

45 Phil. 99

[G.R. No. 20047. August 25, 1923]

**MARCIANO RALLOS, PLAINTIFF AND APPELLEE, VS. PHILIPPINE RAILWAY CO.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

This is an action to recover damages resulting from a fire on June 29, 1921, alleged to have been caused by sparks emitted from a locomotive of the defendant. The complaint alleges negligence, first, in allowing dangerous combustible materials to accumulate on its right of way, and in permitting several nipa houses to be constructed close to its railroad track; second, in not providing engine No. 33 with a spark-arrester; third, in using wood in the engine as fuel; and, fourth, in negligently operating the engine causing large amounts of sparks and cinders to emit from its chimney, which kindled the fire that destroyed the house of Tomas Diores and the houses of the plaintiff and other persons.

For answer, the defendant made a general denial, and, as a special defense, alleges the proper equipment and management of its engine, and the contributory negligence of the plaintiff in allowing his two houses to stand 19 and 30 meters, respectively, from the railroad track. The defendant denies the use of wood for fuel in engine No. 33 on the day in question, although it admits it did use wood in all of its other engines. It also admits that engine No. 33 was not provided with spark-arrester, but claims that the engine does not need one. The defendant also admits that nipa houses were constructed very close to its track, and that it had formerly collected rents from the houses. But at the time in question, it had ceased to collect rents, and had advised the occupants to vacate the premises. It also admits that the houses of the plaintiff were not

built on defendant's right of way, but on his own lot, and it appears that they were built long before the existence of the defendant as a corporation. The plaintiff claims damages in the sum of P6,127.

As a result of a long and tedious trial, the lower court rendered judgment for the plaintiff in the sum of P3,000, with interest at the rate of 6 per cent per annum from the filing of the complaint and costs, from which the defendant appeals, assigning thirteen different errors, in substance, that the court erred in finding that the fire was due to the negligence of the defendant in the operation of its engine; that the origin of the fire was due to the emission of sparks from the engine; that the engine should be equipped with a spark-arrester; that it emitted sparks, as alleged; that the fuel used was wood instead of coal; that at or about the time of the fire, sparks were seen to be emitted from the smoke stack of the locomotive; that at the time the engine was hauling three loaded cars, and in failing to find that the plaintiff was guilty of contributory negligence, and that the law of railroads is not in force, and in its valuation of the property destroyed; and in not finding for the defendant.

The amount involved on this appeal is only P3,000, and costs, but it appears from the record that a number of other cases are pending against the company to recover damages resulting from the same fire, amounting in the aggregate to more than P10,000, and, for such reasons, and on account of its importance, this case has been considered in *banc*.

JOHNS, J.:

Both parties have filed able and exhaustive briefs.

In a well-written opinion, his Honor, Judge Adolph Wislizenus, made the following analysis of the facts:

“This is a suit for damages caused by the destruction by fire of two houses belonging to plaintiff. Plaintiff's houses were built long before the construction of defendant's railroad and even before defendant's existence as a corporation. They stood on land not belonging to defendant on the north side of Calle Panganiban in Cebu city facing south, this street having a general east

and west course. On the south side of Calle Panganiban a very few feet south is the track and railway of the defendant, which runs along and more or less parallel with Calle Panganiban. Near these tracks and on the railroad road bed stood the house of Tomas Diores which faced Calle Panganiban and extended to within a few feet of the south side of Calle Panganiban. Almost opposite the house and on the north side of Calle Panganiban which is here only twenty feet wide stood the two houses of plaintiff.

“Along the railroad track described defendant was in the habit of running or operating a switch track with engines with or without cars, from the wharf in Cebu city to its main station in Cebu and *vice versa*. The land between defendant’s tracks and the south side of Calle Panganiban was all of it except a bolt of a few feet in width near the south side of Calle Panganiban the property of defendant acquired by condemnation proceedings. This land belonging to the defendant, at the date complained of, was occupied by a number of houses including the house of Tomas Diores, mostly of light materials, some of them with wooden partitions, others with bamboo partitions, but all with nipathatched roofs. These houses were some of them of persons owning the land on which they stood before the defendant acquired the land by condemnation proceedings; others belonged to people who were allowed to ‘squat’ by defendant.

