

**MANUELA ROSARIO ET AL., PLAINTIFFS AND APPELLEES, VS. THE
MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.***G.R. No. 6472. March 07, 1912*

Ponente: TORRES, J.

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This case is before us on appeal by the counsel for The Manila Railroad Company from a judgment rendered by the Honorable Isidro Paredes, judge.

In a written complaint filed with the Court of First Instance of Pangasinan, on June 23, 1909, the plaintiff Manuela Rosario set forth: That she was the widow of Joaquin Fontanilla, who died in the pueblo of Alava, Pangasinan, on the 8th of January of the year aforesaid, and the guardian ad litem of the other plaintiffs, who were the legitimate children of herself and the said Fontanilla, upon whose work and pay, prior to his death, the plaintiffs all depended for their support; that the deceased Fontanilla, prior to January 8, 1909, was in the service of the defendant company and was foreman over a number of laborers who were working on the construction of a railroad and were engaged in loading and unloading stone and gravel upon and from cars and trains under the control of the said company, its engine driver, train dispatcher, and superintendent; that on said date the cars and trains upon and from which stone and gravel were being loaded and unloaded by the workmen directed by Fontanilla, were, by order of the train dispatchers, agents, and superintendent of the said company, removed to other points of the railroad line, and although the foreman Fontanilla discharged his duties with diligence and care, the car on which he was riding collided, during the movement of the cars and trains, with another car on the track; that, as a result of the heavy shock and violent collision between the two cars, Fontanilla fell from the car and the wheels thereof passed over his body, crushing some of his bones and causing his instant death; that said accident occurred through the negligence and carelessness of the engine driver, superintendent, and train dispatcher of the company, since the car and train in which Fontanilla was riding, in the performance of his duties, were being drawn by a locomotive belonging to the defendant company and on arrival at a grade where the rails were not on a level, the engineer who was driving the locomotive stopped the same, letting loose the car and train in which Fontanilla, was riding, and, as a result thereof, the said car ran down the incline with great rapidity and collided with another loaded car; that this would not have occurred if the rails had been on a level, or if the car had remained coupled to the locomotive, or if the engineer of the latter had stopped the locomotive at a place where there was no declivity or grade; that the engineer acted negligently and carelessly by his failure to couple the said car to the locomotive which was drawing it, when he knew that the car, being uncoupled from the locomotive, would start to run down the slope, whereby he failed to perform his duty, as likewise did the other employees of the company by permitting the locomotive to stop in the said place, thus causing the car to run by its own momentum and cause the collision with the other loaded car, when they should have foreseen that, by the cars running down the grade, the said collision would occur; that it was to be believed that the company's engine driver and train dispatcher did not know their duties and had neither the ability nor the experience required for the service to which they were assigned and for directing the movements and superintendence of cars, trains, and locomotives; and that; as a result of what occurred, the defendants suffered damages in the amount of P2,500, by

the death of Joaquin Fontanilla. The plaintiffs therefore prayed the court to render judgment in their behalf for the said sum, and for the costs. The demurrer to the complaint having been overruled by an order of August 12, 1909, and exception thereto taken by the defendant party, the latter, by a writing of the 21st of the same month, set forth that it admitted the truth of the allegation contained in the second paragraph of the complaint, but made a general and specific denial of each and all of the allegations of each and all the other paragraphs of the complaint, and, as a special defense, alleged that the defendant company, at all times and places, had employed all due diligence in its operations and labors, both as regarded its personnel and its' material, and had endeavored to avoid accidents such as might injure any of its employees or laborers; that the accident suffered by Fontanilla and which occasioned his death, was due to his own negligence, carelessness, and imprudence, and that the defendant company was not culpable. The latter, therefore, asked that judgment be pronounced in its favor, by absolving it from the, complaint and sentencing the plaintiffs to the payment of the costs.

On February 17, 1910, the plaintiff Manuela Rosario filed a motion for the withdrawal of her action, in so far as it concerned herself.

Upon a motion presented by the defendant on the same date, and with the authorization of the court, the defendant company filed an additional answer in which it alleged that the plaintiff Rosario could in no wise maintain an action for damages on account of the death of her husband, for the reason that she herself had admitted, under oath and in a public document, that the accident was due to the deceased's own imprudence; and that the defendant was in no way to blame for what had occurred.

