

TO GUIOC-CO, PLAINTIFF AND APPELLEE, VS. LORENZO DEL ROSARIO, DEFENDANT AND APPELLANT.

G.R. No. 3534. September 14, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

The plaintiff seeks to recover damages for the death of his brother, To-Tico. The proofs have not been brought to this court from the court below and in their absence we must affirm the judgment unless the facts recited by the judge in his decision, together with those admitted in the pleadings, fail to sustain the conclusion reached by him.

The action was brought in the name of the plaintiff upon the allegation that he was the only brother and heir of the intestate deceased. Upon demurrer the court, over the plaintiff's objection and exception, ordered the complaint amended, which was effected by adding to the allegation of relationship this clause: "The plaintiff is administrator of the goods of the deceased Chinaman, To-Tico, appointed by this court," no other change being made in either the body or the title of the pleading. The defendant interposed a general denial. After the taking of the evidence the trial judge, who retired from office, was succeeded by another judge of First Instance who rendered the judgment, of which it is material to quote only the following:

"The evidence on the part of the plaintiff is to the effect that the plaintiff was a brother of a deceased Chinaman by the name of To-Tico, and that he had been appointed by the Court of First Instance for the city of Manila as administrator of the estate of said To-Tico.

"That the plaintiff is the administrator of the estate of To-Tico, deceased.

"That a building was being constructed in the district of Ermita, in the city of Manila, by the defendant during the month of March, 1903, and before the building was completed, and while the said To-Tico was at work upon it as a carpenter, the defendant, on the 20th day of March, 1903, ordered that the stays or braces upon the upright posts of the building be taken off, and that in compliance with his orders they were taken off, which rendered the construction as it then was unstable and unsafe, and that shortly after the stays and braces had been thus removed the building fell, and said To-Tico was killed by the fall of the building as thus constructed.

"That the defendant was in sole charge of the construction of the building, giving orders to the workmen employed by him in its construction.

"That damage was incurred by the killing of said To-Tico in the sum of P3,000.

"That the administrator of the estate of said To-Tico is entitled to collect such damage as may have arisen from the death of said To-Tico, caused as aforesaid."

Judgment was entered in favor of the plaintiff as administrator against the defendant for the said sum.

The question for our determination is: Upon the facts found and the pleadings, was the plaintiff entitled to recover either as administrator, inheritor, or as next of kin of the deceased?

In the Code of Civil Procedure, which is our only law defining the powers of an administrator, there is nothing authorizing him to sue for injuries causing the death of his intestate. No such right is enumerated in section 673, among the assets for which he is accountable, nor is any action therefor included within those that he is expressly authorized to bring by the terms of section 702. Nor do we find anywhere in our legislation any statute creating a remedy for accidents causing death, other than such, as is contained in the Spanish codes, by whose terms it is lodged, when it existed at all, in the surviving next of kin and not in an executor or administrator (Civil Code, arts. 657 to 661 and 924; Penal Code, Title IV, arts. 119 to 126.)

Actions of this character in England and America are now brought under statutes usually conferring a right of action upon personal representatives, nearly all more or less closely modeled upon the earliest of them which is known as "Lord Campbell's Act," passed in the tenth year of Queen Victoria, which recited in its preamble that—

"No action at common law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person."

It would seem that before the enactment of this law the earlier English and American decisions recognized a cause of action in an executor or administrator to the extent of the loss suffered by the estate in the expenditure from its funds of money in immediate consequence upon the death, such as doctor's fees and funeral charges, and also, in some instances, a similar right in persons entitled to the services or earnings of the deceased, for damages accruing in the interval between the injury and the decease, but nothing more. Some of these decisions will be found collated in *The Harrisburg* (119 U. S., 199). In that case, which was one in admiralty for damages from a death occurring at sea, to which no statute either national or State under existing conditions was applicable, Chief Justice Waite said:

"It was held by this court, on full consideration, in *Insurance Company vs. Brame* (95 U. S., 756), 'that by the common law no civil action lies for an injury which results in death.' "

The *Brame* case arose in Louisiana where the provisions of the code give a right of action to relatives similar to that in the Spanish law. The action was brought by an insurance company to recover from the defendant damages to the extent of a policy paid by the company upon the life of a man whom the defendant had killed. After full review of the authorities it was held in the language of Mr. Justice Hunt—

"That at the common law no civil action lies for an injury which results in the death of the party injured, and that the statutes of Louisiana on the subject do not include the present case."

