

FRANK CERF, PLAINTIFF AND APPELLANT, VS. LUCAS MEDEL, DEFENDANT AND APPELLEE.

G.R. No. 10351. December 24, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila sustaining a demurrer to the complaint and, on plaintiff's failure to amend, dismissing the action.

The complaint alleges in part:

"1. That on the first day of April, 1914, the plaintiff was the owner of a certain Henderson four cylinder motorcycle, which he was then legally using and riding along a public highway in the district of Malate, city of Manila, and that defendant was then owner and possessed of a certain automobile bearing No. 2621, license No. 1822, of the city of Manila, which automobile was then operated and employed by the defendant as a public vehicle carrying passengers for hire, and was then in charge of and under the direction of defendant's servant.

"2. That the defendant by his said servant then and there so carelessly, negligently and improperly drove and managed said automobile, that by reason of his negligence said automobile struck plaintiff's said motorcycle, and thereby broke and damaged said motorcycle, to plaintiff's damage, in the sum of seven hundred pesos.

"3. That plaintiff was at the time of said accident lawfully upon said highway, and that he used all due and proper care to avoid said collision, and that said collision and the injuries caused thereby were the result solely of defendant's negligence and without any fault on the part of plaintiff."

The defendant demurred to the complaint on the ground (1) that the court had no jurisdiction of the person of the defendant in that "the complaint contains no allegation as to the residence of the defendant, and there is no allegation showing that the defendant is within the jurisdiction of this court' and (2) "that the complaint does not state facts sufficient to constitute a cause of action' in that it appears on the face of the complaint that the automobile, at the time of the occurrence set forth in the complaint, was in the charge of and under the direction of the defendant's servant and that for that reason, as a matter of law, the defendant was not liable under the decision of this court in the case of *Johnson vs. David* (5 Phil. Rep., 663).

Touching the first ground on which the demurrer is based, it is clear that it is not sustainable. Where the jurisdiction of a court is limited and is made to depend on the residence of the defendant, a demurrer based on the failure of the plaintiff to allege defendant's residence will be sustained. Where, however, as in the case before us, the jurisdiction of the court is general and is not made to depend on the residence of the parties, the failure to allege the residence of the defendant is not jurisdictional and cannot be laid as the basis of a demurrer. (*Manila Railroad Co. vs. Adorney-General*, 20 Phil. Rep., 523.)

Dealing with the second ground on which the demurrer is based, we also find it untenable. The Civil Code, in dealing with the liability of a master for the negligent acts of his servant, makes a distinction between private

individuals and public enterprises. (Art. 1903, Civil Code.)

That article, together with the preceding article, is as follows:

"ART, 1902. A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

"ART. 1903. The obligation imposed by the preceding article is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

"The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.

"Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.

"Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or on account of their duties.

"The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

"Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

"The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage."

These two articles are found under chapter 2, title 16, of the Civil Code, dealing with "obligations which arise from fault or negligence;" and set out the cases, generally speaking, in which the master is liable for the acts of his servant. That chapter also contains articles providing for liability for negligent acts of servants in special cases, among them 1905, which provides that "the possessor of an animal, or the one who uses it, is liable for the damages it may cause, even when said animal escapes from him or strays/" but that this liability shall cease "in case the damage should arise from force majeure or from the fault of the person who may have suffered it;" 1906 which declares that "the owner of a game preserve shall be liable for damages caused by the game to neighboring estates, should he not have done what may have been necessary to avoid the increase of the same or should he have hindered the efforts of the owners of said estates to hunt;" 1907 which provides for the liability of the owner of a building "for damages which may result from the collapse of the whole or a part thereof, if it should occur through the absence of necessary repairs;" 1908 which states that "owners shall be liable for damages caused by the explosion of machines which may not have been cared for with due diligence, and for kindling of explosive substances, which may not have been placed in a safe and proper place;" "by excessive smoke, which may be noxious to persons or property;" "by the fall of trees, located in places of transit, when not caused by force majeure;" "by the emanations of sewers or deposits of infectious matters, when constructed without precautions proper for the place where they are located;" and "the head of a family who dwells in a house, or in a part of the same, is liable for the damages caused by the things which may be thrown or which may fall therefrom."

These are the only cases under the Civil Code in which damages may be recovered from the master for the negligent acts of his servant. As is seen from a reading of article 1903, a person being driven about by his servant is not liable for injuries done to others by the servant's negligent acts except under certain circumstances. (Chapman vs. Underwood, 27 Phil. Rep., 374; Johnson vs. David, supra.) On the other hand, the master is liable for the negligent acts of his servant where he is the owner or director of a business or enterprise and the negligent

acts are committed while the servant is engaged in his master's employment as such owner.