On March 17, 1910, counsel for the defendant presented a new motion wherein it alleged that, since the plaintiff Rosario had withdrawn her action, in so far as it concerned her—which implied an admission of the allegation relative to the argument advanced that she could not maintain any action whatever for damages against the railroad company on account of her having admitted that the accident, to wit, the death of her husband, was due to the deceased's imprudence—it was proper to dismiss this action, following the decision in the case of *Naval vs. Enriquez* (3 Phil. Rep., 669) counsel prayed that, as a preliminary matter, his motion be granted, and the court, by an order of March 22, dismissed the suit, with the costs in favor of the defendant company.

On March 29, counsel for the plaintiffs moved the court to reconsider the case dismissed by a previous order, and, on the same date, made written motion that an exception be entered for his clients against the said order of dismissal; and by another writing of the 30th of the same month requested a reopening of the case and a reconsideration of the motion praying for the annulment of the said order of dismissal. Both these motions were overruled by the court, in an order issued on April 9, to which ruling counsel for the plaintiffs excepted.

By a writing of May 10, presented to the court and subscribed by both parties, the latter stated that they had agreed to a rehearing of this case and that all the relevant evidence which the parties might present should be admitted. This agreement was approved by an order of August 10, 1910.

After a hearing of the case and the introduction of testimony by both parties, the court, on the 24th of August of the same year, rendered judgment by sentencing the defendant, The Manila Railroad Company, to pay to the plaintiffs the sum of P2,500 and the costs. To this judgment counsel for the defendant took exception and, in writing, moved for its annulment and the holding of a new trial, which motion was overruled by an order of September 1, to which an exception was taken and the proper bill of exceptions filed, certified, approved, and forwarded to the clerk of this court.

The action in this case was brought for the purpose of obtaining damages, in behalf of the six children of Joaquin Fontanilla, a foreman in the service of the corporation known as The Manila Railroad Company, who died on January 8, 1909, as a result of falling from and being run over by one of the open cars belonging to the defendant

and used for hauling stone and gravel. The accident was caused by the car colliding with another loaded car, after the said open cars had run, on their own momentum, down a grade at a place called Cabaoanan, of the pueblo of Alava, Pangasinan, due to their having been, by order of the engineer who was driving the locomotive, uncoupled from the said engine. The lumbar vertebrae and floating ribs of the deceased were broken.

At the beginning, suit was brought by Manuela Rosario, the widow of the unfortunate Fontanilla and guardian ad litem of their children, but, seven months and some days afterwards, while the litigation was still pending, counsel for the said plaintiff presented a written motion for the withdrawal of the action in so far as his client was concerned, and the defendant, on being informed thereof, prayed for the dismissal of the complaint in view of the fact that the plaintiff had admitted, in a public document, that the accident which caused her husband's death was occasioned by the deceased's own imprudence, as she herself declared under oath, and therefore withdrew her action. This petition was granted by an order of March 22, 1910; but, through an agreement reached between both parties, the trial was reopened with respect to the minor children of the deceased Fontanilla.

The document above cited, executed by Manuela Rosario, reads as follows:

"I, Manuela Rosario y Urbano, widow of the deceased Joaquin Fontanilla, 39 years of age and a resident of the municipality of Alava, Province of Pangasinan, P. I., after taking oath in legal form, declare: (1) That on the eighth day of the present month, at the hour of 10 minutes to 4 o'clock in the afternoon, my deceased husband, Joaquin Fontanilla, who was in the employ of the Manila Railroad Company in the capacity of foreman, jumped from one of the cars of the construction train, on the Camp One line of the said company, lost his balance on striking the ground, and rolled under the wheels of another car which passed over him and caused his immediate death, as shown by the official report made by the Cabaoanan station master; (2) That the Manila Railroad Company, in consideration of the services rendered by the deceased and the neediness of his widow and children, brought about by the deceased's carelessness and negligence, the said company being in no manner responsible for this misfortune, decided to pay us a gratuity of P100 (one hundred pesos) Philippine currency, which I, Manuela Rosario y Urbano, his widow, accept in my name and in that of my minor children, in the nature, as aforesaid, of a gratuity, and not as an indemnity, since there is no reason for the latter, as the deceased met his death solely by his own fault; and (3) That, in accordance with the foregoing, we deem this matter to be closed and promise the Manila Railroad Company that we shall make no other claim nor present any judicial complaint in any form whatever, with reference thereto, the affair being hereby terminated. In witness whereof, I sign this affidavit, in San Fabian, this 22d day of January, 1909—Manuela Rosario.—Signed. Signed and sworn to before me, this 22d day of January, 1909. The affiant did not exhibit to me her certificate of registration, on account of her being exempt from this tax by reason of her sex.—Before me: Mariano Legaspi, notary public.—My appointment expires on January 1, 1910."

