

FAUSTO BARREDO, PETITIONER, VS. SEVERINO GARCIA AND TIMOTEA ALMARIO, RESPONDENTS.*G.R. No. 48006. July 08, 1942*

Ponente: BOCOBO, J.

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This case comes up from the Court of Appeals which held the petitioner herein, Fausto Barredo, liable in damages for the death of Faustino Garcia caused by the negligence of Pedro Fontanilla, a taxi driver employed by said Fausto Barredo.

At about half past one in the morning of May 3, 1936, on the road between Malabon and Navotas, Province of Rizal, there was a head-on collision between a taxi of the Malate Taxicab driven by Pedro Fontanilla and a carretela guided by Pedro Dimapilis. The carretela was overturned, and one of its passengers, 16-year-old boy Faustino Garcia, suffered injuries from which he died two days later. A criminal action was filed against Fontanilla in the Court of First Instance of Rizal, and he was convicted and sentenced to an indeterminate sentence of one year and one day to two years of prision correccional. The court in the criminal case granted the petition that the right to bring a separate civil action be reserved. The Court of Appeals affirmed the sentence of the lower court in the criminal case. Severino Garcia and Timotea Almario, parents of the deceased, on March 7, 1939, brought an action in the Court of First Instance of Manila against Fausto Barredo as the sole proprietor of the Malate Taxicab and employer of Pedro Fontanilla. On July 8, 1939, the Court of First Instance of Manila awarded damages in favor of the plaintiffs for P2,000 plus legal interest from the date of the complaint. This decision was modified by the Court of Appeals by reducing the damages to P1,000 with legal interest from the time the action was instituted. It is undisputed that Fontanilla's negligence was the cause of the mishap, as he was driving on the wrong side of the road, and at high Speed. As to Barredo's responsibility, the Court of Appeals found:

"* * * It is admitted that defendant is Fontanilla's employer. There is no proof that he exercised the diligence of good father of a family to prevent the damage. (See 22 appellant's brief.) in fact it is shown he was careless in employing Fontanilla who had been caught several times for violation of the Automobile Law and speeding (Exhibit A)— violations which appeared in the records of the Bureau of Public Works available to the public and to himself. Therefore, he must indemnify plaintiffs under the provisions of article 1903 of the Civil Code."

The main theory of the defense is that the liability of Fausto Barredo is governed by the Revised Penal Code; hence, his liability is only subsidiary, and as there has been no civil action against Pedro Fontanilla, the person criminally liable, Barredo cannot be held responsible in this case. The petitioner's brief states on page 10:

"* * * The Court of Appeals holds that the petitioner is being sued for his failure to exercise all the diligence of a good father of a family in the selection and supervision of Pedro Fontanilla to prevent damages suffered by the respondents. In other words, the Court of Appeals insists on applying in this case article 1903 of the Civil Code. Article 1903 of the Civil Code is found in Chapter II, Title 16, Book IV of the Civil Code. This fact makes said article inapplicable to a civil liability arising from a crime as in the case at bar simply because

Chapter II of Title 16 of Book IV of the Civil Code, in the precise words of article 1903 of the Civil Code itself, is applicable only to "those (obligations) arising from wrongful or negligent acts or omissions not punishable by law."

The gist of the decision of the Court of Appeals is expressed thus:

"* * * We cannot agree to the defendant's contention. The liability sought to be imposed upon him in this action is not a civil obligation arising from a felony or a misdemeanor (the crime of Pedro Fontanilla), but an obligation imposed in article 1903 of the Civil Code by reason of his negligence in the selection or supervision of his servant or employee."

The pivotal question in this case is whether the plaintiffs may bring this separate civil action against Fausto Barredo, thus making him primarily and directly responsible under article 1903 of the Civil Code as an employer of Pedro Fontanilla. The defendant maintains that Fontanilla's negligence being punishable by the Penal Code, his (defendant's) liability as an employer is only subsidiary, according to said Penal Code, but Fontanilla has not been sued in a civil action and his property has not been exhausted. To decide the main issue, we must cut through the tangle that has, in the minds of many, confused and jumbled together delitos and cuasi delitos, or crimes under the Penal Code and fault or negligence under articles 1902-1910 of the Civil Code. This should be done, because justice may be lost in a labyrinth, unless principles and remedies are distinctly envisaged. Fortunately, we are aided in our inquiry by the luminous presentation of this perplexing subject by renown jurists and we are likewise guided by the decisions of this Court in previous cases as well as by the solemn clarity of the considerations in several sentences of the Supreme Tribunal of Spain.

Authorities support the proposition that a quasi-delict or "culpa aquiliana" is a separate legal institution under the Civil Code, with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime. Upon this principle, and on the wording and spirit of article 1903 of the Civil Code, the primary and direct responsibility of employers may be safely anchored.

The pertinent provisions of the Civil Code and Revised Penal Code are as follows:

CIVIL CODE

"ART. 1089. Obligations arise from law, from contracts and quasi-contracts, and from acts and omissions which are unlawful or in which any kind of fault or negligence intervenes."

* * * * *

"ART. 1092. Civil obligations arising from felonies or misdemeanors shall be governed by the provisions of the Penal Code.

"ART. 1093. Those which are derived from acts or omissions in which fault or negligence, not punishable by law, intervenes shall be subject to the provisions of Chapter II, Title XVI of this book."

* * * * *

"ART. 1902. 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.

"ART. 1903. The obligation imposed by the next preceding article is enforceable, not only for person si acts and omissions, but also for those of persons for whom another is responsible.

"The father, and, in case of his death or incapacity, the mother, are 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 an establishment or business are equally liable for any damagea 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 damagea caused by their pupils Or apprentices while they are under their custody. "The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage."

"ART. 1901. Any person who pays for damage Caused by his employees may recover from the latter what he may have paid."

REVISED PENAL CODE

"Art. 100. Civil liability of a perton guilty of felony.—Every person criminally liable for a felony is also civilly liable.

"Art. 101. Rules regarding civil liability in certain cases.—The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of article 12 and in subdivision 4 of article 11 of this Coden does not include exemption from civil liability, which shall be enforced subject to the following rules:

"First. In casts of subdivisions 1, 2 and 3 of article 12 the civil liability for acts committed by any imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

"Should there be no person having such insane, imbecile or minor under his authority, legal guardianship, or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

"Second. In cases falling within subdivision 4 of article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

" The courts shall determine, in their sound discretion, the proportionate amount for which each one shall be liable.

"When the respective shares can not be equitably determined, even approximatly, or when the liability also attaches to the Government, or to the majority of the ihabitants of the town, and, in all events, whenever the damage has been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

"Third. In cases falling within subdivisions 5 and 6 of article 12, the persons using violence or causing the fear shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.

"ART. 102 Subsidiary civil liability of innkeepers, tavern keepers and proprietors of establishment.—In default of persons criminally liable, innkeepers, tavern keepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or

some general or special police regulation shall have been committed by them or their employees.