“On June 29, 1921, at about 9.30 a. m., a ‘pony engine’ owned and operated by defendant passed along the tracks described (also owned and operated by defendant) going from the Cebu city wharf to the main station in the same place. It carried three heavily loaded roof freight cars—one loaded with cross ties and the other two with wood for fuel (called ‘rajas’ in Cebu). There is some testimony that the engine drew four or five cars but the court finds that they did not exceed three in number.

“As the cars passed along the tracks parallel with Calle Panganiban from a point known as Forbes Bridge (where Calle Magallanes is carried over the tracks) it passed the house of one Tomas Diores. This house was situated across Calle Panganiban (20 feet wide at the place) and on the south side of said street. Opposite to it and on the north side of Calle Panganiban were plaintiff’s houses. Diores’ house was almost in contact with defendant’s tracks. It had a nipa roof. A few charred rear *harigues* of Diores’ house are still to be

seen within twenty feet of the nearest rail. The eaves of its roof were (before the fire) within five feet of the near rail. As one witness said 'it was possible from Diores' house to pull off a stick off the cars loaded with wood as they passed.' The rear part of Diores' house stood on defendant's land and a portion of the front part of Diores' house reached to within a few feet of the south line of Panganiban street separated from plaintiff's houses which stood on the north side of Panganiban street by the width of said street, *i. e.*, some twenty feet.

"As the engine and cars passed the house of Tomas Diores clouds of smoke poured from the smoke stack of the engine which was not provided with a spark-arrester. The south wind was blowing strongly, and blew the smoke which carried numerous cinders hot and incandescent to the nipa roof of Tomas Diores' house which almost touched the tracks. Before the train had proceeded more than

a few hundred yards (toward Calle Colon) the wind had fanned these sparks and cinders into flames, the roof of Diores' house visibly burning and the cry of 'fire!' was raised. The upper part of the house ('los altos') was locked and unoccupied. The lower part ('los bajos') was occupied by a *lavandera* who had not made any fire in the 'fogon' that morning having made a breakfast of cold rice left over from the evening before. This woman describes the time which elapsed from the passing of the train till the cry of 'fire!' was raised quite graphically. She was counting laundry pieces as the train went by and had not counted a hundred pieces (laundry is charged for by the hundreds in Cebu) before

the cry of 'fire!' was raised. From the house of Diores the fire spread by sparks carried by the wind to other houses which were standing near (much less than a stone's throw) from Diores' house. From these houses the fire spread across Panganiban street (twenty feet wide at that place) to plaintiff's houses on the north side of Panganiban street which were destroyed by the fire before assistance could be rendered by the firemen.

"Considerable stress was laid in the course of argument whether at the time in question the engine was using wood or coal as fuel. The court is inclined to believe that wood was used as fuel, at least immediately before and while passing the house of Tomas Diores. Whether wood or coal was used as fuel, the court has no doubt that the fire started in the roof of Diores' house by hot

sparks and cinders carried in the smoke cloud which issued from the smoke stack of engine number 33 unprovided, as heretofore stated, with a spark-arrester. Furthermore defendant was guilty of negligence in allowing the house of Tomas Diores (and those of others) to remain on its land in such close proximity to its railroad tracks that the only wonder is that the fire did not happen long ago. Indeed from a remark dropped by one of the witnesses (though perhaps not relevant in fixing the blame in this case) quite a number of fires have occurred at the place from the same alleged causes. Of course plaintiff (whose houses did not stand on defendant's land) is not responsible for negligence in that regard.

