

DAVID TAYLOR, PLAINTIFF AND APPELLEE, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 4977. March 22, 1910

Ponente: CARSON, J.

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CARSON, J.:

An action to recover damages for the loss of an eye and other injuries, instituted by David Taylor, a minor, by his father, his nearest relative.

The defendant is a foreign corporation engaged in the operation of a street railway and an electric light system in the city of Manila. Its power plant is situated at the eastern end of a small island in the Pasig River within the city of Manila, known as the Isla del Provisor. The power plant may be reached by boat or by crossing a footbridge, impassable for vehicles, at the westerly end of the island.

The plaintiff, David Taylor, was at the time when he received the injuries complained of, 15 years of age, the son of a mechanical engineer, more mature than the average boy of his age, and having considerable aptitude and training in mechanics.

On the 30th of September, 1905, plaintiff, with a boy named Manuel Claparols, about 12 years of age, crossed the footbridge to the Isla del Provisor, for the purpose of visiting one Murphy, an employee of the defendant, who had promised to make them a cylinder for a miniature engine. Finding on inquiry that Mr. Murphy was not in his quarters, the boys, impelled apparently by youthful curiosity and perhaps by the unusual interest which both seem to have taken in machinery, spent some time in wandering about the company's premises. The visit was made on a Sunday afternoon, and it does not appear that they saw or spoke to anyone after leaving the power house where they had asked for Mr. Murphy.

After watching the operation of the traveling crane used in handling the defendant's coal, they walked across the open space in the neighborhood of the place where the company dumped the cinders and ashes from its furnaces. Here they found some twenty or thirty brass fulminating caps scattered on the ground. These caps are approximately of the size and appearance of small pistol cartridges and each has attached to it two long thin wires by means of which it may be discharged by the use of electricity. They are intended for use in the explosion of blasting charges of dynamite, and have in themselves a considerable explosive power. After some discussion as to the ownership of the caps, and their right to take them, the boys picked up all they could find, hung them on a stick, of which each took one end, and carried them home. After crossing the footbridge, they met a little girl named Jessie Adrian, less than 9 years old, and all three went to the home of the boy Manuel. The boys then made a series of experiments with the caps. They thrust the ends of the wires into an electric light socket and obtained no result. They next tried to break the cap with a stone and failed. Manuel looked for a hammer, but could not find one. They then opened one of the caps with a knife, and finding that it was filled with a yellowish substance they got matches, and David held the cap while Manuel applied a lighted match to the contents. An explosion

followed, causing more or less serious injuries to all three. Jessie, who, when the boys proposed putting a match to the contents of the cap, became frightened and started to run away, received a slight cut in the neck. Manuel had his hand burned and wounded, and David was struck in the face by several particles of the metal capsule, one of which injured his right eye to such an extent as to necessitate its removal by the surgeons who were called in to care for his wounds.

The evidence does not definitely and conclusively disclose how the caps came to be on the defendant's premises, nor how long they had been there when the boys found them. It appears, however, that some months before the accident, during the construction of the defendant's plant, detonating caps of the same size and kind as those found by the boys were used in sinking a well at the power plant near the place where the caps were found; and it also appears that at or about the time when these caps were found, similar caps were in use in the construction of an extension of defendant's street car line to Fort William McKinley. The caps when found appeared to the boys who picked them up to have been lying there for a considerable time, and from the place where they were found would seem to have been discarded as defective or worthless and fit only to be thrown upon the rubbish heap.

No measures seem to have been adopted by the defendant company to prohibit or prevent visitors from entering and walking about its premises unattended, when they felt disposed so to do. As admitted in defendant counsel's brief, "it is undoubtedly true that children in their play sometimes crossed the footbridge to the island;" and, we may add, roamed about at will on the uninclosed premises of the defendant, in the neighborhood of the place where the caps were found. There is no evidence that any effort ever was made to forbid these children from visiting the defendant company's premises, although it must be assumed that the company or its employees were aware of the fact that they not infrequently did so.

