence on the part of his fellow workmen. Conceding that the foreman was a representative of the company, I do not think it has anything to do with the case. Plaintiff was not taken from any particular duty and put into one that he was not hired to do, which was extrahazardous, and unnecessarily exposed him to a danger which he did not contemplate by virtue of his employment; but he was hired to do just what he was ordered to do, and in so doing the accident happened. I think this man was injured by a risk which he assumed by virtue of his employment, and I instruct you that the defendant is entitled to your verdict.

WHITE et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. February 20, 1896.)

1. CUSTOMS DUTIES—APPEAL FROM BOARD OF APPRAISERS—CONFLICTING EVIDENCE.
   A decision by the board of general appraisers of a question of fact involved in great conflict of testimony, which is affirmed by the circuit court upon a like conflict of testimony, should not be disturbed by the circuit court of appeals.
2. SAME—MANUFACTURES OF JUTE AND FLAX—BURLAPS.
   Articles woven of flax, and of jute and flax, less than 60 inches wide, used chiefly for stiffening collars and fronts of coats and other garments, and as bands in trowsers, etc., the goods being known commercially as "canvas," "paddings," "ducks," "coatings," etc., were dutiable as manufactures of flax, under paragraph 371 of the act of 1890, and as manufactures of jute and flax, under paragraph 374, and not as burlaps over 60 inches wide, under paragraph 364. 65 Fed. 788, affirmed.

This is an appeal from a decision of the circuit court for the Southern district of New York affirming a decision of the board of general appraisers sustaining the collector's classification of certain merchandise as manufactures of flax, or of which flax is a component material, under paragraph 371 of the tariff act of October 1, 1890. The importers claim that the articles in question are paddings or canvas from 18 to 24 inches in width, and used chiefly in the clothing trade. A description of the goods, together with a statement of the evidence, will be found in the report of the decision of the circuit court. See 65 Fed. 788.

Stephen G. Clark, for appellants.

James T. Van Rensselaer, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The board of general appraisers had before it a number of importations of jute fabrics, claimed by the importers to be burlaps, and after taking a great deal of testimony as to the character, manufacture, and uses of the goods, and as to the meaning in commerce of the words "burlaps," "canvas," and "paddings," delivered a long and carefully considered decision. In that decision they held that the articles before them, represented by some 30 different samples, were burlaps, and dutiable as such under the act of 1890. An appeal being taken, that decision of the board of general appraisers was affirmed by the circuit court in the Southern district of New York (In Re White, 53 Fed. 787), the court holding that there being conflicting evidence before the board as to whether the articles were commercially burlaps or not, its decision on such evidence would not be disturbed. Subsequently, the goods now before the court, represented by four samples, came before the board upon appeal from the collector; the importers claiming that they, too, should be classified as burlaps. The board held that they were not burlaps, and referred for a statement of the facts involved to their earlier decision, returning in this case the evidence taken in the former one. Except for the fact that the