

JOSE CANGCO, PLAINTIFF AND APPELLANT, VS. MANILA RAILROAD CO., DEFENDANT AND APPELLEE.*G. R. No. 12191. October 14, 1918*

Ponente: FISHER, J.

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At the time of the occurrence which gave rise to this litigation the plaintiff, Jose Cangco, was in the employment of the Manila Railroad Company in the capacity of clerk, with a monthly wage of P25. He lived in the pueblo of San Mateo, in the province of Rizal, which is located upon the line of the defendant railroad company; and in coming daily by train to the company's office in the city of Manila where he worked, he used a pass, supplied by the company, which entitled him to ride upon the company's trains free of charge. Upon the occasion in question, January 20, 1915, the plaintiff was returning home by rail from his daily labors; and as the train drew up to the station in San Mateo the plaintiff arose from his seat in the second class-car where he was riding and, making his exit through the door, took his position upon the steps of the coach, seizing the upright guardrail with his right hand for support.

On the side of the train where passengers alight at the San Mateo station there is a cement platform which begins to rise with a moderate gradient some distance away from the company's office and extends along in front of said office for a distance sufficient to cover the length of several coaches. As the train slowed down another passenger, named Emilio Zuñiga, also an employee of the railroad company, got off the same car, alighting safely at the point where the platform begins to rise from the level of the ground. When the train had proceeded a little farther the plaintiff Jose Cangco stepped off also, but one or both of his feet came in contact with a sack of watermelons with the result that his feet slipped from under him and he fell violently on the platform. His body at once rolled from the platform and was drawn under the moving car, where his right arm was badly crushed and lacerated. It appears that after the plaintiff alighted from the train the car moved forward possibly six meters before it came to a full stop.

The accident occurred between 7 and 8 o'clock on a dark night, and as the railroad station was lighted dimly by a single light located some distance away, objects on the platform where the accident occurred were difficult to discern, especially to a person emerging from a lighted car.

The explanation of the presence of a sack of melons on the platform where the plaintiff alighted is found in the fact that it was the customary season for harvesting these melons and a large lot had been brought to the station for shipment to the market. They were contained in numerous tow sacks which had been piled on the platform in a row one upon another. The testimony shows that this row of sacks was so placed that there was a space of only about two feet between the sacks of melons and the edge of the platform; and it is clear that the fall of the plaintiff was due to the fact that his foot alighted upon one of these melons at the moment he stepped upon the platform. His statement that he failed to see these objects in the darkness is readily to be credited.

The plaintiff was drawn from under the car in an unconscious condition, and it appeared that the injuries which he

had received were very serious. He was therefore brought at once to a certain hospital in the city of Manila where an examination was made and his arm was amputated. The result of this operation was unsatisfactory, and the plaintiff was then carried to another hospital where a second operation was performed and the member was again amputated higher up near the shoulder. It appears in evidence that the plaintiff expended the sum of P790.25 in the form of medical and surgical fees and for other expenses in connection with the process of his curation.

Upon August 31, 1915, he instituted this proceeding in the Court of First Instance of the city of Manila to recover damages of the defendant company, founding his action upon the negligence of the servants and employees of the defendant in placing the sacks of melons upon the platform and in leaving them so placed as to be a menace to the security of passenger alighting from the company's trains. At the hearing in the Court of First Instance, his Honor, the trial judge, found the facts substantially as above stated, and drew therefrom his conclusion to the effect that, although negligence was attributable to the defendant by reason of the fact that the sacks of melons were so placed as to obstruct passengers passing to and from the cars, nevertheless, the plaintiff himself had failed to use due caution in alighting from the coach and was therefore precluded from recovering. Judgment was accordingly entered in favor of the defendant company, and the plaintiff appealed.

It can not be doubted that the employees of the railroad company were guilty of negligence in piling these sacks on the platform in the manner above stated; that their presence caused the plaintiff to fall as he alighted from the train; and that they therefore constituted an effective legal cause of the injuries sustained by the plaintiff. It necessarily follows that the defendant company is liable for the damage thereby occasioned unless recovery is barred by the plaintiff's own contributory negligence. In resolving this problem it is necessary that each of these conceptions of liability, to-wit, the primary responsibility of the defendant company and the contributory negligence of the plaintiff should be separately examined.

