

J. H. CHAPMAN, PLAINTIFF AND APPELLANT, VS. JAMES M. UNDERWOOD, DEFENDANT AND APPELLEE.*G.R. No. 9010. March 28, 1914*

Ponente: MORELAND, J.

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At the time the accident occurred, which is the basis of this action, there was a single-track street-car line running along Calle Herran, with occasional switches to allow cars to meet and pass each other. One of these switches was located at the scene of the accident.

The plaintiff had been visiting his friend, a man by the name of Creveling, in front of whose house the accident happened. He desired to board a certain "San Marcelino" car coming from Santa Ana and bound for Manila. Being told by Creveling that the car was approaching, he immediately, and somewhat hurriedly, passed from the gate into the street for the purpose of signaling and boarding the car. The car was a closed one, the entrance being from the front or the rear platform. Plaintiff attempted to board the front platform but, seeing that he could not reach it without extra exertion, stopped beside the car, facing toward the rear platform, and waited for it to come abreast of him in order to board. While in this position he was struck from behind and run over by the defendant's automobile.

The defendant entered Calle Herran at Calle Penafrancia in his automobile driven by his chauffeur, a competent driver. A street car bound from Manila to Santa Ana being immediately in front of him, he followed along behind it. Just before reaching the scene of the accident the street car which he was following took the switch—that is, went off the main line to the left upon the switch lying alongside of the main track. Thereupon the defendant no longer followed that street car nor went to the left, but either kept straight ahead on the main street-car track or a bit to the right. The car which the plaintiff intended to board was on the main line and bound in an opposite direction to that in which defendant was going. When the front of the "San Marcelino" car, the one the plaintiff attempted to board, was almost in front of defendant's automobile, defendant's driver suddenly went to the right and struck and ran over the plaintiff, as above described.

The judgment of the trial court was for defendant. A careful examination of the record leads us to the conclusion that defendant's driver was guilty of negligence in running upon and over the plaintiff. He was passing an oncoming car upon the wrong side. The plaintiff, in coming out to board the car, was not obliged, for his own protection, to observe whether a car was coming upon him from his left hand. He had only to guard against those coming from the right. He knew that, according to the law of the road, no automobile or other vehicle coming from his left should pass upon his side of the car. He needed only to watch for cars coming from his right, as they were the only ones under the law permitted to pass upon that side of the street car.

The defendant, however, is not responsible for the negligence of his driver, under the facts and circumstances of this case. As we have said in the case of *Johnson vs. David* (5 Phil. Rep., 663), the driver does not fall within the list of persons in article 1903 of the Civil Code for whose acts the defendant would be responsible.

Although in the David case the owner of the vehicle was not present at the time the alleged negligent acts were committed by the driver, the same rule applies where the owner is present, unless the negligent acts of the driver are continued for such a length of time as to give the owner a reasonable opportunity to observe them and to direct his driver to desist therefrom. An owner who sits in his automobile, or other vehicle, and permits his driver to continue in a violation of the law by the performance of negligent acts, after he has had a reasonable opportunity to observe them and to direct that the driver cease therefrom, becomes himself responsible for such acts. The owner of an automobile who permits his chauffeur to drive up the Escolta, for example, at a speed of 60 miles an hour, without any effort to stop him, although he has had a reasonable opportunity to do so, becomes himself responsible, both criminally and civilly, for the results produced by the acts of his chauffeur. On the other hand, if the driver, by a sudden act of negligence, and without the owner having a reasonable opportunity to prevent the act or its continuance, injures a person or violates the criminal law, the owner of the automobile, although present therein at the time the act was committed, is not responsible, either civilly or criminally, therefor. The act complained of must be continued in the presence of the owner for such a length of time that the owner, by his acquiescence, makes his driver's act his own.

In the case before us it does not appear from the record that, from the time the automobile took the wrong side of the road to the commission of the injury, sufficient time intervened to give the defendant an opportunity to correct the act of his driver. Instead, it appears with fair clearness that the interval between the turning out to meet and pass the street car and the happening of the accident was so small as not to be sufficient to charge defendant with the negligence of the driver.

Whether or not the owner of an automobile driven by a competent driver, would be responsible, whether present or not, for the negligent acts of his driver when the automobile was a part of a business enterprise, and was being driven at the time of the accident in furtherance of the owner's business, we do not now decide.

The judgment appealed, from is affirmed, with costs against the appellant.

Arellano, C. J., Carson, and Araullo, JJ., concur.

Trent, J., concurs in the result.

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