

REFERENCE DIGEST

CIVIL LAW: DAMAGES — ENFORCING THE CIVIL LIABILITY OF COMMON CARRIERS. — P while riding in a bus of C, a common carrier suffers injuries in a collision brought about by the reckless imprudence of D a driver of C. What recourses if any are open to P, if he desires to recover damages against C, and which of these legal recourses is the most effective and advantageous?

P can collect damages in two ways:

- (1) Through the instrumentality of the penal law in case the acts producing the injury also constitute a crime:
- (2) By a civil action for damages, regardless of whether the acts producing the injury amount to a crime or not.

The injured party may recover damages from the common carrier thru the instrumentality of the penal law if the acts of negligence amount to a crime. This is so because it is a fundamental principle that every person criminally liable for a felony is also civilly liable. As a general rule, in actual practice, the trial of the criminal case will take precedence over the trial of the civil case involving the same facts. In the same criminal proceeding where the employee or servant of a common carrier is convicted, the judgment will also sentence the accused to pay the corresponding indemnity unless the offended party expressly waives his right to institute the civil action or has made a reservation to institute the same. The liability of the accused to pay civil damages under Art. 100 R.P.C. is a primary, direct liability. In the same criminal action, the court has no authority to require the employer (common carrier) to pay damages because the employer is not a party to the case; the court has not acquired personal jurisdiction over him; he was not given a day in court to defend himself. To sentence him to pay any indemnity would be unfair and unjust and constitutes deprivation of property without due process of law. In case however, where the employee or servant has no property of his own to pay the civil liability imposed by the judgment then the offended party may bring a civil action to recover the value of the unpaid judgment from the employer (common carrier).

But the offended party, for the purpose of recovering damages from the common carrier that has caused him injury, is not required by the law to resort to the penal statute. The offended party may bring a civil ac-

tion directly against the common carrier for breach of contract of carriage. When a carrier undertakes to transport goods or passengers, there is a contract of carriage which is binding on both parties. The prestation of the carrier is to deliver safely the goods or the passengers at the point of destination. The carrier must comply with this prestation using extraordinary diligence.

In choosing between a criminal action and a civil suit the following considerations must be taken into account:

(a) Under the Civil Code, the liability of employers is direct and primary, while under the Revised Penal Code, their liability is subsidiary. In other words under the Civil Code, the injured party may immediately sue the employer without first suing the negligent employee. On the other hand, under the Revised Penal Code, the liability of the employer arises only when the employee who caused the damage fails to pay for such damage.

(b) If an employer is sued under his direct and primary liability imposed by the Civil Code, he may interpose the defense of due diligence in the selection of his employee and in the supervision over his acts. Such a defense is not available to the employer under the Revised Penal Code.

(c) Under the Civil Code employers are liable for the damage caused by the negligence of their employees and household helpers even though they are not engaged in any business or industry. Under the Revised Penal Code, however, employers are liable for the damage caused by the felonies committed by their employees only when such employers are engaged in a business or industry.

It is well to remember, that the defense of careful selection and supervision is a good defense in an action in tort; that is to say, in an action for *culpa aquiliana*.

But an action against a common carrier for injury to goods and passengers is entirely of a different nature. It is based on culpa contractual or for breach of a contract of carriage and it has been held that the defense of careful selection and supervision has no application thereto.

It is submitted that in an action for breach of contract of carriage, the common carrier cannot exempt itself on the ground of careful selection and supervision as stated in Art. 2180, par. 8, New Civil Code.

It is therefore, highly urged that all actions against the common carrier for injury to goods or passengers be filed directly under the civil law without resorting to the round-about way of first instituting a criminal action against the employee followed by a civil action for subsidiary liability of employer. (Cesar Kintanar, *Damage Suits Against Common Carriers*, VIII *The University of San Carlos Law Review* No. 24 at 1-8 (1958). This issue also contains: Petition: In re amendment of Section 6 of Rule 127 of the Rules of Court regarding pre-law requirements.)

