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CARTLEDGE AND OTHERS v. E. JOPLING & SONS, LTD.

Before Lord REID, Lord EVERSHED, Lord MORRIS OF BORTH-Y-GEST, Lord HODSON and Lord PEARCE

Limitation of action — Pneumoconiosis — Ventilation of factory—Breach of duty by fettlers' employers causing pneumoconiosis —Dispute as to when cause of action accrued — Onus of proof — Liability of employers.

Pneumoconiosis contracted by plaintiff fettlers employed in defendants' steel factory—Claim by fettlers, on Oct. 1, 1956, alleging that defendants were negligent and/or in breach of statutory duty as to ventilation of factory and/or provision of masks — Decision by Glyn-Jones, J., (A) (1) that, before 1939, there was ample ventilation; that during the war, until 1944, the ventilation was defective; that, from 1944 until the summer of 1950, the ventilation, although improved, was not adequate; that, after the summer of 1950, the ventilation was adequate except for a part of the fettling shop known as the lean-to; (2) that certain grinders, used in contravention of Regulations, contributed about 10 per cent. of noxious particles; (3) that sufficient micro-filter masks were available in August, 1950, to supply every man in fettling shop; and that defendants had complied with Sect. 47 of Factories Act, 1937; (B) (1) that at date of issue of writs (Oct. 1, 1956) each of plaintiffs was suffering from pneumoconiosis contracted in employment of defendants; (2) (i) that by far the greater factor in the progress of the disease was the "innocent" particles; (ii) that, until Oct. 1, 1950, contribution by "guilty" particles (i.e., resulting from factors for which defendants were responsible) was material; but, after 1950, was negligible; (C) that the cause of action arose more than six years (the appropriate limitation period) before the issue of the writs; that plaintiffs had failed to establish any cause of action in respect of defendants' breaches of duty committed after Oct. 1, 1950; that Limitation Act, 1939, applied and plaintiffs' claims were barred—Appeal by plaintiffs, and cross-appeal by defendants—Contention by plaintiffs that cause of action did not accrue until sufferer knew of the wrong or when some disability manifested itself.

————*Held*, by C.A. (SELLERS, HARMAN and PEARSON, L.JJ.), dismissing plaintiffs' appeal, [A] that the Judge's findings as to defendants' breaches of duty and causes of disease should not be disturbed; [C] that a cause of action accrued when the damage was done; that plaintiffs had suffered damage and the causes of action accrued before Oct. 1, 1950, in respect of defendants' wrong-doings before that date; and that plaintiffs' claims in respect of those wrong-doings were barred by Limitation Act, 1939.

————*Held*, by HARMAN, L.J., [B] that, where, as in this case, there were two contributory causes (for only one of which a defendant was responsible) a plaintiff should be entitled to recover the whole of his damage from the defendant; and that a defendant should only be liable for such part of the damage as accrued during the six years before the issue of the writ.

————Appeal by plaintiffs, contending (1) that injury should be taken as having occurred when man became aware of disease; (2) that, if a cause of action arose when unknown injury was done to lungs, a fresh cause of action arose when damage was discovered; and (3) that, in cases of insidious diseases, Court should import into words of Limitation Act, 1939, a gloss that cause of action

did not accrue or time did not begin to run until plaintiff knew or ought to have known that he had suffered injury.

