A PRELIMINARY ANALYSIS OF THE LEGAL SYSTEM OF EMPLOYERS LIABILITY IN THE STATE OF NEW YORK

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649268351

A preliminary analysis of the legal system of employers liability in the state of New York by Joseph Potter Cotton

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

JOSEPH POTTER COTTON

A PRELIMINARY ANALYSIS OF THE LEGAL SYSTEM OF EMPLOYERS LIABILITY IN THE STATE OF NEW YORK

Trieste

A PRELIMINARY ANALYSIS

OF THE

LEGAL SYSTEM OF EMPLOYERS LIABILITY IN THE STATE OF NEW YORK.

F. P. COTTON, Jr.
165 Broadway,
New York City.

September 1, 1909.

A PRELIMINARY ANALYSIS OF THE LEGAL SYSTEM OF EMPLOYERS LIABILITY IN THE STATE OF NEW YORK.

The legal relations of employer and employee in New York are governed by the common law as modified by statute. To any understanding of these relations it is necessary to examine the common law system of liability—since the New York statutes have not changed the fundamental principles of the common law in this regard or greatly altered it.

At common law the employers duty is to use reasonable care for the safety of his employees while they are performing his work. That duty includes:

(*a*) the duty to provide a reasonably safe place to work,

(*b*) the duty to provide reasonably safe tools and appliances,

(*c*) the duty of being reasonably careful in hiring fellow servants fit for the work they are to do, and

(*d*) the duty of providing suitable rules for carrying on the work.

By the common law, if an employee be injured by reason of the failure of the employer in any of these duties he may recover from the employer full compensation for his injury, the amount to be determined by jury trial in the usual legal proceedings. That common law right is based on the employer's negligence or fault. That is the fundamental principle of the

common law system which no New York statute has ever changed.

But at common law the employer has certain defenses to an action at law brought by an injured employee which are very important.

(*a*) *Contributory negligence.* If the employee who is injured has failed to use reasonable care himself and that neglect has contributed to his injury he can recover nothing from the employer, and the employee must show his freedom from negligence to make out his case. This defense of contributory negligence has always been a part of the common law of this state and of the English common law.

(*b*) *Fellow Servant Rule.* If the employee be injured by the negligence of a fellow servant that fact will bar his recovery against the employer at common law. This fellow servant rule is a special rule applying only to employees, which was incorporated into the common law by two decisions about 1840, one by Lord ABINGER in England, one by Chief Justice SHAW in Massachusetts, and was certainly adopted on insufficient reasoning. It had never previously existed at common law. The fellow servant rule has been limited by decisions in this state in two important particulars:

1. The rule will not avail the employer as a defense if the negligence of the fellow servant was a failure of one of the duties (previously described) which by law rest on the employer himself; *i. e.*, such as the duty to provide a safe place to work.

2. A superintendent in general charge of work and so acting is not a fellow servant within the meaning of the fellow servant rule, but the *alter ego* of the employer, and for his neglect the employer must respond in damages.

(*c*) *Assumption of Risk.* The third important common law defense which the employer has is the doctrine of assumption of risk. This doctrine—

vague and shadowy, and constantly shading into contributory negligence—may be stated as follows: an employee entering employment is held to assume the ordinary and obvious risks incident to the employment, and if he is injured thereby he cannot recover from his employer; for the ordinary risk of the trade, the accidents which are nobody's fault, the employer does not pay. But assumption of risk covers not only such risks as could not be avoided by care of the employer, but also, if the employee knows of dangerous possibilities of his work (though such danger arises by neglect or fault of the employer), and, appreciating the danger, continues in such work, he cannot recover if injured by such risk. The decisions of our Courts as to the intricacies and refinements of the doctrine have been most unsatisfactory. The doctrine has grown into the common law imperceptibly in the last seventy-five years by a series of judicial decisions.

The foregoing analysis gives a general outline of the system of liability at common law. It has, however, been changed by legislation in this state in two ways, by statutes which place new duties on the employer and by statutes increasing the rights of the workmen. It is necessary to examine the general effect of these statutes.