CIVIL LAW: RIGHT OF WAY AND PRESCRIPTION. One of the vexing questions in Philippine law is whether or not a servitude of way may be acquired by prescription. In the case of Archbishop of Manila vs. Roxas, 22 Phil. 450, the Supreme Court said that a right of way, like the one sought to be established in the case at bar, is a charge upon real property for the benefit of another estate belonging to a different owner. Such a right of way is a privilege or advantage in land existing from the ownership of the soil and, because it is a permanent interest in another's land with the right to enter at all times and enjoy it, it can only be founded upon agreement or prescription. In a subsequent case, Municipality of Dumangas vs. Bishop of Jaro, 34 Phil. 541, the Court again said that it is therefore to be presumed that the use of said side door also carries with it the use by the faithful Catholics of the municipal land over which they have had to pass in order to gain access to said place of worship and as this use of the land has been continuous, it is evident that the Church has acquired a right to such use by prescription in view of the time that has elapsed since the church was built. However in Cuaycong vs. Benedicto, 37 Phil. 781, the Supreme Court cited a decision Supreme Court of Spain holding that under the law in force before the enactment of the Civil Code, the easement of way was discontinuous, and that while such an easement might be acquired by prescription, it must be used in good faith, in the belief of the existence of the right, and such user must have been continuous from time immemorial. In this case no evidence has been made to prove immemorial use. It is evident therefore that no vested right by user from time immemorial had been acquired by plaintiffs at the time the Civil Code took effect. Under that Code no discontinuous easement could be acquired by prescription in any event. In North Negros Sugar Co. vs. Hidalgo, 63 Phil. 664, the Supreme Court, in the main opinion penned by Justice Recto, refused to grant an injunction on the ground that the plaintiff had created a personal servitude of way over its property when it constructed a road thereon and offered its use to the general public upon payment of a certain sum as passage fee in the case of motor vehicles. However Justice Laurel did not believe that a servitude of way had been created on plaintiff's property because the defendant had no title and prescription could not be considered. In the recent case of Ronquillo vs. Roco, G.R. No. L-10619, Feb. 28, 1958, the Court held that the servitude of way is discontinuous and may not be acquired by prescription. To reconcile these various decisions, Justice Reyes, commenting on the Dumangas case, said that it does not, if properly analyzed, constitute authority to hold that the easement of right of way is acquired by prescription or adverse possession because the word prescription was used in the decision not in the sense of adverse possession for ten or thirty years but in the sense of 'immemorial usage' which, under the law anterior to the Civil Code of

1889, was one of the ways in which the servitude of right of way could be acquired.

The author then cites U.S. authorities to show that in the United States the servitude of right of way may be acquired by prescription. He then concludes by saying that although under the present Civil Code the servitude of way is discontinuous and may not be acquired by prescription, there is still the possibility of change. In this respect Art. 646 of the Civil Code points the way to a change or clarification. The servitude of aqueduct is not necessarily continuous but under the aforementioned article, "for legal purposes the easement of aqueduct shall be considered as continuous and apparent." (Vicente Abad Santos, *Right of Way and Prescription*, 33 Phil. L.J. No. 4 at 457-465 (1958). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Salonga, *Views on Legal Education*; Fernandez, *Freedom of the Press in the Philippines*.)

REMEDIAL LAW: IS IT TIME TO REVAMP THE JUDICIAL MACHINERY OF THE PHILIPPINES? At a conference of judges and lawyers held recently, an eminent member of the Philippine Bar perspicaciously pointed out the needs which confront our judicial machinery and came out with suggestions on the simplification of trial procedure and the improvement of the administration of justice. The following are his recommendations:

(a) We should have in this country a Law Day. To implant the significance of having such an annual occasion, President Eisenhower is quoted as having said that "freedom under the law is like the air we breathe. People take it for granted and are unaware of it — until they are deprived of it. The clearest way to show what the rule of law means in everyday life is to recall what has happened where there is no rule of law."

(b) There should be an integrated bar in this country. The integrated or statutory bar is the most effective instrumentality yet devised for the purpose of improving the quality of the services that lawyers render to the public. And by the rendition of those public services, and as a necessary result thereof, lawyers as a whole are made more worthy of respect and more respected; and what they have to sell to the public is made more attractive and consequently is more in demand.