"Innkeepers are also subsidiary liable for the restitution of goods taken by robbery or theft within their houses from guest lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

"ART. 103. Subsidiary civil liability of other persons.—The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

* * * * *

"ART. 365. Imprudence and negligence.— Any person who, by reckless impudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of arresto mayor in its maximum period to prision correccional in its minimum period; if it would have constituted a less grave felony, the penalty of arresto mayor in its minimum and medium periods shall be imposed.

"Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of arresto mayores in its minimum period shall be imposed."

It will thus be seen that while the terms of article 1902 of the Civil Code seem to be broad enough to cover the driver's negligence in the instant case, nevertheless article 1093 limits *cuasi-delitos* to acts or omissions "not punishable by law." But inasmuch as article 365 of the Revised Penal Code punishes not only reckless but even simple imprudence or negligence, the fault or negligence under article 1902 of the Civil Code has apparently been crowded out. It is this overlapping that makes the "confusion worse confounded." However, a closer study shows that such a concurrence of scope in regard to negligent act causing does not destroy the distinction between the civil liability arising from a crime and the responsibility for *causi-delitos* or *culpa extra-contractual*. The same negligent act causing damages may produce civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for *causi-delito* or *culpa extra-contractual* under articles 1902-1910 of the Civil Code.

The individuality of *cuasi-delito* or *culpa extra-contractual* looms clear and unmistakable. This legal institution is of ancient lineage, one of its early ancestors being the *Lex Aquilia* in the Roman Law. In fact, in Spanish legal terminology, this responsibility is often referred to as *culpa aquiliana*. The *Partidas* also contributed to the genealogy of the present fault or negligence under the Civil Code; for instance, Law 6, Title 15, of *Partida* 7, say "Tenudo es de fazer emienda, porque, como quier que el non fizo a sabiendas el daño al otro, pero acaesci6 por su culpa."

The distinctive nature of *cuasi-delitos* survives in the Civil Code. According to article 1089, one of the five sources of obligations is this legal institution of *cuasi-delito* or *culpa extra-contractual*: "los actos * * * en que intervenga cualquier genero de culpa o negligencia." Then article 1093 provides that this kind of obligation shall be governed by Chapter II of Title XVI of Book IV, meaning articles 1902-1910. This portion of the Civil Code is exclusively devoted to the legal institution of *culpa aquiliana*.

Some of the differences between crimes under the Penal Code and the *culpa aquiliana* or *cuasi-delito* under the

Civil Code are:

- That crimes affect the public interest, while *cuasi-delitos* are only of private concern.
- That, consequently, the Penal Code punishes or corrects the criminal act, while the Civil Code, by means of indemnification, merely repairs the damage.
- That delicts are not as broad as quasi-delicts, because the former are punished only if there is a penal law clearly covering them, while the latter, *causi-delitos*, include all acts in which "any kind of fault or negligence intervenes." However, it should be noted that not all violations of the penal law produce civil responsibility, such as begging in contravention of ordinances, violation of the game laws, infraction of the rules of traffic when nobody is hurt. (See Colin and Capitant, "Curso Elemental de Derecho Civil," Vol. 3, p. 728.)

Let us now ascertain what some jurists say on the separate existence of quasi-delicts and the employer's primary and direct liability under article 1903 of the Civil Code.

Dorado Montero in his essay on "Responsabilidad" in the "Enciclopedia Juridica Española" (Vol. XXVII, p. 414) says:

"El concepto juridico de la responsabilidad civil abarca d l versos aipoctoa y comprende a diferentes peraonas. Aai, exiatc una responsabilidad civil pro-piamente dicha, que en mngtin caso Neva aparejada responsabilidad criminal alguna, y otra que ea con-sccuencia indeclinable dc la penal quo nace de todo delito o falta."

"The juridical concept of civil responsabilidad has various aspects and comprises different persons. Thus, there is a civil responsabilidad, properly speaking, which in no case carries with it any criminal responsabilidad, and another which is a necessary consequence of the penal liability as a result of every felony or misdemeanor."

Maura, an outstanding authority, was consulted on the following case: There had been a collision between two trains belonging respectively to the Ferrocarril Canta-brico and the Ferrocarril del Norte. An employee of the latter had been prosecuted in a criminal case, in which the company had been made a party as subsidiarily responsible in civil damages. The employee had been acquitted in the criminal case, and the employer, the Ferrocarril del Norte, had also been exonerated. The question asked was whether the Ferrocarril Cantabrico could still bring a civil action for damages against the Ferrocarril del Norte. Maura's opinion was in the affirmative, stating in part (Maura, *Dictamenes*, Vol. 6, pp. 511-513):

"Quedando tas cosas asi, a proposito de la realidad pura y neta de los hechos, todavia menoa parece sostcnible que exista cosa juzgada ace re a de la obligacion civil de indemnizar los quebrantos y menoscabos inferidos por el choque de los trenes. El titulo en que se funda la accion para demandar el resarcimiento, no puede confundirse con las responsabilidades civiles nacidas de delito, siquiera exista en este, sea el cual sea, una culpa rodeada de notas agravatorias que motivan sanciones penales, mas o menos severaa. La lesion causada por delito o falta en los derechoa civiles, requiere restitutiones, reparaciones o indemnizaciones, que cual la pena misma atañen al orden publico; por tal motivo vienen encomendadas, de ordinario, al Ministerio Fiscal; y claro es que si por esta via ae enmiendan los quebrantos y menoscabos, el agraviado exeusa procurar el ya conseguido desagravio; pero esta eventual coincidencia de los efectos, no borra la diversidad originaria de las accioncs civiles para pedir indemnniacion.

"Estas, para el caso actual (proscindiendo de culpas contractuales, que no vendrian a cuento y que tienen otro regimen), dimanen, segun el articulo 1902 delCodigo Civil, de toda accion u omision, causante de daños o perjuicios, en que intervenes culpa o negligencia. Es trivial que acciones semejantes son ejercitadas ante los Tribunales de lo civil cotidianamente, sin que la Justicia punitiva tenga que mezclarse en los asuntos. Los articulos 18 al 21 y 121 al 128 delCodigo Penal, atentos al espiritu y a los lines sociales y politicos del miamo, desenvuelven y ordenon la materia de responsabilidades civiles nacida de delito, en terminos separados del

regimen por ley comun de la culpa que se denomina aquiliana, por alusion a precedentes legislativos del Corpus Juris. Seria interpestivo un paralelo entre aquellas ordenaciones, y la de la obligacion de indemnizar a titulo de culpa civil; pero viene al caao y es necesaria una de laa diferenciaciones que en el tal paralelo se notarial.

