

[G.R. No. 3124. January 03, 1907]

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. ENRIQUE RODRIGUEZ, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The steamship *Pluto*, belonging to the plaintiff, while lying at its dock in the Pasig River on the 5th day of January, 1904, was run into by *lorcha* No. 1, belonging, as the plaintiff alleged, to the defendant, and was damaged, as the plaintiff also alleged, to the amount of 5,292 pesos. Judgment was rendered in the court below against the defendant for that sum, from which judgment he appealed.

In this court he makes the point that there is no evidence of negligence on the part of the persons in charge of the *lorcha*. In answer to this claim, the appellee refers to the testimony of Golden and of Collins, and claims that this testimony is sufficient to prove negligence on the part of the persons in the *lorcha*. The testimony of Golden, who was the master of the launch *St. Paul* on that day, so far as it relates to this point, is as follows:

“Q. Will you please inform the court what occurred while you were towing quartermaster *lorcha* No. 1, as you have testified?—A. I towed quartermaster *lorcha* No. 1, from the quartermaster dock to the arsenal dock, and just before I got to the dock there was a large *banca* of lumber crossing from the dock, and I had to let go of the *lorcha*. I was going slow at the time. I was about 400 feet, or over, away from the dock.

“Q. What happened?—A. I cast off the *lorcha* and went to port, then turned around and was watching the *lorcha*, which was going slow, and the tide was bringing them in all the time.

“Q. What did the *lorcha* do?—A. I could see the *lorcha* steering straight toward the stern of the *Pluto*, but I did not see her strike.

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“Q. After you had cast off the *lorcha*, what did you do next?—A. I went to port of the *casco* of lumber and went on up the river and turned round, and while turning round I saw the *lorcha* going straight for the stern of the *Pluto* very slow, but I did not see her strike.”

Collins was the engineer on the *Pluto* on that day. He testified:

“A. I had been working in the engine room, at the time the *lorcha* struck us, and Captain O’Brien came to the engine room and called me on deck, and said: ‘Look at this railing about the stern all broken by this *lorcha*.’ Our men were standing by with fenders, but could not do anything after the damage was done, so the captain sent a man to the launch to find out the captain’s name, and also the *lorcha*. That is all that I can say about the matter.

“Q. What did you do when Captain O’Brien came and called you?—A. I came on deck, and the men were shoving a *lorcha* off close by—shoving it right away from us.”

Both parties agree that this is all the evidence in the case which tends to show any negligence on the part of the *lorcha*, and in our opinion it is entirely insufficient for that purpose. As will be noticed, there is nothing to show what the persons on the *lorcha* did or what they did not do; how many people there were on the *lorcha*; how near the *lorcha* was to the *Pluto* when the tow rope was cast off by the *St. Paul*; whether or not the people on the *lorcha* were notified by the captain of the *St. Paul* that he was going to cast them off; what time, if any, they had to prepare for such an event, and whether or not they did all that was possible to prevent the collision after they knew that they had been cast adrift. On these points, as is seen, there was absolutely no evidence at all.

It was suggested in the court below that the *Pluto* being tied to the wharf and having been run into by the *lorcha*, there is a presumption that the accident was caused by the negligence of the *lorcha*. Whatever may be said of this presumption in other cases, it can

have no application in this case since it affirmatively appears that the *lorcha* was being towed by the *St. Paul*, and whether the accident was caused by the negligence of the people on the *lorcha* or by the negligence of the captain of the *St. Paul* in casting off the tow so unexpectedly does not appear.

The case was continued from January to July to enable the defendant to present the testimony of O'Brien, captain of the *Pluto*, and who evidently was an eyewitness of the accident. He was not produced at that time as a witness, but in his place Collins, the engineer, testified. Why he was not produced does not appear, but the reason may perhaps be inferred from a statement made by him on the day following the accident, when reporting it, which statement was introduced in evidence by the plaintiff. In that report he said:

"This accident occurred while the S. S. *Pluto* was moored at its garbage dock, and everything was done, as far as putting out rattan fenders, to offset the force of the blow, as we could see the *lorcha* had a big rate of speed owing to the bad judgment on the part of the native patron of the launch *St. Paul* by letting go his towline."

Golden, the master of the *St. Paul*, testified as follows:

"Q. In your judgment could the collision have been avoided if proper methods had been taken by the patron of the *lorcha*?—A. Yes, sir.

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"Q. How could the collision have been avoided?—A. If they went to port they could have gone right by the *Pluto*, and if they had gone to starboard they could have gone right to the dock; there was nothing lying there; the dock was empty.

"Q. Through whose fault, in your judgment, was the collision caused?—A. The fault of the patron of the *lorcha*."

It is very plain that this evidence can have no effect upon the result. The witness did not testify to the facts upon which he based his conclusion, even if with such testimony his opinion would have been competent.

The judgment of the court below is reversed and the defendant is acquitted of the complaint, with the costs of the first instance against the plaintiff. No costs will be allowed to either party in this court. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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