Two years before the accident, plaintiff spent four months at sea, as a cabin boy on one of the interisland transports. Later he took up work in his father's office, learning mechanical drawing and mechanical engineering. About a month after his accident he obtained employment as a mechanical draftsman and continued in that employment for six months at a salary of P2.50 a day; and it appears that he was a boy of more than average intelligence, taller and more mature both mentally and physically than most boys of fifteen.

The facts set out in the foregoing statement are to our mind fully and conclusively established by the evidence of record, and are substantially admitted by counsel. The only questions of fact which are seriously disputed are plaintiff's allegations that the caps which were found by plaintiff on defendant company's premises were the property of the defendant, or that they had come from its possession and control, and that the company or some of its employees left them exposed on its premises at the point where they were found.

The evidence in support of these allegations is meager, and the defendant company, apparently relying on the rule of law which places the burden of proof of such allegations upon the plaintiff, offered no evidence in rebuttal, and insists that plaintiff failed in his proof. We think, however, that plaintiff's evidence is sufficient to sustain a finding in accord with his allegations in this regard.

It was proven that caps, similar to those found by plaintiff, were used, more or less extensively, on the McKinley extension of the defendant company's track; that some of these caps were used in blasting a well on the company's premises a few months before the accident; that not far from the place where the caps were found the company has a storehouse for the materials, supplies, and so forth, used by it in its operations as a street railway and a purveyor of electric light; and that the place, in the neighborhood of which the caps were found, was being used by the company as a sort of dumping ground for ashes and cinders. Fulminating caps or detonators for the discharge by electricity of blasting charges by dynamite are not articles in common use by the average citizen, and under all the circumstances, and in the absence of all evidence to the contrary, we think that the discovery of

twenty or thirty of these caps at the place where they were found by the plaintiff on defendant's premises fairly justifies the inference that the defendant company was either the owner of the caps in question or had these caps under its possession and control. We think also that the evidence tends to disclose that these caps or detonators were willfully and knowingly thrown by the company or its employees at the spot where they were found, with the expectation that they would be buried out of sight by the ashes which it was engaged in dumping in that neighborhood, they being old and perhaps defective; and, however this may be, we are satisfied that the evidence is sufficient to sustain a finding that the company or some of its employees either willfully or through an oversight left them exposed at a point on its premises which the general public, including children at play, were not prohibited from visiting, and over which the company knew or ought to have known that young boys were likely to roam about in pastime or in play.

Counsel for appellant endeavors to weaken or destroy the probative value of the facts on which these conclusions are based by intimating or rather assuming that the blasting work on the company's well and on its McKinley extension was done by contractors. It was conclusively proven, however, that while the workman employed in blasting the well was regularly employed by J. G. White & Co., a firm of contractors, he did the work on the well directly and immediately under the supervision and control of one of defendant company's foremen, and there is no proof whatever in the record that the blasting on the McKinley extension was done by independent contractors. Only one witness testified upon this point, and while he stated that he understood that a part of this work was done by contract, he could not say so of his own knowledge, and knew nothing of the terms and conditions of the alleged contract, or of the relations of the alleged contractor to the defendant company. The fact having been proven that detonating caps were more or less extensively employed on work done by the defendant company's directions and on its behalf, we think that the company should have introduced the necessary evidence to support its contention if it wished to avoid the not unreasonable inference that it was the owner of the material used in these operations and that it was responsible for tortious or negligent acts of the agents employed therein, on the ground that this work had been intrusted to independent contractors as to whose acts the maxim respondeat superior should not be applied. If the company did not in fact own or make use of caps such as those found on its premises, as intimated by counsel, it was a very simple matter for it to prove that fact, and in the absence of such proof we think that the other evidence in the record sufficiently establishes the contrary, and justifies the court in drawing the reasonable inference that the caps found on its premises were its property, and were left where they were found by the company or some of its employees.

Plaintiff appears to have rested his case, as did the trial judge his decision in plaintiff's favor, upon the provisions of article 1089 of the Civil Code read together with articles 1902, 1903, and 1908 of that code.

"ART. 1089. Obligations are created by law, by contracts, by quasi-contracts, and by illicit acts and omissions or by those in which any kind of fault or negligence occurs."

"Art. 1902. 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.

"Art. 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 on account 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."