"Los articulos 20 y 21 delCodigo Penal, despues de distribuir a su modo las responsabilidades civiles, entre los que sean por diversos conceptos culpables del delito o falta, las hacen extensivas a las empresas y los establecimientos al servieio de los cuales estan los delinueentes; pero con caracter subsidiario, o sea, segun el texto literal, en defecto de los que sean responsables criminalmente. No coincide en ello elCodigo Civil, cuyo articulo 1903, dice; La obilgacion que impone el articulo anterior es exigible, no solo por los actos y omisiones propios, sino por los de aquellas personal de quienes se debe responder; personas en la enumeracion de las cuales figuran los dependientes y empleados de los establecimientos o empresas, sea por actos del servicio, sea con ocasion de sus funciones. Por esto acontece, y se observa en la jurisprudencia, que las empresas, despues de intervenir en las causas criminales con el caracter subsidiario de su rcsponsabilidad civil por razon del delito, son demandadas y condenadaa directa y aisladamente, cuando se trata de la obligacion, ante los tribunales civiles.

"Siendo como se ve, divecao el titulo de esta obligacion, y formando verdadero postulado de nuestro regimen judicial la separacion entre justicia punitiva y tribunales de lo civil, de suerte que tienen unos y otros normas de fondo en distintos cuerpos legales, y diferentes modos de proceder, habiendose, por añadidura, abatenido de asistir al juicio criminal la Compañía del Ferrocarril Cantabrieo, que se reservo ejercitar sus aceiones, parece innegable que la de indemnizacion por los daños y perjuicios que le irrogot el choque, no estuvo sub judice ante el Tribunal del Jurado, ni fue sentenciada, sino que permanecio intacta, al pronunciarse el fallo de 21 de marzo. Aun cuando el veredicto no hubiese sido de inculpabilidad, mostrose mas arriba, que tal accion quedaba legit imomenle reservada para despues del proceso; peto al dedararse que no existio delito, ni responsabilidad dimanada de delito, materia unica sobre que tenfan jurisdiccion aquellos juzgadores, se redobra el motivo para la obligation civil ex lege, y se patentiza mas y mas que la accion para pedir su cumplimiento permanece incolume, extraña a la cosa juzgada."

"As things are, apropos of the reality pure and simple of the facts, it seems less tenable that there should be res judicata with regard to the civil obligation for damages on account of the losses caused by the collision of the trains. The title upon which the action for reparation is based cannot be confused with the civil responsibilities born of a crime, because there exists in the latter, whatever each nature, a culpa surrounded with aggravating aspects which give rise to penal measures that are more or less severe. The injury caused by a felony or misdemeanor upon civil rights requires restitutions, reparations, or indemnifications which, like the penalty itself, affect public order; for this reason, they are ordinarily entrusted to the office of the prosecuting attorney; and it is clear that if by this means the losses and damages are repaired, the injured party no longer desires to seek another relief; but this coincidence of effects does not eliminate the peculiar nature of civil actions to aak for indemnity.

"Such civil actions in the present case (without referring to contractual, faults which are not pertinent and belong to another scope) are derived, according to article 1902 of the Civil Code, from every act or omission causing losses and damages in which culpa or negligence intervenes. It is unimportant that such actions are every day filed before the civil courts without the criminal courts interfering therewith. Articles 18 to 21 and 121 to 128 of the Penal Code, hearing in mind the spirit and the social and political purposes of that Code, develop and regulate the matter of civil responsibilities arising from a crime, separately from the regime under common law, of culpa which is known aa aquiliana, in accordance with legislative precedent of the Corpus Juris. It would be unwarranted to make a detailed comparison between the former provisions and that regarding the obligation to indemnify on account of civil culpa; but it is pertinent and necessary to point out to one of such differences.

"Articles 20 and 21 of the Penal Code, after distributing in their own way the civil responsibilities among those

who, for different reasons, are guilty of felony or misdemeanor, make such civil responsibilities applicable to enterprises and establishments for which the guilty parties render service, but with subsidiary character, that is to say, according to the wording of the Penal Code, in default of those who are criminally responsible. In this regard, the Civil Code does not coincide because article 1903 says: 'The obligation imposed by the next preceding article is rtemandable, not only for personal acts and omissions, but a 130 for those of persons for whom another is responsible.' Among the persons enumerated are the subordinates and employees of establishments or enterprises, either for acts during their service or on the occasion of their functions. It is for this reason that it happens, and it is so observed in judicial decisions, that the companies or enterprises, after taking part in the criminal cases because of their subsidiary civil responsibility by reason of the crime, are sued and sentenced directly and separately with regard to the obligation, before the civil courts.

"Seeing that the title of this obligation is different, and the separation between punitive justice and the civil courts being a true postulate of our judicial system, so that they have different fundamental norms in different codes, as well as different modes of procedure, and inasmuch as the Compañía del Ferrocarril Cantabrico has abstained from taking part in the criminal case and has reserved the right to exercise its actions, it seems undeniable that the action for indemnification for the losses and damages caused to it by the collision was not submitted before the Tribunal del Jurado, nor was it the subject of a sentence, but it remained intact when the decision of March 21 was rendered. Even if the verdict had not been that of acquittal, it has already been shown that such action had been legitimately reserved till after the criminal prosecution; but because of the declaration of the non-existence of the felony and the non-existence of the responsibility arising from the crime, which was the sole subject matter upon which the Tribunal del Jurado had jurisdiction, there is greater reason for the civil obligation *ex lege*, and it becomes clearer that the action for its enforcement remain intact and is not *res judicata*."

Laurent, a jurist who has written a monumental work on the French Civil Code, on which the Spanish Civil Code is largely based and whose provisions on quasi-delito or culpa extra-contractual are similar to those of the Spanish Civil Code, says, referring to article 1384 of the French Civil Code which corresponds to article 1903, Spanish Civil Code:

"The action can be brought directly against the person responsible (for another), without including the author of the act. The action against the principal is accessory in the sense that it implies the existence of a prejudicial act committed by the employee, but it is not subsidiary in the sense that it can not be instituted till after the judgment against the author of the act or at least, that it is subsidiary to the principal action; the action for responsibility (of the employer) is in itself a principal action." (Laurent, Principles of French Civil Law, Spanish translation, Vol. 20, pp. 734-736.)

Amandi, in his "Cuestionario del Código Civil Reformado" (Vol. 4, pp. 429, 430), declares that the responsibility of the employer is principal and not subsidiary. He writes:

"Cuestion 1. La responsabilidad declarada en el artículo 1903 por las acciones u omisiones de aquellas personas por las que se debe responder, es subsidiaria? es principal? Para contestar a esta pregunta es necesario saber, en primer lugar, en que se funda el precepto legal. Es que realmente se impone una responsabilidad por una falta ajena? Así parece a primera vista; pero semejante afirmación sería contraria a la justicia y a la máxima universal, según la que las faltas son personales, y cada uno responde de aquellas que le son imputables. La responsabilidad de que tratamos se impone con ocasión de un delito o culpa, pero no por causa de ellos, sino por causa del quasi delito, esto es, de la imprudencia o de la negligencia del padre, del tutor, del dueño o director del establecimiento, del maestro, etc. Cuando cualquiera de las personas que enumera el artículo citado (menores de edad, incapacitados, dependientes, aprendices) causan un daño, la ley presume que el padre, el tutor, el maestro, etc., han cometido una falta de negligencia para prevenir o evitar el daño. Esta falta es la que la ley castiga. No hay, pues, responsabilidad por un hecho ajeno, sino en la apariencia; en realidad la responsabilidad se exige por un hecho propio. La idea de que esa responsabilidad sea subsidiaria es, por lo

tanto, completamente inadmisibile."