In an American pioneer case, *Carey vs. Berkshire E. R. Co.* (55 Mass., 475), it was held that no cause of action could be maintained by a widow in the absence of an enabling statute, and the leading New York authority, *Green vs. H. R. R. Co.* (2 Keyes, 294), likewise denied the existence of a cause of action for death, overruling the law laid down in the lower courts. [See also *Palfrey vs. P. S. & P. R. R. Co.* (86 Mass., 55) ; *Conn. Mut. L. Ins. Co. vs. N. Y. & N. H. R. R. Co.* (25 Conn., 265) ; *Sherman vs. Johnson* (58 Vt., 40) ; *Houston vs. Hook*, (60 Texas, 603).]

In many of the cases cited it is said that without a statute expressly authorizing it, an executor or administrator can not bring such an action, as indeed is self-evident, if no right to such action is recognized by the law. We are cited to a few reported cases not before us in which it appears to have been held that a cause of action, for such injuries as may be considered independent of the death, survives to the administrator [*Winnegar vs. Central Pass R. R. Co.* (85 Ky., 547) ; *Kelly vs. U. P. R. R. Co.* (16 Col., 455)], but the great weight of authority is to the contrary. It is unnecessary to say here that we refuse to recognize this exception to the general rule, inasmuch as the point is not presented by the pleadings or judgment, in which the damages claimed or allowed are such only as were immediately consequent upon the death. In jurisdictions where the laws award damages for a death to the family of the deceased, it appears to be uniformly held that actions therefor must be prosecuted by the relatives

personally, and are not available to the executor or administrator, as the recovery forms no part of the decedent's estate. [Ramsdell vs. N. Y. & N. E. R. E. Co. (151 Mass., 245) ; Dacey vs. O. C. R. R. Co. (153 Mass., 112) ; Miller vs. U. S. E. Co. (55 Ga., 153) ; Redfield vs. O. C. S. Ry. Co. (110 Cal., 277).]

The same rule with the same reason assigned for it prevails in the law of France. (Fuzier-Herman, Repertoire, Tit. Successions, No. 2219.)

There are States of the Union that have passed statutes whereby, in the course of a criminal proceeding by indictment, a fine may be imposed upon the guilty person as compensation for the benefit of the family of the deceased, substantially like the indemnity to relatives under the Spanish and French penal codes. Such indemnity is payable to the persons designated and none other. [Commonwealth vs. B. & A. R. R. Co. (121 Mass., 36) ; State vs. Manchester, etc., R. R. Co. (52 N. H., 528) ; State vs. G. T. R. R. Co. (49 Me., 29).]

On the strength of all these authorities as well as from the nature of the remedy itself, we must conclude that under our present law the administrator can not maintain this action.

As at the outset the plaintiff made his claim as the only brother and inheritor of his intestate, it remains to determine whether his action lies in that form. This, we believe, can best be done after presentation of the question to the trial court, upon such further evidence as may be taken on the subject of the relationship and qualification of the plaintiff, and the damages suffered.

The unnecessary amendment to the complaint in compliance with the order of the court consisted merely of additional words, which could, if occasion required it, be treated as surplusage; but they may be stricken out upon motion, thereby restoring the pleading to its original form.

The judgment of the Court of First Instance of the city of Manila in favor of the plaintiff is reversed, and the cause is remanded for amendment to the pleadings as indicated, for further testimony on the subject of relationship and qualification of the plaintiff, and as to damages and for adjudication upon the merits, without costs of this instance. So ordered.

Arellano, C. J., Torres, Johnson, and Willard, JJ., concur.

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