"Art. 1908. The owners shall also be liable for the damages caused -

"1. By the explosion of machines which may not have been cared for with due diligence, and for kindling of explosive substances which may not have been placed in a safe and proper place."

Counsel for defendant and appellant rests his appeal strictly upon his contention that the facts proven at the trial do not establish the liability of the defendant company under the provisions of these articles, and since we agree with this view of the case, it is not necessary for us to consider the various questions as to the form and the right of action (analagous to those raised in the case of *Rakes vs. Atlantic, Gulf & Pacific Co.*, 7 Phil. Rep., 359), which would, perhaps, be involved in a decision affirming the judgment of the court below.

We agree with counsel for appellant that under the Civil Code, as under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:

- (1) Damages to the plaintiff.
- (2) Negligence by act or omission of which defendant personally, or some person for whose acts it must respond, was guilty.
- (3) The connection of cause and effect between the negligence and the damage.

These propositions are, of course, elementary, and do not admit of discussion, the real difficulty arising in the application of these principles to the particular facts developed in the case under consideration.

It is clear that the accident could not have happened had not the fulminating caps been left exposed at the point where they were found, or if their owner had exercised due care in keeping them in an appropriate place; but it is equally clear that plaintiff would not have been injured had he not, for his own pleasure and convenience, entered upon defendant's premises, and strolled around thereon without the express permission of the defendant, and had he not picked up and carried away the property of the defendant which he found on its premises, and had he not thereafter deliberately cut open one of the caps and applied a match to its contents.

But counsel for plaintiff contends that because of plaintiff's youth and inexperience, his entry upon defendant company's premises, and the intervention of his action between the negligent act of defendant in leaving the caps exposed on its premises and the accident which resulted in his injury should not be held to have contributed in any wise to the accident, which should be deemed to be the direct result of defendant's negligence in leaving the caps exposed at the place where they were found by the plaintiff, and this latter the proximate cause of the accident which occasioned the injuries sustained by him.

In support of his contention, counsel for plaintiff relies on the doctrine laid down in many of the courts of last resort in the United States in the cases known as the "Torpedo" and "Turntable" cases, and the cases based thereon.

In the typical cases, the question involved has been whether a railroad company is liable for an injury received by an infant of tender years, who from mere idle curiosity, or for purposes of amusement, enters upon the railroad company's premises, at a place where the railroad company knew, or had good reason to suppose, children would be likely to come, and there found explosive signal torpedoes left exposed by the railroad company's employees,

one of which when carried away by the visitor, exploded and injured him; or where such infant found upon the premises a dangerous machine, such as a turntable, left in such condition as to make it probable that children in playing with it would be exposed to accident or injury therefrom and where the infant did in fact suffer injury in playing with such machine.

In these, and in a great variety of similar cases, the great weight of authority holds the owner of the premises liable.

As laid down in *Railroad Co. vs. Stout* (17 Wall. (84 U. S.), 657), (wherein the principal question was whether a railroad company was liable for an injury received by an infant while upon its premises, from idle curiosity, or for purposes of amusement, if such injury was, under the circumstances, attributable to the negligence of the company), the principles on which these cases turn are that "while a railroad company is not bound: to the same degree of care in regard to mere strangers who are unlawfully upon its premises that it owes to passengers conveyed by it, it is not exempt from responsibility to such strangers for injuries arising from its negligence or from its tortious acts;" and that "the conduct of an infant of tender years is not to be judged by the same rule which governs that of an adult. While it is the general rule in regard to an adult that to entitle him to recover damages for an injury resulting from the fault or negligence of another he must himself have been free from fault, such is not the rule in regard to an infant of tender years. The care and caution required of a child is according to his maturity and capacity only, and this is to be determined in each case by the circumstances of the case."

The doctrine of the case of *Railroad Company vs. Stout* was vigorously controverted and sharply criticized in several state courts, and the supreme court of Michigan in the case of *Ryan vs. Towar* (128 Mich., 463) formally repudiated and disapproved the doctrine of the *Turntable* cases, especially that laid down in *Railroad Company vs. Stout*, in a very able decision wherein it held, in the language of the syllabus: (1) That the owner of land is not liable to trespassers thereon for injuries sustained by them, not due to his wanton or willful acts; (2) that no exception to this rule exists in favor of children who are injured by dangerous machinery naturally calculated to attract them to the premises; (3) that an invitation or license to cross the premises of another can not be predicated on the mere fact that no steps have been taken to interfere with such practice; (4) that there is no difference between children and adults as to the circumstances that will warrant the inference of an invitation or a license to enter upon another's premises.