(c) Counsel *de officio* must be paid by the State. Under our present practice only in very rare cases do attorneys *de officio* render their services with enthusiasm. They usually ask for the postponement of trial because they have to attend to cases for which their services have been paid. By paying remuneration to such lawyers we will help many young lawyers make a living out of the profession.

(d) The law on preliminary investigations should be uniform. At present different rules govern the preliminary investigations conducted by

Courts of First Instance, fiscals of Manila, provincial fiscals, and the justices of the peace or municipal courts. While the opportunity to be heard and to cross-examine the complainant and his witnesses is a right granted to be accused by the law governing the preliminary investigation conducted by the city fiscal of Manila, such right does not practically exist under the law governing preliminary investigations conducted by a provincial fiscal.

(e) Preliminary investigations by Judges of Courts of First Instance must be dispensed with.

(f) Trial by jury. As a first step it is suggested that in cases involving capital offenses the assistance of two assessors be made mandatory.

(g) Take away from the fiscals their alleged right to refuse the production of testimony given by the complainant and his witnesses in the preliminary investigation conducted by them. Such practice is not only improper but immoral. Immoral because it presupposes that the fiscal has the right to suppress primary evidence that is in his possession and compel the accused to resort to secondary evidence.

(h) In civil cases, where defendant is in default, dispense with the requirement imposed on plaintiff of having yet to introduce evidence in support of his cause of action.

(i) Establish circuit justice of the peace courts which are courts of record. This will ease the clog in the dockets of Courts of First Instance. The decisions of these courts will be directly appealable to the Court of Appeals.

(j) Temporary assignment of lawyers to assist judges in deciding cases.

(k) The practice of making judges perform non-judicial functions must be stopped. There is already a lack of judges and this situation should not further be aggravated by directing judges to perform non-judicial functions.

(l) Manifest partiality of a judge must be a ground for his disqualification. Because the Rules of Court has not been amended as yet by including in Section 1, Rule 126 the manifest partiality of a trial judge as a ground for his disqualification, the Supreme Court, in the recent case of *People v. Castelo*, denied a petition of the accused that the new trial be held before another judge due to alleged partiality of the trial judge, the reason for such denial being that it is a prerogative of a judge to decide whether he is disqualified or not to try a case and that he cannot be imposed upon by a superior court to disqualify himself.

(m) Punctuality of judges.

(n) Provide the Courts of First Instance with law libraries.

(o) There should be a time limit within which preliminary investigations by fiscals must be finished.

(p) As to young lawyers, it is suggested that Congress or the Supreme Court be asked to amend the pertinent provisions of the Rules of Court

in the sense that lawyers, after passing the bar be allowed to try cases in court only after they have practiced in a law office and assisted experienced lawyers in the actual trial of cases, for one or two years.

(q) The bar and bench should be consulted in the appointment of judges. There will be more chances of securing good appointments to the bench if members of the bar are given a say, or at least consulted, before such appointments are made.

(r) Clerks of Court should charge docketing fees for counterclaims and cross-claims. The government has lost a considerable amount of money for failure of the Clerks of Court to give the proper interpretation to Section 5, Rule 130 of the Rules of Court.

Atty. Vicente J. Francisco gives a detailed, exhaustive, and enlightening analysis of his various suggestions, and advances convincing reasons and explanations why they should be adopted. (Vicente J. Francisco, *Suggestions of Atty. Vicente J. Francisco On the Simplification of Trial Procedure and the Improvement of the Administration of Justice*, 23 THE LAWYERS JOURNAL No. 5, at 152-158 (1958). ₱2.00 at Francisco College, Baesa, Quezon City. This issue also contains: Alegre, *Observations on the Magna Carta of Labor*.)

CORPORATION LAW: THE RIGHT OF INCORPORATION. Before a corporation can be incorporated under the Philippine Incorporation Law, a minimum subscribed capital is required. This is settled. But upon what basis should the minimum subscription be computed? There are divergent views.

