

FELIX NATE, PLAINTIFF AND APPELLEE, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 11730. March 24, 1917

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of First Instance in favor of the plaintiff for the sum of P120, the value of a caraballa killed by the defendant's train.

On March 22, 1913, a locomotive inspector who was in charge of the company's machine shops at San Fabian, Pangasinan, after repairing a locomotive, took it out on the track to test it, and while out in the country, the animal, having strayed on the track, was killed. The negligence relied upon and which forms the basis of the judgment under review is the omission of the railroad company to fence its tracks on both sides. The trial court held that:

"It being an indisputable fact that the said law (of November 23, 1877) is in force in the Philippine Islands, the obligation of the railroad company to inclose its tracks is absolute; that being so, the company is obliged to repair the damage caused by its negligence in failing to comply with the said obligation (Civil Code, articles 1902 and 1903)."

The history of the Spanish legislation concerning the operation of railways in the Philippine Islands may be briefly stated as follows: From 1850 to 1875 a number of laws were put in force in Spain, among those being that of June 3, 1855. The provisions of this law were temporarily extended to the Philippine Islands by royal order dated August 6, 1875, wherein it was provided that:

"First. Until regulations and instructions are issued for the execution of this decree and for the operation and good order of the railways in the Philippines, similar provisions in force in the Peninsula shall be provisionally observed as far as compatible and not inconsistent with the special legislation of said Islands.

"Second. General provisions which may be issued regarding railways in the Philippines shall be binding upon all concessionaries."

There was promulgated on November 23, 1877, a law essentially the same as that of June 3, 1855, and on September 8, 1878, regulations for the execution of the law of 1877 were enacted. This law and these regulations continued in force in the Philippine Islands until the relinquishment of the Spanish sovereignty. Upon American occupation of the Philippine Islands, General Merritt issued on August 13, 1898, a proclamation wherein it was "ordered that the municipal laws, such as affect private rights of persons and property, regulate local institutions and provide for the punishment of crime, shall be considered as continuing in force." Among the laws which were thus continued in force is that of November 23, 1877.

Articles 2, 3, 8, and 14 of the law of 1877 read as follows:

"Art. 2. Along the whole distance of the railroad neither the entry nor the grazing of cattle shall be allowed. If

the railroad has to cross a highway where cattle pass, the trains shall always cross without changing or stopping their progress, and in the manner prescribed as a general rule for that crossing.

"Art. 3. In the future, in a zone of 3 meters on each side of the railroad, only fencing walls shall be constructed, but no facades having openings or projections. This regulation does not refer to buildings constructed before the promulgation of this law or the construction of a railroad, which may be repaired and maintained in the condition in which they are, but cannot be rebuilt. If it be necessary to demolish or change a building for the benefit of a railroad, it shall be done according to the provisions of article 11 of this law.

"Art. 8. The railroads throughout their length shall be fenced on both sides.—The Secretary of the Interior, after hearing the company, in case there be one, shall determine for each line the manner in which and time when the fencing is to be made. When railroads cross other roads on the same grade, gates shall be constructed which shall be closed and only opened when vehicles and cattle cross as provided for in the regulations.

"Art. 14. The concessioners or lessees of the railroads shall be responsible to the state and to individuals for damages caused by the managers, directors, and other employees in the service and operation of the railroad and telegraph line. If the railroad is operated by the State, the State shall be subject to the same responsibility in regard to individuals. The provisions of this article are to be understood as being without prejudice to the personal responsibility which managers, administrators, engineers, and all classes of employees may have incurred, and the powers of discretion which in cases of strikes, disturbances of public order, and conspiracies, appertain to the Government."

Article 8 of the regulations of 1878 for the execution of the law of 1877 reads:

"The owners or drivers of vehicles, horses, or cattle, may not, even for the purpose of entering or leaving adjoining lands, cross railroads, except at the points fixed for that purpose. This prohibition also includes muleteers, drivers of carriages, shepherds or cattlemen who permit their horses or cattle to roam at large and who graze them on lands adjoining the railroads."

The concession or franchise for the construction and operation of the Manila & Dagupan Railway was approved by royal order of April 9, 1885. Paragraph 33 of the specifications which formed a part of the concession or franchise provided that the grantee would be bound by the provisions of the royal order of August 6, 1875, and by the regulations and instructions in force in the Peninsula regarding the management and service of railways and by the general provisions for the regulation of railways in the Philippine Islands. (Opinion of the Attorney-General of August 30, 1909.)

It is contended on behalf of the railroad company, first, that the law of 1877 and the regulations relating to the enforcement thereof have been repealed, in so far as the question under consideration is concerned, by Acts Nos. 1459 and 1510, effective April 1, 1906, and July 7, 1906, respectively; and second, if the Spanish law and the regulations have not been repealed, they do not require the company to fence its tracks throughout their length unless ordered to do so, after hearing, by competent authority.