It is important to note that the foundation of the legal liability of the defendant is the contract of carriage, and that the obligation to respond for the damage which plaintiff has suffered arises, if at all, from the breach of that contract by reason of the failure of defendant to exercise due care in its performance. That is to say, its liability is direct and immediate, differing essentially, in the legal viewpoint from that presumptive responsibility for the negligence of its servants, imposed by article 1903 of the Civil Code, which can be rebutted by proof of the exercise of due care in their selection and supervision. Article 1903 of the Civil Code is not applicable to obligations arising *ex contractu*, but only to extra-contractual obligations—or to use the technical form of expression, that article relates only to *culpa aquiliana* and not to *culpa contractual*.

Manresa (vol. 8, p. 67) in his commentaries upon articles 1103 and 1104 of the Civil Code, clearly points out this distinction, which was also recognized by this Court in its decision in the case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (7 Phil. Rep., 359). In commenting upon article 1093 (vol. 8, p. 30) Manresa clearly points out the difference between "culpa, substantive and independent, which of itself constitutes the source of an obligation between persons not formerly connected by any legal tie" and culpa considered as an "accident in the performance of an obligation already existing * * *."

In the *Rakes* case (*supra*) the decision of this court was made to rest squarely upon the proposition that article 1903 of the Civil Code is not applicable to acts of negligence which constitute the breach of a contract.

Upon this point the Court said:

"The acts to which these articles [1902 and 1903 of the Civil Code] are applicable are understood to be those not growing out of pre-existing duties of the parties to one another. But where relations already formed give rise to duties, whether springing from contract or quasi-contract, then breaches of those duties are subject to articles 1101, 1103 and 1104 of the same code." (*Rakes vs. Atlantic, Gulf and Pacific Co.*, 7 Phil. Rep., 359 at p. 365.)

This distinction is of the utmost importance. The liability, which, under the Spanish law, is, in certain cases imposed upon employers with respect to damages occasioned by the negligence of their employees to persons to whom they are not bound by contract, is not based, as in the English Common Law, upon the principle of respondeat superior—if it were, the master would be liable in every case and unconditionally—but upon the principle announced in article 1902 of the Civil Code, which imposes upon all persons who by their fault or negligence, do injury to another, the obligation of making good the damage caused. One who places a powerful automobile in the hands of a servant whom he knows to be ignorant of the method of managing such a vehicle, is himself guilty of an act of negligence which makes him liable for all the consequences of his imprudence. The obligation to make good the damage arises at the very instant that the unskillful servant, while acting within the scope of his employment, causes the injury. The liability of the master is personal and direct. But, if the master has not been guilty of any negligence whatever in the selection and direction of the servant, he is not liable for the acts of the latter, whether done within the scope of his employment or not, if the damage done by the servant does not amount to a breach of the contract between the master and the person injured.

It is not accurate to say that proof of diligence and care in the selection and control of the servant relieves the master from liability for the latter's acts—on the contrary, that proof shows that the responsibility has never existed. As Manresa says (vol. 8, p. 68) the liability arising from extra-contractual culpa is always based upon a voluntary act or omission which, without willful intent, but by mere negligence or inattention, has caused damage to another. A master who exercises all possible care in the selection of his servant, taking into consideration the qualifications they should possess for the discharge of the duties which it is his purpose to confide to them, and directs them with equal diligence, thereby performs his duty to third persons to whom he is bound by no contractual ties, and he incurs no liability whatever if, by reason of the negligence of his servants, even within the scope of their employment, such third persons suffer damage. True it is that under article 1903 of the Civil Code the law creates a presumption that he has been negligent in the selection or direction of his servant, but the presumption is rebuttable and yields to proof of due care and diligence in this respect.