From the facts which are held in the judgment to have been proven, it is concluded that, on the aforesaid date of January 8, 1909, when the accident occurred which caused the death of Joaquin Fontanilla, he was occupying the position of foreman of laborers, in the service of the said railroad company, at a semimonthly salary of P8.50; that, on the date mentioned, he arrived with a gang of workmen, all being aboard four cars which had come from a place north of Calasiao and which were loaded with gravel to be used in the company's work; that when the loaded cars stopped on the track at a place where there is a grade running from north to south, they were, by order of the engineer, uncoupled from the locomotive which had been drawing them, this maneuver not being noticed by the foreman and workmen; that by reason of this stop and uncoupling, the four cars, in the next to the last of which were seated the foreman and workmen, suddenly moved rapidly backwards down the grade until they met and collided with another car, loaded with stone, which was standing at a point below the incline; that, as a result of the shock, Fontanilla was thrown out and fell to the ground, and the car from which he fell passed over his body; that the post-mortem examination disclosed that four of the lumbar vertebrae and two floating ribs were broken, wherefore the injured man must have died immediately; that Fontanilla, at his death, left a widow,

Manuela Rosario, and six minor children, the eldest of which was 19 years old, all of whom subsisted and depended on the deceased's meager salary; and that when the cars were running backwards, it was not possible to stop them by applying the brakes, because the latter were in bad condition and would not work, and notwithstanding that Fontanilla, on the morning of that day, reported that such a defect existed, the notice was disregarded and the cars were coupled to the locomotive for the service aforementioned.

The trial judge, in consideration of the facts duly proved by the testimony of witnesses, held that the accident, whereby Joaquin Fontanilla lost his life, was due to a defect in the condition of the machinery employed by the defendant company in its business, and also to the fault, carelessness and negligence of the said company and of its employees.

The Act applicable to the case, and on the provisions of which the judgment was based, is No. 1874, section 2 of which reads:

"If, as the result of the negligence of the employer or that of a person for whose negligence the employer is liable under the provisions of section one, an employee is killed or dies by reason of injuries received, his widow, or legal heirs, or next of kin who at the time of his death were dependent upon his wages for support, shall have a right of action for damages against the employer."

The third paragraph of section 3 of the same Act prescribes:

"The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section two, shall not be less than five hundred pesos nor more than two thousand five hundred pesos for both the injury and the death."

Immediately after the accident the company was informed thereof; and the plaintiff's complaint or claim was filed in the court of Pangasinan on June 23 of the same year, 1909; so all the provisions of section 4 of the said Act were complied with.

Manuela Rosario, the widow of the deceased Joaquin Fontanilla, having withdrawn her action, her rights and personality have been set aside. The plaintiff has continued this suit in the name and in representation of her minor children, as the successors and heirs of her deceased husband, in the exercise of the right conferred upon them by the aforecited Act No. 1874, because of the death of their father, due to the negligence of the defendant corporation and of its employees. It is unnecessary to discuss the question of the validity and force of the affidavit apparently made by the said widow and contained in the above-quoted notarial instrument, inasmuch as the statements made by her in the said document can not affect the rights and interests of her minor children. These were expressly recognized in the judgment appealed from.

Even though it were conceded that the above-quoted notarial instrument was of the nature of a public document, as it was authenticated by a notary, yet merely because this officer attested that Manuela Rosario made before him the statements contained in the said affidavit, the said instrument is of but slight juridical value; such documents are always of less probatory value than the testimony of witnesses. The said affidavit could operate as proof, according to article 1218 of the Civil Code, even against third parties with respect to the facts giving rise to and the date of its execution, but such notarial instrument can not operate as conclusive proof against the minor children represented in this litigation by the maker of that instrument, because the children had not acquired the right to demand the indemnity in their character as successors of their mother Rosario, who is still living, but as the children and heirs of the deceased Joaquin Fontanilla, killed as the result of an accident. If Manuela Rosario had not been alive on the date of said accident, the orphans, the children of the deceased, would unquestionably have been entitled to demand the indemnity in question, through a guardian.