"Question No. 1. Is the responsibility declared in article 1903 for the acts or omissions of those persons for whom one is responsible, subsidiary or principal? In order to answer this question it is necessary to know, in the first place, on what the legal provision is based. Is it true that there is a responsibility for the fault of another person? It seems so at first sight; but such assertion would be contrary to justice and to the universal maxim that all faults are personal, and that everyone is liable for those faults that can be imputed to him. The responsibility in question is imposed on the occasion of a crime or fault, but not because of the same, but because of the cuasi-delito, that is to say, the imprudence or negligence of the father, guardian, proprietor or manager of the establishment, of the teacher, etc. Whenever anyone of the persons enumerated in the article referred to (minors, in-capacitated persons, employees, apprentices) causes any damage, the law preumes that the father, guardian, teacher, etc. have committed an act of negligence in not preventing or avoiding the damage. It is this fault that is condemned by the law. It is, therefore, only apparent that there is a responsibility for the act of another; in reality the responsibility exacted is (or one's own art. The idea that such responsibility is subsidiary is, therefore, completely inadmissible."

Oyuelos, in his "Digesto: Principios, Doctrina y Jurisprudencia, Referentes alCodigo Civil Español," says in Vol. VII, p. 743:

"Es decir, no se responde de hechos ajenos, porque se responde solo de su propia culpa, doctrina del articulo 1902; mas por excepcion, se responde de la ajena respecto de aquellas personas con las que media algun nexo o vinculo, que motiva o raznna Id responsabilidad. Esta responsabilidad, es directa o es aubsidiaria? En el orden penal, el Codigo de esta clase distingue entre menorea e incapacitados y los demas, declarando directa la primera (articulo 19) y subsidiaria la segunda (articulos 20 y 21) ; pero en el orden civil, en el caso del articulo 1303, ha de entendorse dircta, por el tenor del articulo que impone la responsabilidad precisamentc 'por loa actos de aquellas personas de quienes se deba responder."

"That is to say, one is not responsible for the acts of others, because one is liable only for his own faults, this being the doctrine of article 1902; but, by exception, one ia liable for the acts of those persons with whom there is a bond or tie which givea riae to the responsibility. Is this responsibility direct or subsidiary? In the order of the penal law, the Penal Code distinguishes between minors and incapacitated persons on the one hand, and other persons on the other, declaring that the responsibility for the former is direct (article 19), and for the latter, subsidiary (articles 20 and 21); but in the scheme of the civil law, in the case of article 1903, the responsibility should be understood as direct, according to the tenor of that article, for precisely it imposes responsibility 'for the acts of those persons for whom one should be responsible."

Coming now to the sentences of the Supreme Tribunal of Spain, that court has upheld the principles above set forth: that a quasi-delict or culpa extra-contractual is a separate and distinct legal institution, independent from the civil responsibility arising from criminal liability, and that an employer is, under article 1903 of the Civil Code, primarily and directly responsible for the negligent acts of his employee.

One of the most important of those Spanish decisions is that of October 21, 1910. In that case, Ramon Lafuente died as the result of having been run over by a street car owned by the "Compañia Electrica Madrileña de Traccion." The conductor was prosecuted in a criminal case but he was acquitted. Thereupon, the widow filed a civil action against the street car company, praying for damages in the amount of 15,000 pesetas. The lower court awarded damages; so the company appealed to the Supreme Tribunal, alleging violation of articles 1902 and 1903 of the Civil Code because by final judgment the non-existence of fault or negligence had been declared. The Supreme Court of Spain dismissed the appeal, saying:

"Considerando que el primer motivo del recurso se funda en el equivocado supuesto de que el Tribunal a quo, al codenar a la Compañia Electrica Madrileña al pago del daño causarto con la muerte de Ramon Lafuente Izquierdo, desconoce el valor y efectos jurldieos de la sentencia absolutoria dieteda en la causa criminal que ae

siguio por el mismo hecho, euando es lo cierto quo de este han conocido las dos jurisdicciones bajo diferentes aspectos, y como la de lo criminal declaro dentro de los limites de su competencia que el hecho de que se trata no era constitutivo de delito por no haber mediado descuido o negligencia graves, lo que no excluye, siendo eate el unico fundaments del fallo absolutorio, el concurso de la culpa o negligencia no calificadas, fuente de obligaciones civila segun el articulo 1902 delCodigo Civil, y que alcanzan, segun el 1903, entre otras personas, a los Dirctores de establecimientos o empresas por los danos causados por sus dependientes en determinadas condiciones, es manifiesto que la de lo civil, al conocer del mismo hecho bajo este ultimo aspecto y al condenar a la Compania recurrent a la indemnizacion del daño causado por uno de sus empleados, lejos de infringir los mencionados textos, en relacion con el articulo 116 de la Ley de Enjuiciamiento Criminal, se ha atenido eatrickamente a ellos, sin invadir atribuciones ajenas a su jurisdiccion propia, ni contrariar en lo mas mlnimo el fallo recaido en la causa."

"Considering that the first ground of the appeal is based on the mistaken supposition that the trial Court, in sentencing the Compañía Madrileña to the payment of the damage caused by the death of Ramon Lafuente Izquierdo, disregards the value and juridical effects of the sentence of acquittal rendered in the criminal caae instituted on account of the aame act, when it is a fact that the two jurisdictions had taken cognizance of the same act in its different aspects, and as the criminal jurisdiction declared within the limits is its authority that the act in question did not constitute a felony becauae there was no grave careleaaneaa or negligence, and this being the only basis of acquittal, it does not exclude the co-existence of fault or negligence which is not qualified, and is a source of civil obligations according to article 1902 of the Civil Code, affecting, in accordance with article 1903, among other persons, the managers of establishments or enterprises by reason of the damages caused by employees under certain conditions, it is manifest that the civil jurisdiction in taking cognizance of the same act in this latter aspect and in ordering the company, appellant herein, to pay an indemnity for the damage cause if by one of is employees, far from violating said legal proviaions, in relation with article 116 of the Law of Criminal Procedure, strictly followed the same, without invading attributes which are beyond its own jurisdiction, and without in any way contraflicting the decision in that cause."(Italics supplied.)

It will be noted, as to the case just cited:

First. That the conductor was not sued in a civil case, either separately or with the street car company. This is precisely what happens in the present case: the driver, Fontanilla, has not been sued in a civil action, either alone or with hia employer.

