

**AMADO PICART, PLAINTIFF AND APPELLANT, VS. FRANK SMITH, JR.,
DEFENDANT AND APPELLEE.***G.R. No. 12219. March 15, 1918*

Ponente: STREET, J.

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In this action the plaintiff, Amado Picart, seeks to recover of the defendant, Frank Smith, jr., the sum of P31,100, as damages alleged to have been caused by an automobile driven by the defendant. From a judgment of the Court of First Instance of the Province of La Union absolving the defendant from liability the plaintiff has appealed.

The occurrence which gave rise to the institution of this action took place on December 12, 1912, on the Carlatan Bridge, at San Fernando, La Union. It appears that upon the occasion in question the plaintiff was riding on his pony over said bridge. Before he had gotten half way across, the defendant approached from the opposite direction in an automobile, going at the rate of about ten or twelve miles, per hour. As the defendant neared the bridge he saw a horseman on it and blew his horn to give warning of his approach. He continued his course and after he had taken the bridge he gave two more successive blasts, as it appeared to him that the man on horseback before him was not observing the rule of the road.

The plaintiff, it appears, saw the automobile coming and heard the warning signals. However, being perturbed by the novelty of the apparition or the rapidity of the approach, he pulled the pony closely up against the railing on the right side of the bridge instead of going to the left. He says that the reason he did this was that he thought he did not have sufficient time to get over to the other side. The bridge is shown to have a length of about 75 meters and a width of 4.80 meters. As the automobile approached, the defendant guided it toward his left, that being the proper side of the road for the machine. In so doing the defendant assumed that the horseman would move to the other side. The pony had not as yet exhibited fright, and the rider had made no sign for the automobile to stop. Seeing that the pony was apparently quiet, the defendant, instead of veering to the right while yet some distance away or slowing down, continued to approach directly toward the horse without diminution of speed. When he had gotten quite near, there being then no possibility of the horse getting across to the other side, the defendant quickly turned his car sufficiently to the right to escape hitting the horse alongside of the railing where it was then standing; but in so doing the automobile passed in such close proximity to the animal that it became frightened and turned its body across the bridge with its head toward the railing. In so doing, it was struck on the hock of the left hind leg by the flange of the car and the limb was broken. The horse fell and its rider was thrown off with some violence. From the evidence adduced in the case we believe that when the accident occurred the free space where the pony stood between the automobile and the railing of the bridge was probably less than one and one half meters. As a result of its injuries the horse died. The plaintiff received contusions which caused temporary unconsciousness and required medical attention for several days.

The question presented for decision is whether or not the defendant in maneuvering his car in the manner above described was guilty of negligence such as gives rise to a civil obligation to repair the damage done; and we are of the opinion that he is so liable. As the defendant started across the bridge, he had the right to assume that the horse

and rider would pass over to the proper side; but as he moved toward the center of the bridge it was demonstrated to his eyes that this would not be done; and he must in a moment have perceived that it was too late for the horse to cross with safety in front of the moving vehicle. In the nature of things this change of situation occurred while the automobile was yet some distance away; and from this moment it was not longer within the power of the plaintiff to escape being run down by going to a place of greater safety. The control of the situation had then passed entirely to the defendant; and it was his duty either to bring his car to an immediate stop or, seeing that there were no other persons on the bridge, to take the other side and pass sufficiently far away from the horse to avoid the danger of collision. Instead of doing this, the defendant ran straight on until he was almost upon the horse. He was, we think, deceived into doing this by the fact that the horse had not yet exhibited fright. But in view of the known nature of horses, there was an appreciable risk that, if the animal in question was unacquainted with automobiles, he might get excited and jump under the conditions which here confronted him. When the defendant exposed the horse and rider to this danger he was, in our opinion, negligent in the eye of the law.

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard suppose to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.

Applying this test to the conduct of the defendant in the present case we think that negligence is clearly established. A prudent man, placed in the position of the defendant, would, in our opinion, have recognized that the course which he was pursuing was fraught with risk, and would therefore have foreseen harm to the horse and rider as a reasonable consequence of that course. Under these circumstances the law imposed on the defendant the duty to guard against the threatened harm.

