

**REMIGIO RODRIGUEZA ET AL., PLAINTIFFS AND APPELLEES, VS.
THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.***G. R. No. 15688. November 19, 1921*

Ponente: STREET, J.

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This action was instituted jointly by Remigio Rodriguez and three others in the Court of First Instance of the Province of Albay to recover a sum of money of the Manila Railroad Company as damages resulting from a fire kindled by sparks from a locomotive engine under the circumstances set out below. Upon hearing the cause upon the complaint, answer and an agreed statement of facts, the trial judge rendered judgment against the defendant company in favor of the plaintiffs and awarded to them the following sums respectively as damages, to wit, (1) to Remigio Rodriguez, P3,000; (2) to Domingo Gonzaga, P400; (3) to Cristina Luna, P300; and (4) to Perfecta Losantas, P150; all with lawful interest from March 21, 1919. From this judgment the defendant appealed.

The facts as appearing from the agreed statement, in relation with the complaint, are to the effect that the defendant Railroad Company operates a line through the district of Daraga in the municipality of Albay; that on January 29, 1918, as one of its trains passed over said line, a great quantity of sparks were emitted from the smokestack of the locomotive, and fire was thereby communicated to four houses nearby belonging to the four plaintiffs respectively, and the same were entirely consumed. All of these houses were of light construction with the exception of the house of Remigio Rodriguez, which was of strong materials, though the roof was covered with nipa and cogon. The fire occurred immediately after the passage of the train, and a strong wind was blowing at the time. It does not appear either in the complaint or in the agreed statement whose house caught fire first, though it is stated in the appellant's brief that the fire was first communicated to the house of Remigio Rodriguez, from whence it spread to the others.

In the fourth paragraph of the complaint—which is admitted to be true—it is alleged that the defendant Railroad Company was conspicuously negligent in relation to the origin of said fire, in the following respects, namely, first, in failing to exercise proper supervision over the employees in charge of the locomotive; secondly, in allowing the locomotive which emitted these sparks to be operated without having the smokestack protected by some device for arresting sparks; thirdly, in using in its locomotive upon this occasion Bataan coal, a fuel of known inferior quality which, upon combustion, produces sparks in great quantity.

The sole ground upon which the defense is rested is that the house of Remigio Rodriguez stood partly within the limits of the land owned by the defendant company, though exactly how far away from the company's track does not appear. It further appears that, after the railroad track was laid, the company notified Rodriguez to get his house off the land of the company and to remove it from its exposed position. Rodriguez did not comply with this suggestion, though he promised to put an iron roof on his house, which he never did. Instead, he changed the materials of the main roof to nipa, leaving the kitchen and media-aguas covered with cogon. Upon this fact it is contended for the defense that there was contributory negligence on the part of Remigio Rodriguez in having his house partly on the premises of the Railroad Company, and that for this reason the company is not liable. This

position is in our opinion untenable for the reasons which we shall proceed to state.

In the first place, it will be noted that the fact suggested as constituting a defense to this action could not in any view of the case operate as a bar to a recovery by the three plaintiffs other than Remigio Rodriguez, even assuming that the fire was first communicated to his house; for said three plaintiffs are in nowise implicated in the act which supposedly constitutes the defense. In this connection it will be observed that the right of action of each of these plaintiffs is totally distinct from that of his coplaintiff, so much so that each might have sued separately, and the defendant, if it had seen fit to do so, might in this case have demurred successfully to the complaint for misjoinder of parties plaintiff. The fact that the several rights of action of the different plaintiffs arose simultaneously out of one act of the defendant is not sufficient of itself to require, or even permit, the joinder of such parties as coplaintiffs in a single action (30 Cyc, 114) if objection had been made thereto. Domingo Gonzaga, Cristina Luna, and Perfecta Losantas are therefore entitled to recover upon the admitted fact that this fire originated in the negligent acts of the defendant; and the circumstance that the fire may have been communicated to their houses through the house of Remigio Rodriguez, instead of having been directly communicated from the locomotive, is immaterial. (See 38 Am. Dec, 64, 77;[1] 11 R. C. L., 968-971; Kansas City, etc. Railroad Co. vs. Blaker, 64 L. R. A., 81; Pennsylvania Railroad Co. vs. Hope, 80 Pa. St., 373; 21 Am. Rep., 100.)

With respect to the case of Remigio Rodriguez it is to be inferred that his house stood upon this ground before the Railroad Company laid its line over this course; and at any rate there is no proof that this plaintiff had unlawfully intruded upon the railroad's property in the act of building his house. What really occurred undoubtedly is that the company, upon making this extension, had acquired the land only, leaving the owner of the house free to remove it. Hence he cannot be considered to have been a trespasser in the beginning. Rather, he was there at the sufferance of the defendant company, and so long as his house remained in this exposed position, he undoubtedly assumed the risk of any loss that might have resulted from fires occasioned by the defendant's locomotives if operated and managed with ordinary care. But he cannot be held to have assumed the risk of any damage that might result from the unlawful negligent acts of the defendant. Nobody is bound to anticipate and defend himself against the possible negligence of another. Rather he has a right to assume that the other will use the care of the ordinarily prudent man. (Philadelphia & Reading Railroad Co. vs. Hendrickson, 80 Pa. St., 182; 21 Am. Rep., 97.)

In the situation now under consideration the proximate and only cause of the damage that occurred was the negligent act of the defendant in causing this fire. The circumstance that Remigio Rodriguez's house was partly on the property of the defendant company and therefore in dangerous proximity to passing locomotives was an antecedent condition that may in fact have made the disaster possible, but that circumstance cannot be imputed to him as contributory negligence destructive of his right of action, because, first, that condition was not created by himself; secondly, because his house remained on this ground by the toleration, and therefore with the consent of the Railroad Company; and thirdly, because even supposing the house to be improperly there, this fact would not justify the defendant in negligently destroying it. (Grand Trunk Railway of Canada vs. Richardson, 91 U. S., 454; 23 L. ed., 356; Norfolk etc. Ry. Co. vs. Perrow, 101 Va., 345, 350.)

The circumstance that the defendant company, upon planting its line near Remigio Rodriguez's house, had requested or directed him to remove it, did not convert his occupancy into a trespass, or impose upon him any additional responsibility over and above what the law itself imposes in such situation. In this connection it must be remembered that the company could at any time have removed said house in the exercise of the power of eminent domain, but it elected not to do so.

Questions similar to that now before us have been under the consideration of American courts many times, and

their decisions are found to be uniformly favorable to recovery where the property destroyed has been placed in whole or in part on the right of way of the railroad company with its express or implied consent. (L. R. Martin Timber Co. vs. Great Northern Railway Co., 123 Minn., 423; Ann. Cas., 1915A, p. 496, note; Burroughs vs. Housatonic R. R. Co., 15 Conn., 124; 38 Am. Dec, 64, 74; Southern Ry. Co. vs. Patterson, 105 Va., 6; 8 Ann. Cas., 44.) And the case for the plaintiff is apparently stronger where the company constructs its line in proximity to a house already built and fails to condemn it and remove it from its right of way.

From what has been said it is apparent that the judgment appealed from is in all respects in conformity with the law, and the same is accordingly affirmed, with costs. So ordered.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

[1] Burroughs vs. Housatonic R. R. Co.

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