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R. M. Gray Jr.

court modified its former ruling, stating that it did so in order to conform to the rule of another state which had an identical statute. As a matter of fact the rule in that other state was, at that time diametrically opposite to the rule then being promulgated.[13]

The Supreme Court of North Carolina, in attempting to construe an ambiguous statute which merely sets up one scale of compensation for total disability in one section and another scale for specific injuries in another section of the law lays down the rule that the provisions of these sections are not mutually exclusive, and holds that recovery may be had consecutively under each of them.

In a recent case it has held that when an employee sustained a badly lacerated hand, necessitating immediate amputation of fingers, he was entitled to compensation for total disability during the healing period, and to full compensation for the loss of his fingers after the wounds had healed.[14] It is submitted that this is a sound result. Under any other interpretation of the law it is quite possible that in case of a long healing period after the extent of the specific injuries has been determined, the statutory period will have run before the injured man is able to return to work. In such case the employee would not only lose a good share of his earnings over a long period of time but would return to industry without a cent of indemnity for the injury that was permanent in character—a result that could hardly have been within the contemplation of the legislature in passing the act. There is no indication within the statute itself that it was intended that the two sections construed in the principal case should be mutually exclusive. The decision serves well what seems to be the underlying purpose of all Workmen's Compensation Laws.

ALLEN LANGSTON.

Workmen's Compensation—Recovery for Injuries Resulting from Horseplay

The North Carolina Workmen's Compensation Act[1] provides that compensable injuries are only those injuries "by accident arising out of *and* in the course of the employment." An employee was injured by the accidental discharge of a gun in the hands of a fellow-employee. The injured man took no part in the "horseplay," but was

[13] Gobble v. Clinch Valley Lumber Co., *supra* note 6.
[14] Rice v. Denny Roll and Panel Co., 199 N. C. 154, 154 S. E. 69 (1930).
[1] N. C. PUB. LAWS (1929) c. 120, §2 (f); N. C. ANN. CODE (Michie, Supp. 1929) §8081 (i).

at the time busily at work. *Held,* the injury arose out of the employment, and recovery allowed.[2]

When an employee at work sustains an injury due to some playful act of his fellow-employees, he is the victim of "horseplay."[3] "With practical uniformity, the courts hold, both under the English act and also under the various American statutes, that an injury occasioned by some sportive act of a fellow-workman does not arise out of the employment within the meaning of the governing statute, and consequently that its compensatory provisions are not thereby invoked."[4] Upon this reasoning, recovery has been denied in a great many instances.[5] In some cases denying a right to compensation, it has been regarded as immaterial that the injured party took no part in the horseplay.[6] But in a number of cases, the right to compensation has been sustained, where an employee who was injured through horseplay took no part in the proceedings, but was attending to his duties.[7] In a few instances, compensation has been allowed

[2] Chambers v. Oil Co., 199 N. C. 28, 153 S. E. 594 (1930).

[3] (1930) 18 CALIF. L. REV. 560.

[4] Re Loper, 64 Ind. App. 571, 116 N. E. 324 (1917).

[5] Coronado Beach Co. v. Pillsbury, 172 Cal. 682, 158 Pac. 212 (1916) (Employee known to co-workers to be very ticklish. Tickled in ribs by one of them, while he was carrying a bucket downstairs.); Great Western Power Co. v. Industrial Accident Commission, 187 Cal. 295, 201 Pac. 931 (1921) Employee while in performance of duties struck on leg by fellow-workmen who were wrestling.); Tarpper v. Weston-Mott Co., 200 Mich. 275, 166 N. W. 857 (1918) (Plaintiff while working was injured by air hose used by fellow-employee in spirit of play.); Federal Mut. Liability Ins. Co. v. Industrial Acc. Com. of California, 187 Cal. 284, 201 Pac. 920 (1921) (Employee sweeping floor struck in eye by grape thrown by fellow-employee.); Lee's Case, 240 Mass. 473, 134 N. E. 268 (1922) (Employee standing in line to punch time clock, pushed down by other employees indulging in horseplay.); Hulley v. Moosbrugger, 88 N. J. L. 161, 95 Atl. 1007 (1915) (Plaintiff engaged in duties fell while trying to avoid blow aimed at hat by fellow-employee); Fishering v. Pillsbury, 172 Cal. 690, 158 Pac. 215 (1916) (Toy factory employee posed before trick camera held by another employee and injured by the spring it ejected.); Pierce v. Boyer-Van Kuran Co., 99 Neb. 321, 156 N. W. 509 (1916); Payne, Dir. Gen. of Ry. v. Industrial Commission, 295 Ill. 388, 129 N. E. 122 (1920); Federal Rubber Mfg. Co. v. Havolic, 162 Wis. 301, 156 N. W. 143 (1916); Washburn's Case, 123 Me. 402, 123 Atl. 180 (1924); Hazelwood *et al.* v. Standard Sanitary Mfg. Co., 208 Ky. 618, 271 S. W. 687 (1925); Stuart v. Kansas City, 102 Kan. 307, 171 Pac. 913 (1918); Ward *et al.* v. Industrial Acc. Com. of California, 175 Cal. 42, 164 Pac. 1123 (1917).

[6] Hulley v. Moosbrugger, Pierce v. Boyer-Van Kuran Co., Stuart v. Kansas City, Tarpper v. Weston-Mott Co., all *supra* note 5.