The distinction made in the Code has been observed, as would naturally be expected, by the decisions of this court. In the case of *Johnson vs. David* (5 Phil. Rep., 663) we held that the defendant was not liable for the acts of his servant in negligently driving a horse and carriage against plaintiff, who was at the time riding a bicycle in the streets of Manila, throwing him to the ground and injuring him and his bicycle. It appeared in that case that the vehicle was owned by the defendant, that it was being driven by the defendant's coachman on the private affairs of the owner, that it was not a public conveyance driven for hire or as a part of a business or enterprise. In that case we said:

"It would seem, from an examination of these various provisions, that the obligation to respond for the negligent acts of another was limited to the particular cases mentioned; in other words, we are of the opinion and so hold that it was the intention of the legislature in enacting said chapter 2 to enumerate all of the persons for whose negligent acts third persons are responsible. Article 1902 provides when a person himself is liable for negligence. Articles 1903, 1904, 1905, 1906, 1907, 1908, and 1910 provide when a person shall be liable for injuries caused, not by his own negligence but by the negligence of other persons or things.

* * * * *

These sections do not include a liability on the part of the plaintiff for injuries resulting from acts of negligence such as are complained of in the present case * * *."

The case of *Chapman vs. Underwood* (27 Phil. Rep., 374) was similar in its facts, and the principles governing it, to that of *Johnson vs. David*. In that case the plaintiff, while about to board a street car, was struck by an automobile which, at the time, was being driven on the wrong side of the street. The automobile was in charge of the servant of the owner, who was present in the automobile at the time the accident occurred. The automobile was not a part of defendant's business nor was it being used at the time as a part or adjunct of any business or enterprise owned or conducted by him. Although the act of the driver was negligent, and was so held by this court, it was, nevertheless, held that the master was not liable for the results of the act. We said:

"The defendant, however, is not responsible for the negligence of his driver, under the facts and circumstances of this case. As we have said in the case of *Johnson vs. David* (5 Phil. Rep., 663), the driver does not fall within the list of persons in article 1903 of the Civil Code for whose acts the defendant would be responsible.

"Although in the *David* case the owner of the vehicle was not present at the time the alleged negligent acts were committed by the driver, the same rule applies where the owner is present, unless the negligent acts of the driver are continued for such a length of time as to give the owner a reasonable opportunity to observe them and to direct his driver to desist therefrom. An owner who sits in his automobile, or other vehicle, and permits his driver to continue in a violation of the law by the performance of negligent acts, after he has had a reasonable opportunity to observe them and to direct that the driver desist, becomes himself responsible for such acts. The owner of an automobile who permits his chauffeur to drive up the Escolta, for example, at a speed of 60 miles an hour, without any effort to stop him, although he has had a reasonable opportunity to do so, becomes himself responsible, both criminally and civilly, for the results produced by the acts of his chauffeur. On the other hand, if the driver, by a sudden act of negligence, and without the owner having a reasonable opportunity to prevent the act or its continuance, injures a person or violates the criminal law, the owner of the automobile, although present therein at the time the act was committed, is not responsible, either civilly or criminally, therefor. The act complained of must be continued in the presence of the owner for such a length of time that the owner, by his acquiescence, makes his driver's act his own.

"In the case before us it does not appear from the record that, from the time the automobile took the wrong side of the road to the commission of the injury, sufficient time intervened to afford the defendant an opportunity to correct the act of his driver. Instead, it appears with fair clearness that the interval between the turning out to

meet and pass the street car and the happening of the accident was so short as not to be sufficient to charge defendant with the negligence of the driver."

The case of *Bahia vs. Litonjua and Leynes* (30 Phil. Rep.. 624) was a case of different character. There an automobile was being operated by the defendant as a public vehicle carrying passengers from Balayan to Tuy (Province of Batangas), and return for hire. On one of the trips, the machine, by reason of a defect in the steering gear, refused to respond to the guidance of the driver and, as a result, a child was run over and killed. That case, as is seen at a glance, is quite different from the case of *Chapman vs. Underwood*, in that the operation of the automobile was a business or enterprise on which the defendant had entered for gain; and this is the particular distinction which is made in article 1903 of the Civil Code which holds the master responsible for the negligent acts of the servant when the master is the owner "of an establishment or enterprise," and the acts complained of are committed within the scope of the servant's employment in such business. In the case under discussion we held that, in addition to the requirement to select and use proper and safe machines, it was the duty of a person or corporation operating automobiles for hire to exercise ordinary care and diligence in the selection of the drivers of his or its automobiles and in supervision over them while in his or its employ, including the promulgation of proper rules and regulations and the formulation and due publication of proper instructions for their guidance in cases where such rules, regulations and instructions are necessary. Discussing article 1903 of the Civil Code, which, as we have seen, not only establishes liability in cases of negligence but also provides when that liability ceases, the court in that case said:"

From this article two things are apparent: (1) That when an injury is caused by the negligence of a servant or employee there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee or in supervision over him after the selection, or both; and (2) that that presumption is *juris tantum* and not *juris et de jure*, and, consequently may be rebutted. It follows necessarily that if the employer shows to the satisfaction of the court that in selection and supervision he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved from liability.