Similar criticisms of the opinion in the case of *Railroad Company vs. Stout* were indulged in by the courts in Connecticut and Massachusetts. (*Nolan vs. Railroad Co.*, 53 Conn., 461; 154 Mass., 349). And the doctrine has been questioned in Wisconsin, Pennsylvania, New Hampshire, and perhaps in other States.

On the other hand, many if not most of the courts of last resort in the United States, citing and approving the doctrine laid down in England in the leading case of *Lynch vs. Nurdington* (1 Q. B., 29, 35, 36), lay down the rule in these cases in accord with that announced in *Railroad Company vs. Stout* (supra), and the Supreme Court of the United States, in a unanimous opinion delivered by Justice Harlan in the case of *Union Pacific Railway Co. vs. McDonald* (152 U. S., 262) on the 5th of March, 1894, reexamined and reconsidered the doctrine laid down in *Railroad Co. vs. Stout*, and after an exhaustive and critical analysis and review of many of the adjudged cases, both English and American, formally declared that it adhered "to the principles announced in the case of *Railroad Co. vs. Stout*."

In the case of *Union Pacific Railway Co. vs. McDonald* (supra) the facts were as follows: The plaintiff, a boy 12 years of age, out of curiosity and for his own pleasure, entered upon and visited the defendant's premises, without defendant's express permission or invitation, and, while there, was by accident injured by falling into a burning slack pile of whose existence he had no knowledge, but which had been left by defendant on its premises without

any fence around it or anything to give warning of its dangerous condition, although defendant knew or had reason to believe that it was in a place where it would attract the interest or curiosity of passers-by. On these facts the court held that the plaintiff could not be regarded as a mere trespasser, for whose safety and protection while on the premises in question, against the unseen danger referred to, the defendant was under no obligation to make provision.

We quote at length from the discussion by the court of the application of the principles involved to the facts in that case, because what is said there is strikingly applicable in the case at bar, and would seem to dispose of defendant's contention that, the plaintiff in this case being a trespasser, the defendant company owed him no duty, and in no case could be held liable for injuries which would not have resulted but for the entry of plaintiff on defendant's premises.

"We adhere to the principles announced in *Railroad Co. vs. Stout* (supra). Applied to the case now before us, they require us to hold that the defendant was guilty of negligence in leaving unguarded the slack pile, made by it in the vicinity of its depot building. It could have forbidden all persons from coming to its coal mine for purposes merely of curiosity and pleasure. But it did not do so. On the contrary, it permitted all, without regard to age, to visit its mine, and witness its operation. It knew that the usual approach to the mine was by a narrow path skirting its slack pit, close to its depot building, at which the people of the village, old and young, would often assemble. It knew that children were in the habit of frequenting that locality and playing around the shaft house in the immediate vicinity of the slack pit. The slightest regard for the safety of these children would have suggested that they were in danger from being so near a pit, beneath the surface of which was concealed (except when snow, wind, or rain prevailed) a mass of burning coals into which a child might accidentally fall and be burned to death. Under all the circumstances, the railroad company ought not to be heard to say that the plaintiff, a mere lad, moved by curiosity to see the mine, in the vicinity of the slack pit, was a trespasser, to whom it owed no duty, or for whose protection it was under no obligation to make provisions.