It goes without saying that the plaintiff himself was not free from fault, for he was guilty of antecedent negligence in planting himself on the wrong side of the road. But as we have already stated, the defendant was also negligent; and in such case the problem always is to discover which agent is immediately and directly responsible. It will be noted that the negligent acts of the two parties were not contemporaneous, since the negligence of the defendant succeeded the negligence of the plaintiff by an appreciable interval. Under these circumstances the law is that the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.

The decision in the case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (7 Phil. Rep., 359) should perhaps be mentioned in this connection. This Court there held that while contributory negligence on the part of the person injured did not constitute a bar to recovery, it could be received in evidence to reduce the damages which would otherwise have been assessed wholly against the other party. The defendant company had there employed the plaintiff, a laborer, to assist in transporting iron rails from a barge in Manila harbor to the company's yards located not far away. The rails were conveyed upon cars which were hauled along a narrow track. At a certain spot near the water's edge the track gave way by reason of the combined effect of the weight of the car and the insecurity of the road bed. The car was in consequence upset; the rails slid off; and the plaintiff's leg was caught and broken. It appeared in evidence that the accident was due to the effects of a typhoon which had dislodged one of the supports of the track. The court found that the defendant company was negligent in having failed to repair the bed of the track and also that the plaintiff was, at the moment of the accident, guilty of contributory negligence in walking at the side of the car instead of being in front or behind. It was held that while the defendant was liable to the plaintiff by reason of its negligence in having failed to keep the track in proper repair, nevertheless the amount of the damages should be reduced on account of the contributory negligence of the plaintiff. As will be seen the defendant's negligence in that case consisted in an omission only. The liability of the company arose from its responsibility for the dangerous condition of its track. In a case like the one now before us, where the defendant was actually present and operating the automobile which caused the damage, we do not feel constrained to attempt to weigh the negligence of the respective parties in order to apportion the damage according to the degree of their, relative fault. It is enough to say that the negligence of the defendant was in this case the immediate and determining cause of the accident and that the antecedent negligence of the plaintiff was a more remote factor in the case.

A point of minor importance in the case is indicated in the special defense pleaded in the defendant's answer, to the effect that the subject matter of the action had been previously adjudicated in the court of a justice of the peace. In this connection it appears that soon after the accident in question occurred, the plaintiff caused criminal proceedings to be instituted before a justice of the peace charging the defendant with the infliction of serious injuries (*lesiones graves*). At the preliminary investigation the defendant was discharged by the magistrate and the proceedings were dismissed. Conceding that the acquittal of the defendant at a trial upon the merits in a criminal prosecution for the offense mentioned would be *res adjudicata*, upon the question of his civil liability arising from negligence—a point upon which it is unnecessary to express an opinion—the action of the justice of the peace in dismissing the criminal proceeding upon the preliminary hearing can have no such effect. (See *U. S. vs. Banzuela and Banzuela*, 31 Phil. Rep., 564.)

From what has been said it results that the judgment of the lower court must be reversed, and judgment is here rendered that the plaintiff recover of the defendant the sum of two hundred pesos (P200), with costs of both instances. The sum here awarded is estimated to include the value of the horse, medical expenses of the plaintiff, the loss or damage occasioned to articles of his apparel, and lawful interest on the whole to the date of this recovery. The other damages claimed by the plaintiff are remote or otherwise of such character as not to be recoverable. So ordered.

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

Johnson, J., reserves his vote.

CONCURRING OPINION

MALCOLM, J., concurring:

After mature deliberation, I have finally decided to concur with the judgment in this case. I do so because of my understanding of the "last clear chance" rule of the law of negligence as particularly applied to automobile accidents. This rule cannot be invoked where the negligence of the plaintiff is "concurrent with that of the defendant. Again, if a traveller when he reaches the point of collision is in a situation to extricate himself and avoid injury, his negligence at that point will prevent a recovery. But Justice Street finds as a fact that the negligent act of the defendant succeeded that of the plaintiff by an appreciable interval of time, and that at that moment the plaintiff had no opportunity to avoid the accident. Consequently, the "last clear chance" rule is applicable. In other words, when a traveller has reached a point where he cannot extricate himself and vigilance on his part will not avert the injury, his negligence in reaching that position becomes the condition and not the proximate cause of the injury and will not preclude a recovery. (Note especially *Aiken vs. Metcalf* [1917], 102 Atl, 330.)

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