Second. That the conductor had been acquitted of grave criminal negligence, but the Supreme Tribunal of Spain said that this did not exclude the co-existence of fault or negligence, which is not qualified, on the part of the conductor, under article 1902 of the Civil Code. In the present case, the taxi driver was found guilty of criminal negligence, so that if he had even sued for hia civil responsibility arising from the crime, he would have been held primarily liable for civil damages, and Barredo would have been held subsidiarily liable for the same. But the plaintiffs are directly suing Barredo, on his primary responsibility because of his own presumed negligence—which he did not overcome—under article 1903. Thus, there were two liabilities of Barredo: first, the subsidiary one because of the civil liability of the taxi driver arising from the latter's criminal negligence; and, second, Barredo's primary liability as an employer under article 1903. The plaintiffs were free to choose which course to take, and they preferred the second remedy. In so doing, they were acting within their rights. It might be observed in passing, that the plaintiffs chose the more expeditious and effective method of relief, because Fontanilla was either in prison, or had just been released, and besides, he was probably without property which might be seized in enforcing any judgment against him for damages.

Third. That inasmuch as in the above sentence of October 21, 1910, the employer was held liable civilly, notwithstanding the acquittal of the employee (the conductor) in a previous criminal case, with greater reason

should Barredo, the employer in the case at bar, be held liable for damages in a civil suit filed against him because his taxi driver had been convicted. The degree of negligence of the conductor in the Spanish case cited was less than that of the taxi driver, Fontanilla, because the former was acquitted in the previous criminal case while the latter was found guilty of criminal negligence and was sentenced to an indeterminate sentence of one year and one day to two years of prison correctional.

(See also Sentence of February 19, 1902, which is similar to the one above quoted.)

In the Sentence of the Supreme Court of Spain, dated February 14, 1919, an action was brought against a railroad company for damages because the station agent, employed by the company, had unjustly and fraudulently, refused to deliver certain articles consigned to the plaintiff. The Supreme Court of Spain held that this action was properly under article 1902 of the Civil Code, the court saying:

"Considerando que la senteneia diecutida reconoce, en virtud de los hechos que consigns con relacion a las pruebas del pleito: 1.º, que las expediciones facturadas por la compañía ferroviaria a la consifnacion del actor de las vasisas vacias que en au demanda relacionan tenian como fin el que este las devolviera a sus remitentes con vinos y alcoholes; 2.º, que llegadas a su destino tales mercancías no se quiaieron entregar a dicho consignatario por el jefe de la estacion sin motivo justificado y con intencion dolosa, y 3.º, que la falta de entrega de estas expediciones al tiempo do reclamarlas el demandante le originaron daños y perjuicios en cantidad de bastante inoportnncin como expendedor al por mayor que era de vinos y alcoholea por las ganancias que dejo de obtener al verae privado de servir los pedidos que se le hablan hecho por los remitentes en los envases:

"Considerando que sobre eata base hay necesidad de estimar los euatro motivos que integran este recurso, porque la demand a inicial del pleito a que se contrae no contiene accion que nazca del incumplimicnto del contrato de tranaporte, toda vez que no se funda en el retraso de la llegada de las mereancias ni de ningun otro vinculo contractual entre las partea contendientes, careciendo, por tanto, de aplicadon el articulo 371 del Codigo de Comercio, en que principalmente descansa el fallo recurrido, sino que se limita a pedir la reparation dc los daños y perjuicios producidos en el patrimonio del actor por la injustificada y dolose ncgativa del porteador a la entrega de laa mereancias a su nombre conaignadaa, aegun lo reconoce la sentencia, y cuya responsabilidad esta claramente sancionada en el articulo 1902 del Codigo Civil, que obliga por el siguiente a la Compañia demandada como ligada con el causante de aquelloa por celaciones de caracter economico y de jerarquia administrativa."

"Considering that the sentence in question recognizes, in virtue of the facts which it declarae, in relation to the evidence in the case: (1) that the invoice issued by the railroad company in favor of the plaintiff contemplated that the empty receptacles referred to in the complaint should be returned to the consignors with wines and liquors; (2) that wher. the aaid merchandise reached their destination, their delivery to the consignee waa refused by the station agent without justification and with fraudulent intent, and (3) that the lack of delivery of these goods when they were demanded by the plaintiff caused him losses and damages of considerable importance, as he was a wholesale vendor of wines and liquors and he failed to realize the profits when he waa unable to fill the orders sent to him by the consignors of the receptacles:

"Considering that upon this basis there ia need of upholding the four assignments of error, as the original complaint did not contain any cause of action arising from non-fulfilment of a contract of transportation, because the action was not based on the delay of the goods nor on any contractual relation between the parties litigant and, therefore, article 371 of the Code of Commerce, on which the decision appealed from is based, is not applicable; but it limits itaelf to asking for reparation for lossta and damages produced on the patrimony of the plaintiff on account of the unjustified and fraudulent refusal of the carrier to deliver the goods consigned to the plaintiff aa stated by the aentence, and the carrier's responsibility is clearly laid down in article 1902 of the Civil Code which binds, in virtue of the next article, the defendant company, because the latter is connected

with the person who caused the damage by relations of economic character and by administrative hierarchy."
(Italics supplied.)

The above case is pertinent because it shows that the same act may come under both the Penal Code and the Civil Code. In that case, the action of the agent was unjustified and fraudulent and therefore could have been the subject of a criminal action. And yet, it was held to be also a proper subject of a civil action under article 1902 of the Civil Code. It is also to be noted that it was the employer and not the employee who was being sued.

Let us now examine the cases previously decided by this Court.

In the leading case of *Rakes vs. Atlantic Gulf and Pacific Co.* (7 Phil., 359, 362-365 [year 1907]), the trial court awarded damages to the plaintiff, a laborer of the defendant, because the latter had negligently failed to repair a tramway, in consequence of which the rails slid oil while iron was being transported, and caught the plaintiff whose leg was broken. This Court held:

"It is contended by the defendant, as its first defense to the action that the necessary conclusion from these collated laws is that the remedy for injuries through negligence lies only in a criminal action in which the official criminally responsible must be made primarily liable and his employer held only subsidiarily to him. According to this theory the plaintiff should have procured the arrest of the representative of the company accountable for not repairing the track, and on his prosecution a suitable fine should have been imposed, payable primarily by him and secondarily by his employer.

"This reasoning misconceived the plan of the Spanish codes upon this subject. Article 1093 of the Civil Code makes obligations arising from faults or negligence not punished by the law, subject to the provisions of Chapter II of Title XVI. Section 1902 of that chapter reads:

" 'A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

" 'SEC. 1903. The obligation imposed by the preceding article is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

" 'The father, and on his death or incapacity, the mother, is liable for the damages caused by the minors who live with them.

* * * * *

" 'Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or in the performance of their duties.

* * * * *

" 'The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage.'"