"In *Townsend vs. Wathen* (9 East., 277, 281) it was held that if a man place dangerous traps, baited with flesh, in his own ground, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept in his neighbors premises, would probably be attracted by their instinct into the traps, and in consequence of such act his neighbor's dogs be so attracted and thereby injured, an action on the case would lie. 'What difference,' said Lord Ellenborough, C. J., 'is there in reason between drawing the animal into the trap by means of his instinct which he can not resist, and putting him there by manual force?' What difference, in reason we may observe in this case, is there between an express license to the children of this village to visit the defendant's coal mine, in the vicinity of its slack pile, and an implied license, resulting from the habit of the defendant to permit them, without objection or warning, to do so at will, for purposes of curiosity or pleasure? Referring to the case of *Townsend vs. Wathen*, Judge Thompson, in his work on the Law of Negligence, volume 1, page 305, note, well says: 'It would be a barbarous rule of law that would make the owner of land liable for setting a trap thereon, baited with stinking meat, so that his neighbor's dog, attracted by his natural instincts, might run into it and be killed, and which would exempt him from liability for the consequences of leaving exposed and unguarded on his land a dangerous machine, so that his neighbor's child attracted to it and tempted to inter middle with it by instincts equally strong, might thereby be killed or maimed for life.'"

Chief Justice Cooley, voicing the opinion of the supreme court of Michigan, in the case of *Powers vs. Harlow* (53 Mich., 507), said that (p. 515):

"Children, wherever they go, must be expected to act upon childlike instincts and impulses; and others who are chargeable with a duty of care and caution toward them must calculate upon this, and take precautions accordingly. If they leave exposed to the observation of children anything which would be tempting to them, and which they in their immature judgment might naturally suppose they were at liberty to handle or play with, they should expect that liberty to be taken."

And the same eminent jurist in his treatise on torts, alluding to the doctrine of implied invitation to visit the premises of another, says:

"In the case of young children, and other persons not fully sui juris, an implied license might sometimes arise when it would not on behalf of others. Thus leaving a tempting thing for children to play with exposed, where they would be likely to gather for that purpose, may be equivalent to an invitation to them to make use of it; and, perhaps, if one were to throw away upon his premises, near the common way, things tempting to children, the same implication should arise." (Chap. 10, p. 303.)

The reasoning which led the Supreme Court of the United States to its conclusions in the cases of *Railroad Co. vs. Stout* (supra) and *Union Pacific Railroad Co. vs. McDonald* (supra) is not less cogent and convincing in this jurisdiction than in that wherein those cases originated. Children here are actuated by similar childish instincts and impulses. Drawn by curiosity and impelled by the restless spirit of youth, boys here as well as there will usually be found wherever the public is permitted to congregate. The movement of machinery, and indeed anything which arouses the attention of the young and inquiring mind, will draw them to the neighborhood as inevitably as does the magnet draw the iron which comes within the range of its magnetic influence. The owners of premises, therefore, whereon things attractive to children are exposed, or upon which the public are expressly or impliedly permitted to enter or upon which the owner knows or ought to know children are likely to roam about for pastime and in play, "must calculate upon this, and take precautions accordingly." In such cases the owner of the premises can not be heard to say that because the child has entered upon his premises without his express permission he is a trespasser to whom the owner owes no duty or obligation whatever. The owner's failure to take reasonable precautions to prevent the child from entering his premises at a place where he knows or ought to know that children are accustomed to roam about or to which their childish instincts and impulses are likely to attract them is at least equivalent to an implied license to enter, and where the child does enter under such conditions the owner's failure to take reasonable precautions to guard the child against injury from unknown or unseen dangers, placed upon such premises by the owner, is clearly a breach of duty, a negligent omission, for which he may and should be held responsible, if the child is actually injured, without other fault on its part than that it had entered on the premises of a stranger without his express invitation or permission. To hold otherwise would be to expose all the children in the community to unknown perils and unnecessary danger at the whim of the owners or occupants of land upon which they might naturally and reasonably be expected to enter.

This conclusion is founded on reason, justice, and necessity, and neither the contention that a man has a right to do what he will with his own property or that children should be kept under the care of their parents or guardians, so as to prevent their entering on the premises of others, is of sufficient weight to put it in doubt. In this jurisdiction as well as in the United States all private property is acquired and held under the tacit condition that it shall not be so used as to injure the equal rights of others or greatly impair the public rights and interests of the community (see *U. S. vs. Toribio*,^[1] No. 5060, decided January 26, 1910), and except as to infants of very tender years it would be absurd and unreasonable in a community organized as is that in which we live to hold that parents or guardians are guilty of negligence or imprudence in every case wherein they permit growing boys and girls to leave the parental roof unattended, even if in the event of accident to the child the negligence of the parent could in any event be imputed to the child so as to deprive it of a right to recover in such cases - a point which we neither discuss nor decide.