"This theory bases the responsibility of the master ultimately on his own negligence and not on that of his servant. This is the notable peculiarity of the Spanish law of negligence. It is, of course, in striking contrast to the American doctrine that, in relations with strangers, the negligence of the servant is conclusively the negligence of the master.

"In the case before us the death of the child caused by a defect in the steering gear of the automobile immediately raised the presumption that Leynes was negligent in selecting a defective automobile or in his failure to maintain it in good condition after selection, and the burden of proof was on him to show that he had exercised the care of a good father of a family.

" In that case we further said: "From the commencement of the use of the machine until the accident occurred sufficient time had not elapsed to require an examination of the machine by the defendant as a part of his duty of inspection and supervision. While it does not appear that the defendant formulated rules and regulation for the guidance of the drivers and gave them proper instructions, designed for the protection of the public and the passengers, the evidence shows, as we have seen, that the death of the child was not caused by a failure to promulgate rules and regulations. It was caused by a defect in the machine as to which the defendant has shown himself free from responsibility."

Of the same character is the case of *Yamada vs. Manila Railroad Co. and Bachrach Garage & Taxicab Co.* (R. G. No. 10073, p. 8, ante). In that case an automobile negligently driven was struck by a railroad train on a crossing and several of the occupants were more or less injured. The automobile was owned and operated at the time by the Bachrach Garage & Taxicab Co., a corporation engaged in the business of letting automobiles for hire and

furnishing drivers therefor. The automobile involved in the case was, at the time of the accident, being driven by a servant of the defendant corporation on its business. The driver of the automobile was held by the trial court, as well as by the Supreme Court, to have been grossly negligent in his manner of approaching and passing over the railroad crossing where the accident occurred; and the taxicab company was held responsible for the damages caused by that negligence on the theory that the corporation had not overcome the presumption of negligence which arises under article 1903 of the Civil Code when the servant of the owner of a business or enterprise, acting within the scope of his employment, injures a third person by his negligent acts. In that case we said:

"We, therefore, see that the taxicab company did not perform its full duty when it furnished a safe and proper car and a driver with a long and satisfactory record. It failed to comply with one of the essential requirements of the law of negligence in this jurisdiction,—that of supervision and instruction, including the promulgation of proper rules and regulations and the formulation and publication of proper instructions for their guidance in cases where such rules and regulations and instructions are necessary. To repeat, it was found by the trial court, and that finding is fully sustained by the record, that it was the custom of the driver who operated the machine on the night of the accident, to approach and pass over railroad crossings without adequate precautions, and that such custom was known to and had been sanctioned by the officials of the taxicab company, the president of the company testifying that none of its drivers, especially the one who operated the car on the night of the accident, were accustomed to stop or even reduce speed or take any other precaution in approaching and passing over railroad crossings, no matter of what nature, unless they heard 'the signal of a car.' He testified that he himself had ridden behind several of his drivers, among them the one who handled the automobile on the night of the accident, and that it was their settled practice, to which he made no objection and as to which he gave no instructions, to approach and pass over railroad crossings without any effort to ascertain the proximity of a train. These facts and circumstances bring the case within the doctrine enunciated in the *Litonjua* case to which reference has already been made and, at the same time, remove it from that class of cases governed by *Johnson vs. David*."

We concluded the discussion with the following statement: "Not only has the defendant taxicab company failed to rebut the presumption of negligence arising from the carelessness of its servant, but it has, in effect, made those negligent acts its own by having observed and known the custom of its drivers without disapproving it and without issuing instructions designed to supersede it."

From the foregoing discussion it is clear that the allegation of the complaint that the automobile, at the time of the injuries complained of, was operated and employed by the defendant as a public vehicle carrying passengers for hire and was then in charge of and under the direction of defendant's servant is, with the other allegations of the complaint, sufficient to remove the cause from the influence of *Johnson vs. David* and *Chapman vs. Underwood* and place it within that of *Bahia vs. Litonjua* and *Leynes*, and *Yamada vs. Manila Railroad Co.* and *Bachrach Garage & Taxicab Co.*

The judgment dismissing the complaint is, therefore, reversed, and the cause remanded for further proceedings. So ordered.

Arellano, C.J., Torres, Carson, and Araullo, JJ., concur.

Johnson and Trent, JJ., did not sit in the case.

Judgment reversed; case remanded.

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