"As an answer to the argument urged in this particular action it may be sufficient to point out that nowhere in our general statutes is the employer penalized for failure to provide or maintain safe appliances for his workmen. His obligation therefore is one 'not punished by the laws' and falls under civil rather than criminal jurisprudence. But the answer may be a broader one. We should be reluctant, under any conditions, to adopt a forced construction of these scientific codes, such as is proposed by the defendant, that would rob some of these articles of effect, would shut out litigants against their will from the civil courts, would make the assertion of their rights dependent upon the selection for prosecution of the proper criminal offender, and render recovery doubtful by reason of the strict rules of proof prevailing in criminal actions. Even if these

articles had always stood alone, such a construction would be unnecessary, but clear light is thrown upon their meaning by the provisions of the Law of Criminal Procedure of Spain (Ley de Enjuiciamiento Criminal), which, though never in actual force in these Islands, was formerly given a suppletory or explanatory effect. Under article 111 of this law, both classes of action, civil and criminal, might be prosecuted jointly or separately, but while the penal action was pending the civil was suspended. According to article 112, the penal action once started, the civil remedy should be sought therewith, unless it had been waived by the party injured or been expressly reserved by him for civil proceedings for the future. If the civil action alone was prosecuted, arising out of a crime that could be enforced only on private complaint, the penal action thereunder should be extinguished. These provisions are in harmony with those of articles 23 and 133 of our Penal Code on the same subject.

"An examination of this topic might be carried much further, but the citation of these articles suffices to show that the civil liability was not intended to be merged in the criminal nor even to be suspended thereby, except as expressly provided in the law. Where an individual is civilly liable for a negligent act or omission, it is not required that the injured party should seek out a third person criminally liable whose prosecution must be condition precedent to the enforcement of the civil right.

"Under article 20 of the Penal Code the responsibility of an employer may be regarded as subsidiary in respect of criminal actions against his employees only while they are in process of prosecution, or in so far as they determine the existence of the criminal act from which liability arises, and his obligation under the civil law and its enforcement in the civil courts is not barred thereby unless by the election of the injured person. Inasmuch as no criminal proceeding had been instituted, growing out of the accident in question, the provisions of the Penal Code can not affect this action. This construction renders it unnecessary to finally determine here whether this subsidiary civil liability in penal actions has survived the laws that fully regulated it or has been abrogated by the American civil and criminal procedure now in force in the Philippines.

"The difficulty in construing the articles of the code above cited in this case appears from the briefs before us to have arisen from the interpretation of the words of article 1053, 'fault or negligence not punished by law,' as applied to the comprehensive definition of offenses in articles 568 and 590 of the Penal Code. It has been shown that the liability of an employer arising out of his relation to his employee who is the offender is not to be regarded as derived from negligence punished by the law, within the meaning of articles 1902 and 1903. More than this, however, it cannot be said to fall within the class of acts unpunished by the law, the consequences of which are regulated by articles 1902 and 1903 of the Civil Code. The acts to which these articles 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. A typical application of this distinction may be found in the consequences of a railway accident due to defective machinery supplied by the employer. His liability to his employee would arise out of the contract of employment, that to the passengers out of the contract for passage, while that to the injured bystander would originate in the negligent act itself."

In *Manzanares vs. Moreta*, 38 Phil., 821 (year 1918), the mother of the 8 or 9-year-old child Salvador Bona brought a civil action against Moreta to recover damages resulting from the death of the child, who had been run over by an automobile driven and managed by the defendant. The trial court rendered judgment requiring the defendant to pay the plaintiff the sum of P1,000 as indemnity; This Court in affirming the judgment, said in part:

"If it were true that the defendant, in coming from the southern part of Solana Street, had to stop his auto before crossing Real Street, because he had met vehicles which were going along the latter street or were coming from the opposite direction along Solana Street, it is to be believed that, when he again started to run his auto across said Real Street and to continue its way along Solana Street northward, he should have adjusted the speed of the auto which he was operating until he had fully crossed Real Street and had completely reached

a clear way on Solana Street. But, as the child was run over by the auto precisely at the entrance of Solana Street, this accident could not have occurred if the auto had been running at a slow speed, aside from the fact that the defendant, at the moment of crossing Real Street and entering Solana Street, in a northward direction, could have seen the child in the act of crossing the latter street from the sidewalk on the right to that on the left, and if the accident had occurred in such a way that after the automobile had run over the body of the child, and the child's body had already been stretched out on the ground, the automobile still moved along a distance of about 2 meters, this circumstance shows the fact that the automobile entered Solana Street from Real Street, at a high speed without the defendant having blown the horn. If these precautions had been taken by the defendant, the deplorable accident which caused the death of the child would not have occurred."

It will be noticed that the defendant in the above case could have been prosecuted in a criminal case because his negligence causing the death of the child was punishable by the Penal Code. Here is therefore a clear instance of the same act of negligence being a proper subject-matter either of a criminal action with its consequent civil liability arising from a crime or of an entirely separate and independent civil action for fault or negligence under article 1902 of the Civil Code. Thus, in this jurisdiction, the separate individuality of a *cuasi-delito* or *culpa aquiliana* under the Civil Code has been fully and clearly recognized, even with regard to a negligent act for which the wrongdoer could have been prosecuted and convicted in a criminal case and for which, after such a conviction, he could have been sued for this civil liability arising from his crime.

Years later (in 1930) this Court had another occasion to apply the same doctrine. In *Bernal and Enverso vs. House and Tacloban Electric & Ice Plant, Ltd.*, 54 Phil. 327, the parents of the five-year-old child, Purificacion Bernal, brought a civil action to recover damages for the child's death as a result of burns caused by the fault and negligence of the defendants. On the evening of April 10, 1925, the Good Friday procession was held in Tacloban, Leyte. Fortunata Enverso with her daughter Purificacion Bernal had come from another municipality to attend the same. After the procession the mother and the daughter with two others were passing along Gran Capitan Street in front of the offices of the Tacloban Electric & Ice Plant, Ltd., owned by defendant J. V. House, when an automobile appeared from the opposite direction. The little girl, who was slightly ahead of the rest, was so frightened by the automobile that she turned to run, but unfortunately she fell into the street gutter where hot water from the electric plant was flowing. The child died that same night from the burns. The trial court dismissed the action because of the contributory negligence of the plaintiffs. But this Court held, on appeal, that there was no contributory negligence, and allowed the parents P1,000 in damages from J. V. House who at the time of the tragic occurrence was the holder of the franchise for the electric plant. This Court said in part:

"Although the trial judge made the findings of fact hereinbefore outlined, he nevertheless was led to order the dismissal of the action because of the contributory negligence of the plaintiffs. It is from this point that a majority of the court depart from the stand taken by the trial judge. The mother and her child had a perfect right to be on the principal street of Tacloban, Leyte, on the evening when the religious procession was held. There was nothing abnormal in allowing the child to run along a few paces in advance of the mother. No one could foresee the coincidence of an automobile appearing and of a frightened child running and falling into a ditch filled with hot water. The doctrine announced in the much debated case of *Rakes vs. Atlantic Gulf and Pacific Co.* ([1307], 7 Phil., 359), still rule. Article 1002 of the Civil Code must again be enforced. The contributory negligence of the child and her mother, if any, does not operate as a bar to recovery, but in its strictest sense could only result in reduction of the damages."

