

WALTER A. SMITH & CO., INC., PLAINTIFF AND APPELLANT, VS. CADWALLADER GIBSON LUMBER COMPANY, DEFENDANT AND APPELLEE.*G.R. No. 32640, December 29, 1930*

Ponente: VILLAMOR, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

On August 30, 1926, the steamer Helen C, belonging to the defendant, the Cadwallader Gibson Lumber Co., under the command of Captain Miguel Lasa, in the course of its maneuvers to moor at the plaintiff's wharf in the port of Olutanga, Zamboanga, struck said wharf, partially demolishing it and throwing the timber piled thereon into the water. Whereupon the plaintiff brought the instant action to recover, of the defendant the sum of P9,705.83 as damages for the partial demolition of the wharf and for the loss of the timber piled thereon.

The defendant denied the plaintiff's causes of action, and in defense alleged that the demolition of the wharf was due to the excessive weight of thousands of board feet of timber piled upon it by the plaintiff to be loaded and shipped on the steamer Helen C and to the bad condition of the piles supporting said wharf.

In view of the evidence adduced by both parties, the trial court held that the defendant was not liable for the partial collapse of the plaintiff's wharf, and for the loss of the timber piled thereon, dismissing the complaint with costs against the plaintiff.

The judge who took cognizance of this cause held:

"The evidence shows that said wharf was built in 1921 and repaired in 1925. The repairs, according to the deposition of Wilson C. Smith, a witness for the plaintiff, consisted in replacing 6 bents of piles leaving more than 9 old bents of piles without being replaced. Therefore, the wharf of the plaintiff was old. The court is inclined to believe that the steamer Helen C slightly struck the dock but not with force, for it was difficult for her to strike it with force, as hereinbefore stated, and due to the bad condition of the dock the slight impact was sufficient to destroy it. The bent of the piles toward the east side of the dock, as may be seen from the pictures Exhibits E and F, after its destruction, does not necessarily mean that the destruction of the wharf was caused by a strong impact, as the weight of the 60,000 board feet of lumber piled thereon, after such slight impact by the steamer against the dock, might have caused said piles to lean toward that side."

We are of opinion that this finding is supported by the evidence. In this connection, it is to be noted that the witness, Dionisio Pascua (for the plaintiff) testified that the 60,00 board feet occupied one-fourth, of the wharf. In other words, by the testimony of the plaintiff's witnesses it has been proved that the plaintiff company piled up on the wharf a Quantity of timber which exceeded its capacity of resistance, because if the whole wharf had a

capacity of 100,000 board feet of timber, one-fourth of it could sustain one-fourth of that amount, or, about 25,000 board feet of timber. But it appears that the plaintiff company loaded 60,000 board feet, weighing over 100 tons, within a space capable of supporting only 25,000 board feet, This must have helped to bring about the collapse of the wharf on the eastern side and the consequent sliding down of the timber piled up on the one side.

The court below did not make any definite finding as to the negligence of the captain, but the plaintiff apparently infers that there was negligence on his part, considering the testimony of its witness Venancio Ignacio to the effect that the impact of the ship with the wharf was due to the excessive force with which the captain ordered the winches to work. This was denied by the captain, testifying for the defendant. If, to this denial, we add the facts found by the trial court that said captain dropped two anchors from the prow and the kedge-anchor from the poop, and besides, fastened two lines of cables to the piles ordinarily used by vessels in docking at that wharf, as preliminary to drawing the vessel alongside the wharf, it will be seen that said winches must have been carefully operated, and if any force was employed in working them, it was doubtless due to the fact that the vessel had already dropped anchor and could not move rapidly and the drawing of the vessel up to the wharf was against the stream which flowed from east to west. We do not believe that the mere statement of the witness Ignacio who has not been shown to possess technical knowledge of the maneuvers for docking vessels, is sufficient to justify a holding that the force employed by the winches on that occasion was excessive under the circumstances of the case, especially so if the captain's testimony is to be considered, that the winches were carefully operated.

The witnesses for the plaintiff state that the steamer Helen C struck the wharf twice, but the trial court, after examining the evidence, found said testimony to be exaggerated.