[7] Chicago, I. and L. Ry. Co. v. Clendenin, 81 Ind. App. 323, 143 N. E. 303 (1924) (Car inspector injured by rock thrown by fellow-employee to frighten him when it rolled off car.); Newport Hydrocarbon Co. v. Ind. Acc. Com. of Wisconsin, 167 Wis. 630, 167 N. W. 749 (1918) (Fellow-workman jokingly connected electric wire to employee's machine.); Knopp v. American Car and Foundry Co., 186 Ill. App. 605 (1914) (Employee operating trip hammer injured while trying to remove can from under same, placed there by bystander.);

where the injured person took part in the horseplay, but was attending to his duties at the same time.[8] But this seems as far as any of the courts have gone in allowing recovery. In the cases of injuries occasioned through horseplay which was commonly carried on with the consent or at least the acquiescence of the employer, compensation has been allowed in some instances.[9]

As said in the instant case, it is practically inevitable that workmen, even of mature years, will indulge in a moment's diversion from work to joke with or play a prank on a fellow-workman. Such risks are incident to business and industry, and grow out of them. The common law put the burden of such risk upon the employee. But the compensation acts are designed for the very purpose of eliminating fault as a basis of liability,[10] and to insure the employee against the ordinary risks of the employment. The burden of proof is upon the employer to prove that the injury was not caused by risk of the employment. A very satisfactory rule, which should not tend to increase horseplay in industry, has been expressed by the Oklahoma Court. This rule denies compensation to the workman who is injured while indulging in horseplay, but grants it to the workman who

Leonbruno v. Champlain Silk Mills, 229 N. Y. 470, 128 N. E. 711 (1920) (Working employee struck in eye by apple thrown by another employee at a third.); Industrial Commission v. Weigandt, 102 Ohio St. 1, 130 N. E. 38 (1921) (Employee struck in eye by file which flew from its handle during a scuffle between other employees.); Boyce v. Burleigh, 112 Neb. 509, 199 N. W. 785 (1924) (Employer kept gun to shoot pigeons. Employee shot by accidental discharge of the weapon in the hands of a fellow-employee.); Pekin Cooperage Co. v. Industrial Board, 277 Ill. 53, 115 N. E. 128 (1917) (Employee standing in line to receive check thrown down and injured by horseplay on the part of other employees.); Hollenbach v. Hollenbach, 181 Ky. 262, 204 S. W. 152 (1918) (Employee killed by live wire run to washbasin for horseplay.); Markel v. Daniel Green Felt Co., 221 N. Y. 490, 116 N. E. 1060 (1917); Socha v. Packing Co., 105 Neb. 691, 181 N. W. 706 (1921); Willis v. State Industrial Commission, 78 Okla. 216, 190 Pac. 92 (1920); Keen v. New Amsterdam Casualty Co., 34 Ga. App. 257, 129 S. E. 174 (1925); Marland Refining Co. v. Colbaugh *et al.*, 110 Okla. 238, 238 Pac. 831 (1925); May Chevrolet Co. v. Armstrong, 82 Ind. App. 547, 146 N. E. 847 (1925).

[8] Kansas City Fibre Box Co. v. Connell, 5 Fed. (2nd) 398 (1925) (Employee operating machine, injured while resisting interference by fellow-workman, while continuing his duties.); Martin v. Georgia Casualty Co., 30 Ga. App. 712, 119 S. E. 337 (1923) (Convict guard on duty playfully toyed with another guard's pistol. Latter, while attempting to readjust same, accidentally shot first guard.); Stark v. State Ind. Commission, 103 Ore. 80, 204 Pac. 151 (1922).

[9] *In re* Loper, *supra* note 4; State v. District Court, 140 Minn. 75, 167 N. W. 283 (1918); White v. Kansas City Stockyards Co., 104 Kan. 90, 177 Pac. 522 (1919); Stuart v. Kansas City, *supra* note 5; Kokomo Steel and Wire Co. v. Irick, 80 Ind. App. 610, 141 N. E. 796 (1923); Glenn v. Reynold's Spring Co., 225 Mich. 693, 196 N. W. 617, 36 A. L. R. 1464 (1924).

[10] Chambers v. Oil Co., *supra* note 2.

is injured by the sportive acts of fellow-workmen to which he is not a party.[11] "Indeed, if a workman be denied compensation solely on the ground that he was injured by the 'sportive act' of a fellow-workman, it would seem to be clear that the old 'fellow-servant' doctrine is appearing in a brand-new suit of legal clothes and parading through the law under the brand-new name of 'horseplay.' "[12] The doctrine of horseplay which excludes an injured workman from compensation, although he is not at fault, seems harsh. The view of the North Carolina Court in the instant case seems in accordance with the purpose for which the act was passed.

R. M. GRAY, JR.

OPEN COURT

TAX REFORM IN NORTH CAROLINA

There has been organized in the State of North Carolina, The North Carolina Tax Relief Association, and also County Tax Relief Associations in approximately sixty of the counties of this State, for the purpose of presenting a definite program of Tax Reform to the 1931 session of the General Assembly.

The following resolutions of the North Carolina Tax Relief Association indicate clearly, in a general way, some of the tax reform measures which will certainly be placed before the members of the coming General Assembly for their consideration.

"1. That this convention demands that the State shall take over the support of the public schools of the State and relieve the Counties and School Districts of any part of the cost of maintaining the public schools for the full period required by the Constitution.

"2. That the State Highway Commission shall be required to take over and maintain the public roads and bridges of the public highways of the State from the funds collected by them as rapidly as the revenues will permit.

"5. That there shall be adopted a complete reform in the method of appraisal and valuation of tangible property of the State."

Should the State take over the financing of the public schools and public roads, the taxes on real properties in the several counties will be reduced on an average of approximately *seventy-five cents* on the *one hundred dollars* valuation. This should be of material advantage

[11] Willis v. State Industrial Commission, *supra* note 7.
[12] Chambers v. Oil Co., *supra* note 2.