———*Held*, by H.L. (Lord REID, Lord EVERSHED, Lord MORRIS OF BORTH-Y-GEST, Lord HODSON and Lord PEARCE), (1) that pneumoconiosis did not increase of itself; that, accordingly, whatever damage there was must have existed before October, 1950, when the cause of it ceased; and that, therefore, plaintiffs' contention (1) could not be accepted; (2) that only one action could be brought in respect of all damage from personal injury; that, in this case, the known pneumoconiosis was but an extension of the unknown; that the cause of action accrued when it reached a stage, whether then known or unknown, at which a Judge could properly give damages; that, on the findings of the trial Judge, that stage was reached before October, 1950; and that, therefore, plaintiffs' contention (2) failed; (3) that, from the wording of the Act, it was apparent that the Legislature considered that the right of action accrued in spite of a plaintiff's ignorance; that the Act was passed in the light of previous cases, and had the Legislature intended to secure a different result, it would have said so; and that, therefore, there was no ground for importing a gloss as contended for by plaintiffs in (3); *further* (4) that, when a defendant raised the Limitation Act, the initial onus of proof was on plaintiff to prove that his cause of action accrued within statutory period, but, when he had proved an accrual of damage within the period (e.g., diagnosis by X-ray of unsuspected pneumoconiosis), burden passed to defendant to show that apparent accrual of cause of action was misleading, and that, in reality, cause of action accrued at an earlier date—Plaintiffs' appeal dismissed.

The following cases were referred to:

A'Court v. Cross, (1825) 3 Bing. 329;
Archer v. Catton & Co., Ltd., [1954] 1 All E.R. 896;
Backhouse v. Bonomi and Wife, (1858) E. B. & E. 622; (1861) 9 H.L.C. 503;
Board of Trade v. Cayzer, Irvine & Co., Ltd., [1927] A.C. 610; (1927) 28 Ll.L.Rep. 113;
Bonnington Castings, Ltd. v. Wardlaw, [1956] A.C. 613;
Brundsden v. Humphrey, (1884) 14 Q.B.D. 141;
Coburn v. Colledge, [1897] 1 Q.B. 702;
Coots v. Southern Pacific Company, (1958) 322 P. 2d 460;
Darley Main Colliery Company v. Mitchell, (1886) 11 App. Cas. 127;
Davie v. New Merton Board Mills, Ltd., and Another, [1959] A.C. 604; [1959] 2 Lloyd's Rep. 587n;
Earl of Harrington v. Corporation of Derby, [1905] 1 Ch. 205;
Fair v. London and North-Western Railway Company, (1869) 21 L.T. 326;
Ferrer v. Beale, (1701) 1 Raym. (Ld.) 692;
Fetter v. Beal, (1701) 1 Raym. (Ld.) 339;
Fetter v. Beale (1701) 1 Salk. 11;
Fitter v. Veal, (1701) 12 Mod. 542;
Granger v. George, (1826) 5 B. & C. 149;
Harnett v. Fisher, (1926) 135 L.T. 724;
Haygarth v. Grayson, Rollo & Clover Docks, Ltd., [1951] 1 Lloyd's Rep. 49;
Howell v. Young, (1826) 5 B. & C. 259;
R. B. Policies at Lloyd's v. Butler, [1950] 1 K.B. 76; (1949) 82 Ll.L.Rep. 841;
Read v. Brown, (1888) 22 Q.B.D. 128;
Ricciuti v. Voltarc Tubes, Inc., (1960) 277 F. 2d 809;
Short v. M'Carthy, (1820) 3 B. & A. 626;
Thomson v. Lord Clanmorris, [1900] 1 Ch. 718;
Urie v. Thompson, Trustee, (1949) 337 U.S. 163;
West Leigh Colliery Company, Ltd. v. Tunnicliffe & Hampson, Ltd., [1908] A.C. 27;
Williams v. Milotin, (1957) 97 C.L.R. 465.

This was an appeal by seven employees and two widows of employees at a steel works from a decision of the Court of Appeal ([1961] 2 Lloyd's Rep. 62), upholding an order of Mr. Justice Glyn-Jones, dismissing their claims for damages, in consolidated actions, against their employers, E. Jopling & Sons, Ltd., of Pallion Steelworks, Sunderland.

The appellant plaintiffs were Mrs. Hannah Cartledge, widow and administratrix of the estate of Mr. Frederick Hector Cartledge, deceased, Mr. Arthur Ridsdale Hepple, Mr. James Jackson Urch, Mrs. Margaret Jane Patterson, widow and administratrix of the estate of Mr. William Wilfred Patterson, deceased, Mr. Sidney Carpenter, Mr. Edward William Shovelin, Mr. Ernest Paterson, Mr. Joseph Clementson and Mr. Charles South.