The supreme court of Porto Rico, in interpreting identical provisions, as found in the Porto Rican Civil Code, has held that these articles are applicable to cases of extra-contractual culpa exclusively. (*Carmona vs. Cuesta*, 20 Porto Rico Reports, 215.)

This distinction was again made patent by this Court in its decision in the case of *Bahia vs. Litonjua and Leynes*, (30 Phil. Rep., 624), which was an action brought upon the theory of the extra-contractual liability of the defendant to respond for the damage caused by the carelessness of his employee while acting within the scope of his employment. The Court, after citing the last paragraph of article 1903 of the Civil Code, 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."

The opinion there expressed by this Court, to the effect that in case of extra-contractual culpa based upon negligence, it is necessary that there shall have been some fault attributable to the defendant personally, and that the last paragraph of article 1903 merely establishes a rebuttable presumption, is in complete accord with the authoritative opinion of Manresa, who says (vol. 12, p. 611) that the liability created by article 1903 is imposed by reason of the breach of the duties inherent in the special relations of authority or superiority existing between the person called upon to repair the damage and the one who, by his act or omission, was the cause of it.

On the other hand, the liability of masters and employers for the negligent acts or omissions of their servants or agents, when such acts or omissions cause damages which amount to the breach of a contract, is not based upon a mere presumption of the master's negligence in their selection or control, and proof of exercise of the utmost diligence and care in this regard does not relieve the master of his liability for the breach of his contract.

Every legal obligation must of necessity be extra-contractual or contractual. Extra-contractual obligation has its source in the breach or omission of those mutual duties which civilized society imposes upon its members, or which arise from these relations, other than contractual, of certain members of society to others, generally embraced in the concept of status. The legal rights of each member of society constitute the measure of the corresponding legal duties, mainly negative in character, which the existence of those rights imposes upon all other members of society. The breach of these general duties whether due to willful intent or to mere inattention, if productive of injury, gives rise to an obligation to indemnify the injured party. The fundamental distinction between obligations of this character and those which arise from contract, rests upon the fact that in cases of non-contractual obligation it is the wrongful or negligent act or omission itself which creates the *vinculum juris*, whereas in contractual relations the *vinculum* exists independently of the breach of the voluntary duty assumed by the parties when entering into the contractual relation.

With respect to extra-contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect—and our Legislature has so elected—to limit such liability to cases in which the person upon whom such an obligation is imposed is morally culpable or, on the contrary, for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them. The legislature which adopted our Civil Code has elected to limit extra-contractual liability—with certain well-defined exceptions—to cases in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agents or servants, or in the control of persons who, by reason of their status, occupy a position of dependency with respect to the person made liable for their conduct.

The position of a natural or juridical person who has undertaken by contract to render service to another, is wholly different from that to which article 1903 relates. When the source of the obligation upon which plaintiff's cause of action depends is a negligent act or omission, the burden of proof rests upon plaintiff to prove the negligence—if he does not his action fails. But when the facts averred show a contractual undertaking by defendant for the benefit of plaintiff, and it is alleged that plaintiff has failed or refused to perform the contract, it is not necessary for plaintiff to specify in his pleadings whether the breach of the contract is due to wilful fault or to negligence on the part of the defendant, or of his servants or agents. Proof of the contract and of its nonperformance is sufficient *prima facie* to warrant a recovery.

"As a general rule * * * it is logical that in case of extra-contractual culpa, a suing creditor should assume the burden of proof of its existence, as the only fact upon which his action is based; while on the contrary, in a case of negligence which presupposes the existence of a contractual obligation, if the creditor shows that it exists and that

it has been broken, it is not necessary for him to prove the negligence." (Manresa, vol. 8, p. 71 [1907 ed., p. 76].)