But while we hold that the entry of the plaintiff upon defendant's property without defendant's express invitation or permission would not have relieved defendant from responsibility for injuries incurred there by plaintiff, without other fault on his part, if such injury were attributable to the negligence of the defendant, we are of opinion that under all the circumstances of this case the negligence of the defendant in leaving the caps exposed on its premises was not the proximate cause of the injury received by the plaintiff, which therefore was not,

properly speaking, "attributable to the negligence of the defendant," and, on the other hand, we are satisfied that plaintiff's action in cutting open the detonating cap and putting a match to its contents was the proximate cause of the explosion and of the resultant injuries inflicted upon the plaintiff, and that the defendant, therefore, is not civilly responsible for the injuries thus incurred.

Plaintiff contends, upon the authority of the *Turntable* and *Torpedo* cases, that because of plaintiff's youth the intervention of his action between the negligent act of the defendant in leaving the caps exposed on its premises and the explosion which resulted in his injury should not be "held to have contributed in any wise to the accident; and it is because we can not agree with this proposition, although we accept the doctrine of the *Turntable* and *Torpedo* cases, that we have thought proper to discuss and to consider that doctrine at length in this decision. As was said in case of *Railroad Co. vs. Stout* (supra), "While it is the general rule in regard to an adult that to entitle him to recover damages for an injury resulting from the fault or negligence of another he must himself have been free from fault, such is not the rule in regard to an infant of tender years. The care and caution required of a child is according to his maturity and capacity only, and this is to be determined in each case by the circumstances of the case." As we think we have shown, under the reasoning on which rests the doctrine of the *Turntable* and *Torpedo* cases, no fault which would relieve defendant of responsibility for injuries resulting from its negligence can be attributed to the plaintiff, a well-grown boy of 15 years of age, because of his entry upon defendant's uninclosed premises without express permission or invitation; but it is a wholly different question whether such a youth can be said to have been free from fault when he willfully and deliberately cut open the detonating cap, and placed a match to the contents, knowing, as he undoubtedly did, that his action would result in an explosion. On this point, which must be determined by "the particular circumstances of this case," the doctrine laid down in the *Turntable* and *Torpedo* cases lends us no direct aid, although it is worthy of observation that in all of the "*Torpedo*" and analogous cases to which our attention has been directed, the record discloses that the plaintiffs, in whose favor judgments have been affirmed, were of such tender years that they were held not to have the capacity to understand the nature or character of the explosive instruments which fell into their hands.

In the case at bar, plaintiff at the time of the accident was a well-grown youth of 15, more mature both mentally and physically than the average boy of his age; he had been to sea as a cabin boy; was able to earn P2.50 a day as a mechanical draftsman thirty days after the injury was incurred; and the record discloses throughout that he was exceptionally well qualified to take care of himself. The evidence of record leaves no room if or doubt that, despite his denials on the witness stand, he well knew the explosive character of the cap with which he was amusing himself. The series of experiments made by him in his attempt to produce an explosion, as described by the little girl who was present, admit of no other explanation. His attempt to discharge the cap by the use of electricity, followed by his efforts to explode it with a stone or a hammer, and the final success of his endeavors brought about by the application of a match to the contents of the cap, show clearly that he knew what he was about. Nor can there be any reasonable doubt that he had reason to anticipate that the explosion might be dangerous, in view of the fact that the little girl, 9 years of age, who was with him at the time when he put the match to the contents of the cap, became frightened and ran away.

True, he may not have known and probably did not know the precise nature of the explosion which might be expected from the ignition of the contents of the cap, and of course he did not anticipate the resultant injuries which he incurred; but he well knew that a more or less dangerous explosion might be expected from his act, and yet he willfully, recklessly, and knowingly produced the explosion. It would be going far to say that "according to his maturity and capacity" he exercised such "care and caution" as might reasonably be required of him, or that the defendant or anyone else should be held civilly responsible for injuries incurred by him under such circumstances.