It is most significant that in the case just cited, this Court specifically applied article 1902 of the Civil Code. It is thus that although J. V. House could have been criminally prosecuted for reckless or simple negligence and not only punished but also made civilly liable because of his criminal negligence, nevertheless this Court awarded damages in an independent civil action for fault or negligence under article 1902 of the Civil Code.

In *Bahia vs. Litonjua and Leynes* (30 Phil., 624 [year 1915]), the action was for damages for the death of the plaintiff's daughter alleged to have been caused by the negligence of the servant in driving an automobile over the child. It appeared that the cause of the mishap was a defect in the steering gear. The defendant *Leynes* had rented the automobile from the International Garage of Manila, to be used by him in carrying passengers during the fiesta of Tuy, Batangas. *Leynes* was ordered by the lower court to pay P1,000 as damages to the plaintiff. On appeal this Court reversed the judgment as to *Leynes* on the ground that he had shown that he exercised the care of a good father of a family, thus overcoming the presumption of negligence under article 1903. This Court said:

"As to selection, the defendant has clearly shown that he exercised the care and diligence of a good father of a family. He obtained the machine from a reputable garage and it was, so far as appeared, in good condition. The workmen were likewise selected from a standard garage, were duly licensed by the Government in their particular calling, and apparently thoroughly competent. The machine had been used but a few hours when the accident occurred and it is clear from the evidence that the defendant had no notice, either actual or constructive, of the defective condition of the steering gear."

The legal aspect of the case was discussed by this Court thus:

"Article 1903 of the Civil Code not only establishes liability in cases of negligence, but also provides when the liability shall cease. It says:

"The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage."

"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."

The doctrine of the case just cited was followed by this Court in *Cerf vs. Medel* (33 Phil., 37 [year 1915]). In the latter case, the complaint alleged that the defendant's servant had so negligently driven an automobile, which was operated by defendant as a public vehicle, that said automobile struck and damaged the plaintiff's motorcycle. This Court, applying article 1903 and following the rule in *Bahia vs. Litonjua and Leynes*, said in part (p. 41) that:

"The master is liable for the negligent acts of his servant where he is the owner or director of a business or enterprise and the negligent acts are committed while the servant is engaged in his master's employment as such owner."

Another case which followed the decision in *Bahia vs. Litonjua and Leynes* was *Cuison vs. Norton & Harrison Co.*, 55 Phil., 18 (year 1930). The latter case was an action for damages brought by *Cuison* for the death of his seven-year-old son *Moises*. The little boy was on his way to school with his sister *Marciana*. Some large pieces of lumber fell from a truck and pinned the boy underneath, instantly killing him. Two youths, *Telesforo Binoya* and *Francisco Bautista*, who were working for *Ora*, an employee of defendant *Norton & Harrison Co.*, pleaded guilty to the crime of homicide through reckless negligence and were sentenced accordingly. This Court, applying articles 1902 and 1903, held:

"The basis of civil law liability is not respondent superior but the relationship of *pater familias*. This theory

bases the liability of the master ultimately on his own negligence and not on that of his servant." (Bahia vs. Litonjua and LeyneB [1915], 30 Phil., 624; Cangco vs. Manila Hailroad Co. [1918], 38 Phil., 768.)

In *Walter A. Smith & Co. vs. Cadwallader Gibson Lumber Co.*, 55 Phil., 517 (year 1930) the plaintiff brought an action for damages for the demolition of its wharf, which had been struck by the steamer *Helen C* belonging to the defendant. This Court held (p. 526):

"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 the 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."

It is, therefore, seen that the defendant's theory about his secondary liability is negated by the six cases above set forth. He is, on the authority of these cases, primarily and directly responsible in damages under article 1903, in relation to article 1902, of the Civil Code.

Let us now take up the Philippine decisions relied upon by the defendant. We study first, *City of Manila vs. Manila Electric Co.*, 52 Phil., 586 (year 1928). A collision between a truck of the City of Manila and a street car of the Manila Electric Co. took place on June 8, 1925. The truck was damaged in the amount of P1,788.27. Sixto Eustaquio, the motorman, was prosecuted for the crime of damage to property and slight injuries through reckless imprudence. He was found guilty and sentenced to pay a fine of P900, to indemnify the City of Manila for P1,788.27, with subsidiary imprisonment in case of insolvency. Unable to collect the indemnity from Eustaquio, the City of Manila filed an action against the Manila Electric Company to obtain payment, claiming that the defendant was subsidiarily liable. The main defense was that the defendant had exercised the diligence of a good father of a family to prevent the damage. The lower court rendered judgment in favor of the plaintiff. This Court held, in part, that this case was governed by the Penal Code, saying:

"With this preliminary point out of the way, there is no escaping the conclusion that the provisions of the Penal Code govern. The Penal Code in easily understandable language authorizes the determination of subsidiary liability. The Civil Code negates its application by providing that civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code. The conviction of the motorman was a misdemeanor falling under article 604 of the Penal Code. The act of the motorman was not a wrongful or negligent act or omission not punishable by law. Accordingly, the civil obligation connected with the Penal Code and not with article 1993 of the Civil Code. In other words, the Penal Code affirms its jurisdiction while the Civil Code negates its jurisdiction. This is a case of criminal negligence out of which civil liability arises and not a case of civil negligence."

* * * * *

"Our deduction, therefore, is that the case relates to the Penal Code and not to the Civil Code. Indeed, as pointed out by the trial judge, any different ruling would permit the master to escape scot-free by simply alleging and proving that the master had exercised all diligence in the selection and training of its servants to prevent the damage. That would be a good defense to a strictly civil action, but might or might not be to a civil action either as a part of or predicated on conviction for a crime or misdemeanor. (By way of parenthesis, it may be said further that the statements here made are offered to meet the argument advanced during our deliberations to the effect that article 1302 of the Civil Code should be disregarded and codal articles 1093 and 1903 applied.)"

It is not clear how the above case could support the defendant's proposition, because the Court of Appeals based

its decision in the present case on the defendant's primary responsibility under article 1903 of the Civil Code and not on his subsidiary liability arising from Fontanilla's criminal negligence. In other words, the case of *City of Manila vs. Manila Electric Co.*, supra, is predicated on an entirely different theory, which is the subsidiary liability of an employer arising from a criminal act of his employee, whereas the foundation of the decision of the Court of Appeals in the present case is the employer's primary liability under article 1903 of the Civil Code. We have already seen that this is a proper and independent remedy.

Arambulo vs. Manila Electric Co. (55 Phil., 75), is another case invoked by the defendant. A motorman in the employ of the Manila Electric Company had been convicted of homicide by simple negligence and sentenced, among other things, to pay the heirs of the deceased the sum of P1,000. An action was then brought to enforce the subsidiary liability of the defendant as employer under the Penal Code. The defendant attempted to show that it had exercised the diligence of a good father of a family in selecting the motorman, and therefore claimed exemption from civil liability. But this Court held:

"In view of the foregoing considerations, we are of opinion and do hold, (1) that the exemption from civil liability established in article 1903 of the Civil Code for one who has acted with the diligence of a good father of a family, is not applicable to the subsidiary civil liability provided in article 20 of the Penal Code."