Section 348 of the Code of Civil Procedure, defining affidavits and depositions, says that an affidavit is a written declaration under oath, made without notice to the adverse party and the section enumerates the instances in which such documents may properly be used. The law only concedes them the character of prima facie evidence of the facts stated therein, but such evidence is susceptible of impeachment, since, according to the doctrine established in the decision of the supreme court of Spain, of July 13, 1899, as a general rule, all documents attest the facts that are the origin of and the date of their execution, but do not attest the veracity of the statements therein made.

Even though the statements made in the said notarial instrument expressed a contract entered into between Manuela Rosario and the defendant corporation, the children had by the said Rosario and the deceased Fontanilla were not bound with respect to the damages claimed in this suit, inasmuch as the former, as the latter's widow, could have waived her right to be indemnified on account of the accidental death of her husband, but she did not have the authority, either as the mother or as the natural guardian of her minor children, to waive, in the latter's name, their right to claim the said indemnity. Once such right was acquired by the death of the children's father, caused by the negligence of the defendant corporation and some of its employees, it became incorporated within the property and interests of the said minors which must be cared for and preserved by their parents or guardians.

Article 164 of the Civil Code prescribes:

"The father, or the mother in a proper case, can riot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity, and after authorization from the judge of the domicile, hearing the department of public prosecution, etc."

Article 269 of the same code provides:

"The guardian requires the authority of the family council:

* * * * *

"5. To alienate or encumber the property constituting the capital of minors or incapacitated persons, or to make contracts or execute instruments subject to record.

* * * * *

"12. To compromise and submit to arbitration the questions in which the minor or incapacitated person may be interested."

Article 275 of the said code provides:

"Guardians are forbidden—

"1. To give or renounce things or rights belonging to the minor or incapacitated person."

Even with the modifications produced by the Code of Civil Procedure in some articles of the Civil Code, and Manuela Rosario's having declared in her sworn statement that she did not renounce any right pertaining to her children, it is not proper to conclude that, by reason of the statements made by her in the said notarial instrument, the right to the indemnity claimed in the present suit may be deemed to have been renounced by the plaintiff minors. The character of natural guardian, with which Manuela Rosario, the mother of the plaintiff minors, is vested, does not confer upon her a right to dispose of her children's property or to renounce in their name the right to indemnity accorded them by law, for section 553 of the Code of Civil Procedure, although it prescribes that the father, or, in case of his death or legal disability, the mother, of a minor child, is to be deemed the natural guardian, and as such is entitled to the custody, and charged with the care and education of the minor, yet this

right is not extended to include the latter's property, unless so ordered by the court; and the record does not show that Manuela Rosario was authorized freely to dispose of the property and rights of her minor children. Meanwhile parents and guardians of minors are expressly forbidden to sell the property, transfer the rights or compromise the interests of their children or wards, without previous judicial authorization, a prohibition introduced into the law for the benefit of minors who might be defrauded even by their parents and guardians; Therefore, the statements made by Manuela Rosario, in the off-mentioned notarial instrument, can in no wise affect the rights of her minor children in the present suit.

Moreover, the said statements of Manuela Rosario can in no manner prejudice the rights and interests of her minor children, and the close relationship between her and her children, does not constitute the particular relation referred to by section 277 of the Code of Civil Procedure, which declares that the rights of a party can not be prejudiced by the declaration, act or omission of another.

If the only evidence which the defendant party was unable to produce (as the court refused to suspend the hearing of this case and postpone the suit until another date), was the testimony of the notary who drew up and authenticated the said notarial instrument, which evidence the defense wished to produce because Manuela Rosario did not assert that she executed or signed the said instrument, inasmuch as the said Rosario withdrew her complaint, and it having been shown that neither the sworn statements contained in the notarial instrument, nor the latter itself can in any wise affect the rights of the plaintiff minors, in whose name their mother was not authorized to renounce any of such rights, it is clear that the trial judge did not incur the errors assigned to the judgment appealed from.

For the reasons aforestated, and the plaintiff minors having an unquestionable right to the indemnity claimed, it is, in our opinion, proper to affirm, and we do hereby affirm, the said judgment, with the costs against the appellant.

Arellano, C. J., Mapa and Johnson, JJ., concur.

Carson, Moreland, and Trent, JJ., concur in the result.

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