As it is not necessary for the plaintiff in an action for the breach of a contract to show that the breach was due to the negligent conduct of defendant or of his servants, even though such be in fact the actual cause of the breach, it is obvious that proof on the part of defendant that the negligence or omission of his servants or agents caused the breach of the contract would not constitute a defense to the action. If the negligence of servants or agents could be invoked as a means of discharging the liability arising from contract, the anomalous result would be that persons acting through the medium of agents or servants in the performance of their contracts, would be in a better position than those acting in person. If one delivers a valuable watch to a watchmaker who contracts to repair it, and the bailee, by a personal negligent act causes its destruction, he is unquestionably liable. Would it be logical to free him from his liability for the breach of his contract, which involves the duty to exercise due care in the preservation of the watch, if he shows that it was his servant whose negligence caused the injury? If such a theory could be accepted, juridical persons would enjoy practically complete immunity from damages arising from the breach of their contracts if caused by negligent acts of omission or commission on the part of their servants, as such juridical persons can of necessity only act through agents or servants, and it would no doubt be true in most instances that reasonable care had been taken in the selection and direction of such servants. If one delivers securities to a banking corporation as collateral, and they are lost by reason of the negligence of some clerk employed by the bank, would it be just and reasonable to permit the bank to relieve itself of liability for the breach of its contract to return the collateral upon the payment of the debt by proving that due care had been exercised in the selection and direction of the clerk?

This distinction between culpa aquiliana, as the source of an obligation, and culpa contractual as a mere incident to the performance of a contract has frequently been recognized by the supreme court of Spain. (Sentencias of June 27, 1894; November 20, 1896; and December 13, 1896.) In the decision of November 20, 1896, it appeared that plaintiff's action arose ex contractu, but that defendant sought to avail himself of the provisions of article 1902 of the Civil Code as a defense. The Spanish Supreme Court rejected defendant's contention, saying:

"These are not cases of injury caused, without any pre-existing obligation, by fault or negligence, such as those to which article 1902 of the Civil Code relates, but of damages caused by the defendant's failure to carry out the undertakings imposed by the contracts * * *."

A brief review of the earlier decision of this court involving the liability of employers for damage done by the negligent acts of their servants will show that in no case has the court ever decided that the negligence of the defendant's servants [has] been held to constitute a defense to an action for damages for breach of contract.

In the case of Johnson vs. David (5 Phil. Rep., 663), the court held that the owner of a carriage was not liable for the damages caused by the negligence of his driver. In that case the court commented on the fact that no evidence had been adduced in the trial court that the defendant had been negligent in the employment of the driver, or that he had any knowledge of his lack of skill or carefulness.

In the case of Baer Senior & Co.'s Successors vs. Compañia Maritima (6 Phil. Rep., 215), the plaintiff sued the defendant for damages caused by the loss of a barge belonging to plaintiff which was allowed to get adrift by the negligence of defendant's servants in the course of the performance of a contract of towage. The court held, citing Manresa (vol. 8, pp. 29, 69) that if the "obligation of the defendant grew out of a contract made between it and the plaintiff * * * we do not think that the provisions of articles 1902 and 1903 are applicable to the case."

In the case of Chapman vs. Underwood (27 Phil. Rep., 374), plaintiff sued the defendant to recover damages for personal injuries caused by the negligence of defendant's chauffeur while driving defendant's automobile in which defendant was riding at the time. The court found that the damages were caused by the negligence of the driver of

the automobile, but held that the master was not liable, although he was present at the time, saying:

"* * * 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 the driver to desist therefrom. * * * 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 the driver's acts his own."

In the case of *Yamada vs. Manila Railroad Co. and Bachrach Garage & Taxicab Co.* (33 Phil. Rep., 8), it is true that the court rested its conclusion as to the liability of the defendant upon article 1903, although the facts disclosed that the injury complained of by plaintiff constituted a breach of the duty to him arising out of the contract of transportation. The express ground of the decision in this case was that article 1903, in dealing with the liability of a master for the negligent acts of his servants "makes the distinction between private individuals and public enterprise;" that as to the latter the law creates a rebuttable presumption of negligence in the selection or direction of the servants; and that in the particular case the presumption of negligence had not been overcome.