"It is true that defendant sent formal notices to Diores and others (not plaintiff) to remove their houses from its land, but no real effort (by suing defendants in ejectment in justice's court) was made until after the fire complained of.

"There is no attempt to deny that engine 33 was unprovided with a spark-arrester. The court can take judicial notice of the fact that a locomotive engine unprovided with a spark-arrester is likely to throw sparks and cause fires. The court takes judicial knowledge that for many years ordinary caution has exacted the use of spark-arresters on engines passing near combustible materials. No amount of 'expert' testimony can affect that knowledge.

"Defendant has offered an ocular inspection to prove that engine number 33 can go along its tracks at the site of the fire in question, without emitting sparks or hot cinders from its smoke stack. This appears to be begging the question. The court has no doubt that with special care as to fuel and firing (not exercised on June 29, 1921) engine number 33 *can* pass the site of Diores' house without showering the adjoining houses and territory with dangerous sparks especially if the day appointed for the 'demonstration' be wind-still and not with a strong south wind blowing as on June 29, 1921. In fact defendant's contention that engine 33 *could* have avoided throwing out sparks calls upon it to explain why on June 29, 1921, it did not do so. On that point testimony of plaintiff's witnesses as to what *did* happen with engine sparks and houses on June 29, 1921, outweighs—in the court's opinion—the testimony of those of defendant's witnesses calling themselves experts (without

being ocular witnesses) as to what should or even could have happened on that day.

“As to the value of plaintiff’s two houses destroyed by the fire, started by defendant’s negligence, plaintiff claims one to have been worth P5,000 and the other to have been worth P1,000 and their furniture to have been worth P154. Before the fire plaintiff had valued these properties for taxation purposes at P2,100 and P50 respectively. Afterwards (before the fire) plaintiff had obtained a reduction of this valuation to P1,200 and P50. In the United States the veriest ‘runts’ are apt to develop into pedigreed stock if killed on the railroad tracks. Something of this kind has evidently happened in this case. As a rule in this jurisdiction the assessed value of property for taxation purposes is one-half or one-third of its selling value. The court believes that P3,000 represents the reasonable value of plaintiff’s property (two houses and furniture) destroyed by the fire.”

All of such findings are well supported by the evidence. In fact the record shows an aggravated case of negligence on the part of the defendant. Under the conditions then and there existing, a fire of this nature could have happened at almost any time.

Among other defenses, the defendant relies upon a Royal Decree promulgated on the 23d of November, 1877. Article 11 of that Decree provides as follows:

“Whenever there are individual rights existing prior to the establishment of a railroad or to the promulgation of this act which after its passage cannot be created and are to be abolished for the need or use of the railroads, the rules for condemnation proceedings on account of public utility provided for in the Act of July 17, 1836, the provisions of the act on public works and the administrative regulations to enforce it should be observed.”

The record here is conclusive that the plaintiff’s houses were on his own property, and that they were constructed before the railroad was built or even the company was organized. It is also conclusive that for some time previous to the fire, the defendant was the owner of land adjoining its track, upon which a

number of houses stood within a few feet of the track, and from which it was collecting rents. In other words, by its own acts, the defendant was violating the spirit and intent of the Royal Decree of 1877, to protect railroad property from loss by fire. Where, as in the instant case, the violation of the Royal Decree by the defendant was the proximate cause of the injury, it may well be doubted whether the Decree could be invoked as a defense to the action. Be that as it may, article 11 above quoted simply provides that, in such cases, the property of adjoining owners can be condemned and taken by the payment of its value. In no event, without condemnation proceedings, could the Royal Decree of 1877 be made to apply to houses which were constructed before the railroad was built, and which became adjoining property by the building of the railroad.

The proof is conclusive that the fire was caused by sparks emitted from one of defendant's engines, which set fire to one of its own houses standing within a few feet of its track, resulting in the destruction of a large amount of adjoining property. The evidence shows a clear case of negligence on the part of the defendant.

The judgment of the lower court is affirmed, with costs. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.