Act No. 1459, known as The Corporation Law, is an Act providing, as its title indicates, for the formation and organization of corporations, defining their powers, fixing the duties of directors and other officers thereof, declaring the rights and liabilities of shareholders and members, prescribing the conditions under which corporations may transact business, and repealing certain articles of the Code of Commerce and all laws or parts of laws in conflict or inconsistent with the Act. Sections 81 to 102, inclusive, are the provisions relating to railroad corporations. At points where the railroad may cross public highways, the corporation, to avoid accidents, is required to put up the necessary notices apprising the public of danger from passing trains; and at crossings of peculiar danger a gate shall be placed or a guard stationed by the corporation when the authorities shall so direct (sec. 83). Where the line is not fenced in, or where there are no gates or flagmen at street crossings, the speed of

trains running through the streets of cities and of centers of population of municipalities shall not exceed 15 kilometers per hour. Municipal councils of municipalities in which such streets are situated may prescribe a maximum speed of less than 15 kilometers per hour, subject to appeal to the Director of Public Works (sec. 93). By section 191 certain provisions of the Code of Commerce were repealed and all other Acts or parts of Acts in conflict or inconsistent with the Act were also repealed, except certain specific and definite Acts and provisions mentioned therein. Sections 83 and 93 of Act No. 1459 were reenacted as sections 2 and 5 of Act No. 2100, effective January 22, 1912, with immaterial changes in the first and fixing the speed of trains within the limits of any city or other centers of population of any municipality at not to exceed 32 kilometers per hour, with authority in municipal councils to prescribe a maximum speed of less than 32 kilometers per hour, subject to appeal to the Supervising Railway Expert. Act No. 1510 grants to the Manila Railroad Company (a New Jersey corporation) a concession for railways lines on the Island of Luzon. The concession included the then existing lines of the Manila Railroad Company (limited) The Manila & Dagupan Railway Company) and branches therefrom as follows: "* * * (e) A concession for a line from a point near Dagupan to Camp One in the direction of Baguio." (It was on this line where the accident in question occurred.) The Act provides that "the grantee shall have the right to construct and maintain for the operation of said railways any and all tracks (single, double or more), bridges, viaducts, culverts, fences, and other structures; * * *." By section 7 all Acts or parts of Acts inconsistent with the provisions of Act No. 1510 were repealed.

As late as September, 1910, this court held that the penal provisions of the law of November 23, 1877, were in force (U. S. vs. Calaguas, 14 Phil. Rep., 739). And we may assume, without necessarily deciding, that those provisions of the same law relating to the fencing in of railroads are still in force. The question then arises: When does the obligation on the part of the railroad company to fence its tracks become binding so that the non performance of it would constitute negligence and confer upon the plaintiff a right of action for damages for the loss of his caraballa, if, in fact, he was himself free from fault? The first sentence in article 8 of the law of November 23, 1877, declares that "railroad tracks shall be inclosed on both sides along the whole length." The article then provides that the Ministerio de Fomento (Department of Public Works, Education, Agriculture and Manufactures in Spain), after hearing the railroad management, shall determine for each line the manner and the time in which the fencing shall be made. It is here clearly indicated that the same kind of fencing may not be required, throughout the whole length of the lines. Special circumstances, configuration of the ground, the density of the population, etc., may be taken into consideration in determining the kind of fences which are necessary in particular localities in order to furnish adequate protection to the public and to the railroads. Again, the time in which the fencing shall be made is another factor to be considered. It may be, and it often happens, that when railroads build through uninhabited and undeveloped countries, the safety of the general public does not require that they be fenced in at the commencement of their operation. These questions must be determined by someone, and the statute expressly provides that they shall be determined by, let us say, the Secretary of the Interior (strictly speaking, not a correct translation), after hearing the railroad management. Until that official thus acts, there can be no obligation on the part of the railroads to fence their tracks throughout their entire length. This being true, the question will always be, in actions for damages, whether, under the circumstances of each particular case, the railroad has been constructed or operated with reasonable precautions for the safety of others and their property. In the instant case, there being no obligation on the part of the railroad company to fence in its tracks at the place where the accident occurred, the proper authorities not having so directed after hearing, and it clearly appearing that the accident could not have been avoided for the reason, as the witnesses state, that the animal strayed on the track just about 5 brazas in front of the locomotive, thereby making it impossible for the engineer to have stopped the train before going that distance, the plaintiff cannot recover for the loss sustained.

In its decision of April 15, 1905, the supreme court of Spain had these facts before it: During the latter part of the

year 1904, one Juan Fuentes permitted six of his cattle to roam at large in the locality crossed by the railroad. One strayed on the track and was killed, delaying the train some ten minutes. Subsequent thereto the railroad company caused to be filed against Fuentes a criminal complaint charging him with having violated certain provisions of the law of November 23, 1877. The acquittal of the defendant by the municipal court was sustained by the district court. The case having been taken up on writ of error, the supreme court held that:

"Considering that the fact found in the judgment appealed from, to wit, that the complainant's cow ventured upon the track of the Sanlucar de Barrameda Railroad and was run over and killed by a train, constitutes the misdemeanor provided for by art. 2 of the law of November 23, 1877, which prohibits the entry and grazing of cattle on railroad tracks, acts penalized in art. 24 thereof; and

"Considering that the question of, whether or not the track was fenced in is not to be considered in applying the foregoing provisions to the case at bar, because the obligation imposed on the railroad companies by article 8 of the said law is not, according to this article, enforceable until the proper resolution is passed in each case; and even though it were, it would not relieve a person from responsibility who, through carelessness or neglect, allowed cattle to enter upon another person's property, thereby inviting dangers which the law tried to forestall in order to insure the safety of the lives and interests of such persons as use this method of transportation, as held by this court in similar cases; and

"Considering, in view of the foregoing reasons, that the error of law assigned to the judgment appealed from was incurred and that the legal infractions that serve as grounds for the appeal were committed;

"We therefore adjudge and decree that the appeal taken by the Compañia de Ferrocarriles Andaluces from the said judgment should be and is hereby sustained and the said judgment reversed and annulled. The costs of the appeal shall be de officio. The amount of the deposit made by the procurador shall be returned to him, and this decision and the order to be rendered immediately hereafter shall be communicated to the trial court of the district of Santiago de Jerez de la Frontera for the purposes required by law."

For the foregoing reasons the judgment is reversed, without costs. So ordered.

Torres, Carson, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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