The above case is also extraneous to the theory of the defendant in the instant case, because the action there had for its purpose the enforcement of the defendant's subsidiary liability under the Penal Code, while in the case at bar, the plaintiff's cause of action is based on the defendant's primary and direct responsibility under article 1903 of the Civil Code. In fact, the above case destroys the defendant's contention because that decision illustrates the principle that the employer's primary responsibility under article 1903 of the Civil Code is different in character from his subsidiary liability under the Penal Code.

In trying to apply the two cases just referred to, counsel for the defendant has failed to recognize the distinction between civil liability arising from a crime, which is governed by the Penal Code, and the responsibility for *cuasi-delito* or *culpa aquiliana* under the Civil Code, and has likewise failed to give due importance to the latter type of civil action.

The defendant-petitioner also cites *Francisco vs. Onrubia* (46 Phil., 327). That case need not be set forth. Suffice it to say that the question involved was also civil liability arising from a crime. Hence, it is as inapplicable as the two cases above discussed.

The foregoing authorities clearly demonstrate the separate individuality of *cuasi-delitos* or *culpa aquiliana* under the Civil Code. Specifically they show that there is a distinction between civil liability arising from criminal negligence (governed by the Penal Code) and responsibility for fault or negligence under articles 1902 to 1910 of the Civil Code, and that the same negligent act may produce either a civil liability arising from a crime under the Penal Code, or a separate responsibility for fault or negligence under articles 1902 to 1910 of the Civil Code. Still more concretely, the authorities above cited render it inescapable to conclude that the employer—in this case the defendant-petitioner—is primarily and directly liable under article 1903 of the Civil Code.

The legal provisions, authors, and cases already invoked should ordinarily be sufficient to dispose of this case. But inasmuch as we are announcing doctrines that have been little understood in the past, it might not be inappropriate to indicate their foundations.

Firstly, the Revised Penal Code in article 365 punishes not only reckless but also simple negligence. If we were to hold that articles 1902 to 1910 of the Civil Code refer only to fault or negligence not punished by law, according to the literal import of article 1093 of the Civil Code, the legal institution of *culpa aquiliana* would have very little scope and application in actual life. Death or injury to persons and damage to property through any degree of

negligence—even the slightest—would have to be indemnified only through the principle of civil liability arising from a crime. In such a state of affairs, what sphere would remain for *cuasi-delito* or *culpa aquiliana*? We are loath to impute to the lawmaker any intention to bring about a situation so absurd and anomalous. Nor are we, in the interpretation of the laws, disposed to uphold the letter that killeth rather than the spirit that giveth life. We will not use the literal meaning of the law to smother and render almost lifeless a principle of such ancient origin and such full-grown development as *culpa aquiliana* or *cuasi-delito*, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code.

Secondly, to find the accused guilty in a criminal case, proof of guilt beyond reasonable doubt is required, while in a civil case, preponderance of evidence is sufficient to make the defendant pay in damages. There are numerous cases of criminal negligence which can not be shown beyond reasonable doubt, but can be proved by a preponderance of evidence. In such cases, the defendant can and should be made responsible in a civil action under articles 1902 to 1910 of the Civil Code. Otherwise, there would be many instances of unvindicated civil wrongs. *Ubi jus ibi remedium*.

Thirdly, to hold that there is only one way to make, defendant's liability effective, and that is, to sue the driver and exhaust his (the latter's) property first, would be tantamount to compelling the plaintiff to follow a devious and cumbersome method of obtaining relief. True, there is "such a remedy under our laws, but there is also a more expeditious way, which is based on the primary and direct responsibility of the defendant under article 1903 of the Civil Code. Our view of the law is more likely to facilitate remedy for civil wrongs, because the procedure indicated by the defendant is wasteful and productive of delay, it being a matter of common knowledge that professional drivers of taxis and similar public conveyances usually do not have sufficient means with which to pay damages. Why, then, should the plaintiff be required in all cases to go through this roundabout, unnecessary, and probably useless procedure? In construing the laws, courts have endeavored to shorten and facilitate the pathways of right and justice.

At this juncture, it should be said that the primary and direct responsibility of employers and their presumed negligence are principles calculated "to protect society. Workmen and employees should be carefully chosen and supervised in order to avoid injury to the public. It is the masters or employers who principally reap the profits resulting from the services of these servants and employees. It is but right that they should guarantee the latter's careful conduct for the personnel and patrimonial safety of others. As Theilhard has said, "they should reproach themselves, at least, some for their weakness, others for their poor selection and all for their negligence." And according to Manresa, "It is much more equitable and just that such responsibility should fall upon the principal or director who could have chosen a careful and prudent employee, and not upon the injured person who could not exercise such selection and who used such employee because of his confidence in the principal or director." (Vol. 12, p. 622, 2nd Ed.) Many jurists also base this primary responsibility of the employer on the principle of representation of the principal by the agent. Thus, Oyuelos says in the work already cited (Vol. 7, p. 747) that before third persons the employer and employee "vienen a ser como una sola personalidad, por refundición de la del dependiente en la de quien le emplea y utiliza." ("become as one personality by the merging of the person of the employee in that of him who employs and utilizes him.") All these observations acquire a peculiar force and significance when it comes to motor accidents, and there is need of stressing and accentuating the responsibility of owners of motor vehicles.

Fourthly, because of the broad sweep of the provisions of both the Penal Code and the Civil Code on this subject, which has given rise to the overlapping or concurrence of spheres already discussed, and for lack of understanding of the character and efficacy of the action for *culpa aquiliana*, there has grown up a common practice to seek damages only by virtue of the civil responsibility arising from a crime, forgetting that there is another remedy,

which is by invoking articles 1902-1910 of the Civil Code. Although this habitual method is allowed by our laws, it has nevertheless rendered practically useless and nugatory the more expeditious and effective remedy based on culpa aquiliana or culpa extra-contractual. In the present case, we are asked to help perpetuate this usual course. But we believe it is high time we pointed out to the harm done by such practice and to restore the principle of responsibility for fault or negligence under articles 1902 et seq. of the Civil Code to its full rigor. It is high time we caused the stream of quasi-delict or culpa aquiliana to flow on its own natural channel, so that its waters may no longer be diverted into that of a crime under the Penal Code. This will, it is believed, make for the better safeguarding of private rights because it re-establishes an ancient and additional remedy, and for the further reason that an independent civil action, not depending on the issues, limitations and results of a criminal prosecution, and entirely directed by the party wronged or his counsel, is more likely to secure adequate and efficacious redress.

In view of the foregoing, the judgment of, the Court of Appeals should be and is hereby affirmed, with costs against the defendant petitioner.

Yulo, C. J., Moran, Ozaeta, and Paras, JJ., concur.

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