As has been stated, the plaintiff seeks to recover against the owner of the steamer Helen C, with whom it had no contractual relations basing its action on the acts of Captain Lasa who was in command of the vessel when docking at the plaintiff's wharf in Olutanga, Zamboanga. In support of its contention, the plaintiff cites the doctrine laid down in the case of Ohta Development Co. vs. Steamship Pompey (49 Phil., 117), wherein it was held that the defendant company, as ship-owner, was liable for the indemnities arising from the lack of skill or from negligence of the captain.

In the case cited, the steamship Pompey, under the command of Captain Alfredo Galvez, was carrying cargo consisting principally of flour and rice for the plaintiff. The ship docked with her bow facing the land and fastened her cables to the posts on the pier. The evidence shows that heretofore other ships docking alongside said pier had the bow facing the land and fastened a cable to a tree situated farther west on the beach, a precaution taken to avoid the ship getting too close to the pier. When the Pompey docked, at the time in question, she did not fasten the cable to the tree on the shore, nor drop her kedge-anchors from the prow. After being docked, they proceeded to unload the flour and rice which were first deposited on the pier and later transported to the plaintiff's warehouse on land. where it was officially receipted for. The work of discharging and hauling the cargo to the plaintiff's warehouse was accomplished without any intervention on the part of the plaintiff and exclusively by laborers and the crew of the ship. The unloading of the cargo on to the pier was hastily done and there being but fifteen or twenty laborers engaged in hauling it to the plaintiff's warehouse, a large amount of cargo accumulated on the dock. At 11.10 that morning, the pier sank with all the merchandise!

As may be noted, the facts in that case were different from those in the case in question. In the former a contract of marine transportation existed between the plaintiff and the defendant, whereas in the latter no previous contractual relation existed between the parties. For this reason, the case of Ohta Development Co. was decided: upon articles 587 and 618 of the Code of Commerce. But the instant case, dealing, as it does, with an obligation arising from culpa aquiliana or negligence, must be decided in accordance with articles 1902 and 1903 of the Civil Code.

Article 1902 of the Civil Code prescribes:

"Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

And article 1903 of the said Code states:

"The obligation imposed by the next preceding article is enforceable, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

"The father, or in case of his death, or incapacity, the mother, is liable for any damages caused by the minor children who live with them.

"Guardians are liable for damages done by minors or incapacitated persons subject to their authority and living with them.

"Owners or directors of any establishment or business are, in the same way, liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.

"The State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable.

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

"The liability imposed by this article shall cease in case the persons subject thereto prove that they exercised ^11 the diligence of a good father of a family to prevent the damage."

In the case of Maryland Casualty Co. vs. Matson Noy, Co, (177 Cal., 610, 612), in an action similar to the present, the court held:

"* * * the plaintiff could only recover, if at all, upon a sufficient showing of negligence on the part of the defendants in the handling of their ship, as a result of which the injury complained of arose; and if the finding of the trial court, to the effect that there was no negligence in respect to the matter complained of on the part of the defendants, is sustained by sufficient evidence, there is an end to the plaintiff's case."

The same doctrine was upheld by the Supreme Court of Spain in its judgment of June 23, 1900, in deciding a case similar to the one at bar, where the plaintiff was a third person without any contractual relation with the defendant before the acts were committed which gave rise to the complaint. In that judgment, the court said: "* * * the action for damages caused by an act or omission arising from fault or negligence, requires an allegation of one or the other of said causes which is the basis of said action, according to articles 1089, 1093, 1902, and 1903 of the Civil Code; and such proof must be made by the plaintiff in accordance with the general principle of evidence regarding obligations as laid down in article 1214; and it is not sufficient merely to suggest—that at any rate cannot be admitted—that from the mere existence of damage, liability must be presumed and that the defendant must rebut such a presumption."

And Manresa, commenting on article 1902 of the Civil Code, among other things, says the following:

"Among the questions most frequently raised and upon which the majority of cases have been decided With respect to the application of this liability, are those referring to the determination of the damage or prejudice, and to the fault or negligence of the person responsible therefor.

"These are the two indispensable factors in the obligations under discussion, for without damage or prejudice

there can be no liability, and although this element is present no indemnity can be awarded unless arising from some person's fault or negligence.