Statutes of New York Which Increase the Common Law Duties of Employers.

The statutes considered under this head do not, it must be remembered, change the common law principles of liability or the methods of getting compensation, but merely add to the common law duties to use due care other duties which tend to preserve the health or safety of the workers.

The most important of these statutes in New York is the Labor Law (in effect 1897). That law, as amended, covers, among others, the following points:

(1) *Hours of labor.* Eight hours is declared a days labor in this state, but the parties may contract for longer hours save on state or municipal labor. Ten consecutive hours of labor is made the legal limit on street and elevated railroads in cities of the first and second class, and in brickyards owned by corporations. On steam railroads (with certain exceptions) eight hours is made the legal limit for railroad signalmen and telegraphers.

(2) *Scaffoldings.* Scaffoldings must be safely constructed, and under certain conditions must have safety rails and are subject to supervision of the State Commissioner of Labor.

(3) *Building Construction.* Building construction shall be carried on (save where floors are brick or fireproof) so that iron work shall not be projected more than three stories above completed floorings. Elevator shafts shall be enclosed. Lumber shall not be hoisted outside of buildings.

(4) *Factories. Employment of Minors and Women.* No child under 14 shall work in factories and none between 14 and 16 save on employment certificate. No minor under 18 shall work before 6 A. M. or after 9 P. M. and no minor or woman more than 10 hours a day or 60 hours a week.

(5) *Factories, Elevators, Stairs, etc.* Elevators and stairs are to be guarded under supervision of the Commissioner of Labor.

(6) *Factory Machinery, Equipment, etc.* Under direction of the Commissioner of Labor factories shall provide belt shifters, loose pulleys for machinery, machinery guards, dust fans, fire escapes, proper ventilation and water closets.

(7) *Reports of Factory Accidents.* Reports of accidents must be furnished to the Commissioner of Labor within 48 hours.

(8) *Boiler Inspection.* Semi-yearly boiler inspections are required.

(9) *Polishing Trades.* Factories may not employ women and children in polishing or buffing.

(10) *Tenement Factories.* All tenement factories must be licensed to insure sanitary and safe conditions of labor.

(11) *Bakeries.* A ten hour day is made the legal limit of a day's work, and certain requirements of cleanliness and sanitation are provided under state supervision.

(12) *Mines.* The Commissioner of Labor is empowered to make provision for health and safety of employees in mines—requiring proper outlets, timbering and ventilation. The use of machinery and explosives is under the supervision of the Commissioner and an immediate report of accidents is required.

(13) *Women and Children.* The employment of women and children in mercantile establishments, hours of labor and sanitary conditions are regulated by law under supervision of Commissioner of Labor.

In addition to the labor law certain other laws (*cf.* Railroad Law, Public Service Commission's Law) con-

tain other provisions relating to safety devices and prevention of accidents in particular occupations which are under the supervision of other public authorities than the Commissioner of Labor.

The Labor Law—in the points thus outlined—has obviously placed upon the employers in many trades stringent duties as to the conduct of their work, intended to prevent accident and ill-health. These statutory requirements are enforced by the Commissioner of Labor and his bureau, and by a system of statutory penalties (by fines, and, in some cases, by criminal proceedings). The efficiency of that system has not as yet been investigated, but at the moment it is sufficient to note that, in this respect, New York statutes have materially increased the duties of the employer to prevent accidents, and have gone as far in this regard as other manufacturing states. And the Labor Law has another important effect on the question of accident compensation. For instance if an employee is injured by failure to guard an elevator shaft which the Labor Law requires to be guarded then, in that employee's action against the employer, the employer cannot raise the point that he was not negligent in failing to guard the shaft. By the statute it became his legal duty to guard the shaft and for an accident due to his failure to obey the law he must answer in damages. Nor in such a case can the employer defeat the suit of the injured employee by showing that the shaft was unguarded by reason of the neglect of a fellow employee, for as pointed out, the fellow servant rule does not apply where the duty rests on the employer himself.