The men were employed as steel dressers or fettlers, and, as a result of contact over many years with silica dust,

contracted pneumoconiosis. The plaintiffs alleged negligence and breach of statutory duty by their employers.

At the trial before Mr. Justice Glyn-Jones, there were 10 consolidated actions. Nine of the writs were issued on Oct. 1, 1956, each on behalf of a different workman who at the date of the issue of the writ had been employed by the defendant company in one or more of the processes to which castings were subjected in the course of being cleaned or fettled. Some of the plaintiffs were still so employed at the date of the issue of the writ. Each claimed that he had contracted pneumoconiosis in the course of his employment as a steel dresser or cleaner, and each asserted that the company had been guilty of negligence at common law and of various breaches of statutory duty whereby his disease was caused. The plaintiff in the first action, Mr. Frederick Hector Cartledge, died some nine months after the issue of the writ, and his widow, Mrs. Hannah Cartledge, as administratrix of his estate, was joined as plaintiff to carry on the action for the benefit of his estate. The writ in the tenth action was issued by Mrs. Cartledge on Mar. 19, 1958, for the purpose of pursuing a claim under the Fatal Accidents Acts, 1846 to 1908, for the damage which she had suffered by her husband's death; and, with the consent of all parties, the action was ordered to be consolidated. In each of the first nine actions the defendant company contended that any cause of action which accrued before Oct. 1, 1950, was barred by Sect. 2 of the Limitation Act, 1939; and, at the trial, Mr. O'Connor, for the defendant company, disposed of any difficulty which might have arisen as to the effect of the plea of the Limitation Act, 1939, in the tenth action, by saying that the Court might deal with that case also on the footing that the period of limitation should run from the same day, which was six years before the issue of the writ by Mr. Cartledge.

Mr. Justice Glyn-Jones found that the disease had been caused by reason of the employers' breach of duty in respect of each of the claims, but held that the Limitation Act, 1939, applied, the cause of action having occurred more than six years before the issue of the writs. He gave judgment for the employers, but said that but for the pleading of the Limitation Act, the plaintiffs would have been successful in proving breach of duty. On that footing he made in each case an estimate of damages.

The Court of Appeal (Lord Justice Sellers, Lord Justice Harman and Lord Justice Pearson), dismissing the plaintiffs' appeal, held (i) that the Judge's findings as to the defendants' breaches of duty and causes of disease should not be disturbed; (ii) that a cause of action accrued when the damage was done; that the plaintiffs had suffered damage and the causes of action accrued before Oct. 1, 1950, in respect of the defendants' wrongdoings before that date; and that the plaintiffs' claims in respect of those wrongdoings were barred by the Limitation Act, 1939. Lord Justice Harman said that where, as in this case, there were two contributory causes (for only one of which a defendant was responsible) a plaintiff should be entitled to recover the whole of his damage from the defendant; and that a defendant should only be liable for such part of the damage as accrued during the six years before the issue of the writ.

The plaintiffs now appealed.

Mr. G. S. Waller, Q.C., and Mr. John Cobb, Q.C. (instructed by Messrs. Rowley Ashworth & Co.) appeared for the appellant plaintiffs; Mr. Patrick O'Connor, Q.C., and Mr. P. M. Taylor (instructed by Messrs. T. D. Jones & Co., agents for Messrs. Linsley & Mortimer, of Newcastle upon Tyne) represented the respondent defendants.

Judgment was reserved.

Thursday, Jan. 17, 1963

JUDGMENT

Lord REID: My Lords, I have had an opportunity of reading the speech which my noble and learned friend Lord Pearce is about to deliver and I agree with it. It is now too late for the Courts to question or modify the rule that a cause of action accrues as soon as a wrongful act has caused personal injury beyond what can be regarded as negligible, even when that injury is unknown to and cannot be discovered by the sufferer; and that further injury arising from the same act at a later date does not give rise to a further cause of action. It appears to me to be unreasonable and unjustifiable in principle that a