The law fixes no arbitrary age at which a minor can be said to have the necessary capacity to understand and appreciate the nature and consequences of his own acts, so as to make it negligence on his part to fail to exercise due care and precaution in the commission of such acts; and indeed it would be impracticable and perhaps impossible so to do, for in the very nature of things the question of negligence necessarily depends on the ability of the minor to understand the character of his own acts and their consequences; and the age at which a minor can be said to have such ability will necessarily vary in accordance with the varying nature of the infinite variety of acts which may be done by him. But some idea of the presumed capacity of infants under the laws in force in these Islands may be gathered from an examination of the varying ages fixed by our laws at which minors are conclusively presumed to be capable of exercising certain rights and incurring certain responsibilities, though it can not be said that these provisions of law are of much practical assistance in cases such as that at bar, except so far as they illustrate the rule that the capacity of a minor to become responsible for his own acts varies with the varying circumstances of each case. Under the provisions of the Penal Code a minor over fifteen years of age is presumed to be capable of committing a crime and is to be held criminally responsible therefor, although the fact that he is less than eighteen years of age will be taken into consideration as an extenuating circumstance (Penal Code, arts. 8 and 9). At 10 years of age a child may, under certain circumstances, choose which parent it prefers to live with (Code of Civil Procedure, sec. 771). At 14 it may petition for the appointment of a guardian (Id., sec. 551), and may consent or refuse to be adopted (Id., sec. 765). And males of 14 and females of 12 are capable of contracting a legal marriage (Civil Code, art. 83; G. O., No. 68, sec. 1).

We are satisfied that the plaintiff in this case had sufficient capacity and understanding to be sensible of the danger to which he exposed himself when he put the match to the contents of the cap; that he was sui juris in the sense that his age and his experience qualified him to understand and appreciate the necessity for the exercise of that degree of caution which would have avoided the injury which resulted from his own deliberate act; and that the injury incurred by him must be held to have been the direct and immediate result of his own willful and reckless act, so that while it may be true that these injuries would not have been incurred but for the negligent act of the defendant in leaving the caps exposed on its premises, nevertheless" plaintiff's own act was the proximate and principal cause of the accident which inflicted the injury.

The rule of the Roman law was: Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire. (Digest, book 50, tit. 17, rule 203.)

The Partidas contain the following provisions:

"The just thing is that a man should suffer the damage which comes to him through his own fault, and that he can not demand reparation therefor from another." (Law 25, tit. 5, Partida 3.)

"And they even said that when a man received an injury through his own negligence he" should blame himself for it." (Rule 22, tit. 34, Partida 7.)

"According to ancient sages, when a man received an injury through his own acts the grievance should be against himself and not against another." (Law 2, tit. 7, Partida 2.)

And while there does not appear to be anything in the Civil Code which expressly lays down the law touching contributory negligence in this jurisdiction, nevertheless, the interpretation placed upon its provisions by the supreme court of Spain, and by this court in the case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (7 Phil. Rep., 359), clearly deny to the plaintiff in the case at bar the right to recover damages from the defendant, in whole or in part, for the injuries sustained by him.

The judgment of the supreme court of Spain of the 7th of March, 1902 (93 Jurisprudencia Civil, 391), is directly in point. In that case the court said:

"According to the doctrine expressed in article 1902 of the Civil Code, fault or negligence is a source of obligation when between such negligence and the injury there exists the relation of cause and effect: but if the injury produced should not be the result of acts or omissions of a third party, the latter has no obligation to repair the same, although such acts or omissions were imprudent or unlawful, and much less when it is shown that the immediate cause of the injury was the negligence of the injured party himself."

The same court, in its decision of June 12, 1900, said that "the existence of the alleged fault or negligence is not sufficient without proof that it, and no other cause, gave rise to the damage."

See also judgment of October 21, 1903.

To similar effect Scaevola, the learned Spanish writer, writing under that title in his *Jurisprudencia delCodigo Civil* (1902 Anuario, p. 455), commenting on the decision of March 7, 1902, says that "in accordance with the doctrine expressed by article 1902 of the Civil Code, fault or negligence gives rise to an obligation when between it and the damage there exists the relation of cause and effect; but if the damage caused does not arise from acts or omissions of a third person, there is no obligation to make good upon the latter, even though such acts or omissions be imprudent or illegal, and much less so. when it is shown that the immediate cause of the damage has been the recklessness of the injured party himself."