It is evident, therefore, that in its decision in the *Yamada* case, the court treated plaintiff's action as though founded in tort rather than as based upon the breach of the contract of carriage, and an examination of the pleadings and of the briefs shows that the questions of law were in fact discussed upon this theory. Viewed from the standpoint of the defendant the practical result must have been the same in any event. The proof disclosed beyond doubt that the defendant's servant was grossly negligent and that his negligence was the proximate cause of plaintiff's injury. It also affirmatively appeared that defendant had been guilty of negligence in its failure to exercise proper discretion in the direction of the servant. Defendant was, therefore, liable for the injury suffered by plaintiff, whether the breach of the duty were to be regarded as constituting *culpa aquilina* or *culpa contractual*. As *Manresa* points out (vol. 8, pp. 29 and 69) whether negligence occurs as an incident in the course of the performance of a contractual undertaking or is itself the source of an extra-contractual obligation, its essential characteristics are identical. There is always an act or omission productive of damage due to carelessness or inattention on the part of the defendant. Consequently, when the court holds that a defendant is liable in damages for having failed to exercise due care, either directly, or in failing to exercise proper care in the selection and direction of his servants, the practical result is identical in either case. Therefore, it follows that it is not to be inferred, because the court held in the *Yamada* case that the defendant was liable for the damages negligently caused by its servant to a person to whom it was bound by contract, and made reference to the fact that the defendant was negligent in the selection and control of its servants, that in such a case the court would have held that it would have been a good defense to the action, if presented squarely upon the theory of the breach of the contract, for defendant to have proved that it did in fact exercise care in the selection and control of the servant.

The true explanation of such cases is to be found by directing the attention to the relative spheres of contractual and extra-contractual obligations. The field of non-contractual obligation is much more broader than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. These two fields, figuratively speaking, concentric; that is to say, the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties.

The contract of defendant to transport plaintiff carried with it, by implication, the duty to carry him in safety and to provide safe means of entering and leaving its trains (Civil Code, article 1258). That duty, being contractual, was direct and immediate, and its non-performance could not be excused by proof that the fault was morally imputable to defendant's servants.

The railroad company's defense involves the assumption that even granting that the negligent conduct of its servants in placing an obstruction upon the platform was a breach of its contractual obligation to maintain safe means of approaching and leaving its trains, the direct and proximate cause of the injury suffered by plaintiff was his own contributory negligence in failing to wait until the train had come to a complete stop before alighting. Under the doctrine of comparative negligence announced in the *Rakes* case (*supra*), if the accident was caused by plaintiff's own negligence, no liability is imposed upon defendant, whereas if the accident was caused by defendant's negligence and plaintiff's negligence merely contributed to his injury, the damages should be apportioned. It is, therefore, important to ascertain if defendant was in fact guilty of negligence.

It may be admitted that had plaintiff waited until the train had come to a full stop before alighting, the particular injury suffered by him could not have occurred. Defendant contends, and cites many authorities in support of the contention, that it is negligence per se for a passenger to alight from a moving train. We are not disposed to subscribe to this doctrine in its absolute form. We are of the opinion that this proposition is too broadly stated and is at variance with the experience of every-day life. In this particular instance, that the train was barely moving when plaintiff alighted is shown conclusively by the fact that it came to stop within six meters from the place where he stepped from it. Thousands of persons alight from trains under these conditions every day of the year, and sustain no injury where the company has kept its platform free from dangerous obstructions. There is no reason to believe that plaintiff would have suffered any injury whatever in alighting as he did had it not been for defendant's negligent failure to perform its duty to provide a safe alighting place.

We are of the opinion that the correct doctrine relating to this subject is that expressed in Thompson's work on Negligence (vol. 3, sec. 3010) as follows:

"The test by which to determine whether the passenger has been guilty of negligence in attempting to alight from a moving railway train, is that of ordinary or reasonable care. It is to be considered whether an ordinarily prudent person, of the age, sex and condition of the passenger, would have acted as the passenger acted under the circumstances disclosed by the evidence. This care has been defined to be, not the care which may or should be used by the prudent man generally, but the care which a man of ordinary prudence would use under similar circumstances, to avoid injury." (Thompson, Commentaries on Negligence, vol. 3, sec. 3010.)