"With respect to the determination of damages, it must be definite and the injury must not be occasioned by the performance of an obligation or by acts or omissions of the injured party himself; and for the proof of the fault or negligence, mere suggestions or inadmissible presumptions will not suffice, but such evidence must be adduced as to exclude all doubt regarding their existence and relation to the injury, for, in order to give rise to an obligation, there must be between the fault or negligence and the evil resulting therefrom, a casual relation." (12 Manresa, 601,602.)

In *Cangco vs. Manila Railroad Co.* (38 Phil, 768), this court held that article 1903 of the Civil Code is not applicable to obligations arising from contracts, but only to obligations arising without any agreement; or, to employ technical language, that article refers only to culpa aquiliana and not to culpa contractual.

Manresa (Vol. VIII, page 67) in his commentaries on articles 1103 and 1104 of the Civil Code clearly sets forth this distinction, which was also recognized by this court in the case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (7 Phil., 359). In commenting upon article 1093 (Vol. VIII, page 30) Manresa points out the difference between "vulva substantive and independent, which, by itself, gives rise to an obligation between persons not formerly bound by any other obligation" and culpa considered as an "incident in the performance of an obligation which already existed * * *

In the *Rakes* case (*supra*), this court based its decision expressly on the principle that article 1903 of the Civil Code is not applicable to a culpa not arising from a contract.

On 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 preexisting 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, and Pacific Co.*, 7 Phil., 359, 365.)

It's not true that proof of due diligence and care in the selection of and instructions to a servant relieves the master of liability for the former's acts; on the contrary, such proof shows that that liability never existed. As Manresa (Vol. VIII, page 68) says, the liability arising from an extra-contractual, wrong is always based upon a voluntary act or omission, which, while free from any wrongful intent, and due to mere negligence or carelessness, causes damage to another. A master who takes all possible precaution in selecting his servants or employees, bearing in mind the qualifications necessary for the performance of the duties to be entrusted to them, and instructs them with equal care, complies with his duty to all third parties to whom he is not bound under contract, and incurs no liability if, by reason of the negligence of such servants though it be during the performance of their duties as such, third parties should suffer damages. It is true that under article 1903 of the Civil Code, the law presumes that the master, if regarded as an establishment, has been negligent in the selection of, or instruction to, its servants, but that is a mere *juris tantum* presumption and is destroyed by the evidence of due care and diligence in this respect.

The Supreme Court of Porto Rico, construing identical provisions in the Civil Code of Porto Rico, held that these articles are applicable only to cases of extra-contractual wrong. (*Carmona vs. Cuesta*, 20 Porto Rico Reports, 215.)

This distinction was clearly stated by this court in *Bahia vs. Litonjua and Leynes* (30 Phil., 624), wherein the action was based on the defendant's extra-contractual liability for damages occasioned by the carelessness of an employee of his, in the performance of his duty as such. This court, after citing the last paragraph of article 1903

of the Civil Code, held:

"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. At 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 of this court is thus expressed, to the effect that in case of extra-contractual wrongs some fault personally imputable to the defendant must exist, and that the last paragraph of article 1903 only establishes a rebuttable presumption and is on all fours with Manresa's authoritative opinion (Vol., XII, page 611), that the liability created by article 1903 is enforced by reason of non-performance of duties inherent in the special relations of authority or superiority existing between the person liable for the damage done and the person who by his act or omission has caused it.

The defendant contends in its answer that the captain and all the officers of the steamer Helen C were duly licensed and authorized to hold their respective positions at the time when the wharf in question collapsed, and that said captain, officers, and all the members of the crew of the steamer had been chosen for their reputed skill in directing and navigating the steamer Helen C, safely, carefully, and efficiently, the evidence shows that Captain Lasa at the time the plaintiff's wharf collapsed was a duly licensed captain, authorized to navigate and direct a vessel of any tonnage, and that the appellee contracted his services because of his reputation as a captain, according to F. C. Cadwallader. This being so, we are of opinion that the presumption of liability against the defendant has been overcome by the exercise of the care and diligence of a good father of a family in selecting Captain Lasa, in accordance with the doctrines laid down by this court in the cases cited above, and the defendant is therefore absolved from all liability.

By virtue of the foregoing, the judgment appealed from must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur

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