And again -

"In accordance with the fundamental principle of proof, that the burden thereof is upon the plaintiff, it is apparent that it is the duty of him who shall claim damages to establish their existence. The decisions of April 9, 1896, and March 18, July 6, and September 27, 1898, have especially supported the principle, the first setting forth in detail the necessary points of the proof, which are two: An act or omission on the part of the person who is to be charged with the liability, and the production of the damage by said act or omission.

"This includes, by inference, the establishment of a relation of cause or effect between the act or the omission and the damage; the latter must be the direct result of one of the first two. As the decision of March 22, 1881, said, it is necessary that the damages result immediately and directly from an act performed culpably and wrongfully; 'necessarily presupposing a legal ground for imputability.'" (Decision of October 29, 1887.)

"Negligence is not presumed, but must be proven by him who alleges it." (Scaevola, *Jurisprudencia delCodigo Civil*, vol. 6, pp. 551, 552.)

(Cf. decisions of supreme court of Spain of June 12, 1900, and June 23, 1900.)

Finally, we think the doctrine in this jurisdiction applicable to the case at bar was definitely settled in this court in the maturely considered case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (supra), wherein we held that while "There are many cases (personal injury cases) in the supreme court of Spain in which the defendant was exonerated," on the ground that "the negligence of the plaintiff was the immediate cause of the casualty" (decisions of the 15th of January, the 19th of February, and the 7th of March, 1902, stated in *Alcubilla's Index* of that year); none of the cases decided by the supreme court of Spain "define the effect to be given the negligence of a plaintiff which contributed to his injury as one of its causes, though not the principal one, and we are left to seek the theory of the civil law in the practice of other countries;" and in such cases we declared the law in this jurisdiction to require the application of "the principle of proportional damages," but expressly and definitely denied the right of recovery when the acts of the injured party were the immediate causes of the accident.

The doctrine as laid down in that case is as follows:

"Difficulty seems to be apprehended in deciding which acts of the injured party shall be considered immediate causes of the accident. The test is simple. Distinction must be made between the accident and the injury,

between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing to his own proper hurt. For instance, the cause of the accident under review was the displacement of the crosspiece or the failure to replace it. This produced the event giving occasion for damages that is, the sinking of the track and the sliding of the iron rails. To this event, the act of the plaintiff in walking by the side of the car did not contribute, although it was an element of the damage which came to himself. Had the crosspiece been out of place wholly or partly through his act or omission of duty, that would have been one of the determining causes of the event or accident, for which he would have been responsible. Where he contributes to the principal occurrence, as one of its determining factors, he can not recover. Where, in conjunction with the occurrence, he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less a sum deemed a suitable equivalent for his own imprudence."

We think it is quite clear that under the doctrine thus stated, the immediate cause of the explosion, the accident which resulted in plaintiff's injury, was his own act in putting a match to the contents of the cap, and that having "contributed to the principal occurrence, as one of its determining factors, he can not recover."

We have not deemed it necessary to examine the effect of plaintiff's action in picking up upon defendant's premises the detonating caps, the property of defendant, and carrying them away to the home of his friend, as interrupting the relation of cause and effect between the negligent act or omission of the defendant in leaving the caps exposed on its premises and the injuries inflicted upon the plaintiff by the explosion of one of these caps. Under the doctrine of the Torpedo cases, such action on the part of an infant of very tender years would have no effect in relieving defendant of responsibility, but whether in view of the well-known fact admitted in defendant's brief that "boys are snappers-up of unconsidered trifles," a youth of the age and maturity of plaintiff should be deemed without fault in picking up the caps in question under all the circumstances of this case, we neither discuss nor decide.

Twenty days after the date of this decision let judgment be entered reversing the judgment of the court below, without costs to either party in this instance, and ten days thereafter let the record be returned to the court wherein it originated, where judgment will be entered in favor of the defendant for the costs in first instance and the complaint dismissed without day. So ordered.

Arellano, C. J., Torres and Moreland, JJ., concur.

Johnson, J., concurs in the result.

[1] 15 Phil. Rep., 85.

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