Or, if we prefer to adopt the mode of exposition used by this court in *Picart vs. Smith* (37 Phil. Rep., 809), we may say that the test is this; Was there anything in the circumstances surrounding the plaintiff at the time he alighted from the train which would have admonished a person of average prudence that to get off the train under the conditions then existing was dangerous? If so, the plaintiff should have desisted from alighting; and his failure so to desist was contributory negligence.

As the case now before us presents itself, the only fact from which a conclusion can be drawn to the effect that the plaintiff was guilty of contributory negligence is that he stepped off the car without being able to discern clearly the condition of the platform and while the train was yet slowly moving. In considering the situation thus presented, it should not be overlooked that the plaintiff was, as we find, ignorant of the fact that the obstruction which was caused by the sacks of melons piled on the platform existed; and as the defendant was bound by reason of its duty as a public carrier to afford to its passengers facilities for safe egress from its trains, the plaintiff had a right to assume, in the absence of some circumstance to warn him to the contrary, that the platform was clear. The place, as we have already stated, was dark, or dimly lighted, and this also is proof of a failure upon the part of the defendant in the performance of a duty owing by it to the plaintiff; for if it were by any possibility conceded that it had a right to pile these sacks in the path of alighting passengers, the placing of them in that position gave rise to the duty to light the premises adequately so that their presence would be revealed.

As pertinent to the question of contributory negligence on the part of the plaintiff in this case the following circumstances are to be noted: The company's platform was constructed upon a level higher than that of the roadbed and the surrounding ground. The distance from the steps of the car to the spot where the alighting passenger would place his feet on the platform was thus reduced, thereby decreasing the risk incident to stepping off. The nature of the platform, constructed as it was of cement material, also assured to the passenger a stable and even surface on which to alight. Furthermore, the plaintiff was possessed of the vigor and agility of young manhood, and it was by no means so risky for him to get off while the train was yet moving as the same act would have been in an aged or feeble person. In determining the question of contributory negligence in performing such act—that is to say, whether the passenger acted prudently or recklessly—the age, sex, and physical condition of the passenger are circumstances necessarily affecting the safety of the passenger, and should be considered. Women, it has been observed, as a general rule, are less capable than men of alighting with safety under such conditions, as the nature of their wearing apparel obstructs the free movement of the limbs. Again, it may be noted that the place was perfectly familiar to the plaintiff, as it was his daily custom to get on and off the train at this station. There could, therefore, be no uncertainty in his mind with regard either to the length of the step which he was required to take or the character of the platform where he was alighting. Our conclusion is that the conduct of the plaintiff in undertaking to alight while the train was yet slightly under way was not characterized by imprudence and that therefore he was not guilty of contributory negligence.

The evidence shows that the plaintiff, at the time of the accident, was earning P25 a month as a copyist clerk, and that the injuries he has suffered have permanently disabled him from continuing that employment. Defendant has not shown that any other gainful occupation is open to plaintiff. His expectancy of life, according to the standard mortality tables, is approximately thirty-three years. We are of the opinion that a fair compensation for the damage suffered by him for his permanent disability is the sum of P2,500, and that he is also entitled to recover of defendant the additional sum of P790.25 for medical attention, hospital services, and other incidental expenditures connected with the treatment of his injuries.

The decision of the lower court is reversed, and judgment is hereby rendered plaintiff for the sum of P3,290.25, and for the costs of both instances. So ordered.

Arellano, C. J., Torres, Street, and Avanceña, JJ., concur.

Malcolm, J. , dissents with whom concurs Johnson, J.

DISSENTING OPINION

MALCOLM, J., dissenting:

With one sentence in the majority decision, we are of full accord, namely, "It may be admitted that had plaintiff waited until the train had come to a full stop before alighting, the particular injury suffered by him could not have occurred." With the general rule relative to a passenger's contributory negligence, we are likewise in full accord, namely, "An attempt to alight from a moving train is negligence per se." Adding these two points together, we have the logical result—the Manila Railroad Co. should be absolved from the complaint, and judgment affirmed.

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