Section 9 of the Corporation Law, before it was amended, reads as follows: "The Director of the Bureau of Commerce and Industry shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of a treasurer elected by the subscribers showing that at least twenty percent of the *Entire Capital Stock* has been subscribed and x x x"

However by virtue of the so-called 1928 amendments, the said Section 9 was amended by Act No. 3518, such that, as impliedly amended also by Commonwealth Act No. 287, it now reads as follows: "The Securities and Exchange Commissioner shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of a treasurer elected by the subscribers showing that at least twenty per cent of the *Entire Number of Authorized Shares of Capital Stock* has been subscribed and x x x"

Thus, although both provisions require a minimum subscription of capital before a corporation could be lawfully incorporated, they differ on the

basis upon which the minimum subscription is computed. Notwithstanding the provisions of Section 9 as amended, the Securities and Exchange Commissioner believes that "where the capital stock of a proposed corporation is divided into shares with different par values, the twenty per cent subscription requirement should be based on the entire amount of capital stock and not literally on the entire number of authorized shares without considering the different par values into which said shares have been divided. Otherwise situations could be created which are not contemplated under the law. Thus, by the expediency of classifying shares with different par values and getting subscriptions only for the shares having the least par value, it would be possible to form a corporation with an authorized capital stock of ₱1,000,000.00 with only ₱0.50 as the paid-up capital stock."

Professor Guevara on the other hand maintains that under the present law, the basis upon which the minimum subscribed capital should be computed is the entire number of authorized shares. The author distinguishes the right of incorporation from the ability of operation. Thus, it is possible to incorporate a corporation even with a very small paid-up capital provided such paid-up capital represents the 25% of the subscription of 20% based on the entire number of authorized shares. To operate with small capital is absurd, but to incorporate with small capital is not absurd. (Sulpicio Guevara, *The Right of Incorporation Under the Philippine Incorporation Law*, 33 Phil. L. J. No. 3 at 349-357 (1958). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Antonio R. Bautista. *The Res Judicata of C.A.R. — Approved Agreements*.

LEGISLATION

LIST OF REPUBLIC ACTS APPROVED DURING THE FIRST REGULAR AND FIRST SPECIAL SESSIONS OF THE FOURTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES.

R.A. No. 2050. An Act appropriating the sum of one hundred fifty thousand pesos to help defray the expenses of the training, preparation and participation of a Filipino Athletic Delegation to the Third Asian Games to be held in Tokyo, Japan from May 24, 1958 to June 1, 1958.

R.A. No. 2051. An Act to amend section eight hundred thirty of the Tariff and Customs Code of the Philippines. (H. No. 481).

R.A. No. 2052. An Act authorizing the President of the Philippines to increase the participation of the Republic of the Philippines in the International Monetary Fund and the International Bank for Reconstruction and Development, and providing for the procedure to meet the financial requirements therefor. (H. No. 1090).

R.A. No. 2053. An Act to authorize the Philippine Charity Sweepstakes Office to hold annually a lottery for the benefit of the Blood Bank. (H. No. 777).

R.A. No. 2054. An Act to further amend Chapter Fifty-six of the Revised Administrative Code, as amended by Republic Act Numbered Eighteen Hundred Thirty-six. (Re salaries of provincial engineers) (S. No. 83).

R.A. No. 2055. An Act to amend Sections One and Five of Republic Act Numbered Three Hundred and Fifty-Seven as amended by Republic Act Numbered Eight Hundred Thirteen by increasing to one hundred million dollars the amount of loans which the National Power Corporation may contract from the International Bank for Reconstruction and Development, the Export-Import Bank of Washington D.C., U.S.A., or any other international financial institution. (S. No. 122).

R.A. No. 2056. An Act to prohibit the construction of dams, dikes or any other works in public navigable waters or waterways, to regulate works in such waters or waterways and to provide penalties for its violations, and for other purposes. (S. No. 196).

R.A. No. 2057. An Act to up-date the commissioned service of the Bureau of Coast and Geodetic Survey and for other purposes. (S. No. 240).

R.A. No. 2058. An Act to amend Section One of Commonwealth Act Numbered One Hundred Twenty by fixing the period of existence of the National Power Corporation. (S. No. 256).

R.A. No. 2059. An Act to authorize the Philippine Charity Sweepstakes Office to hold one special sweepstakes race for the Welfareville Institution as beneficiary. (S. No. 267).

R.A. No. 2060. An Act amending Article One hundred and ninety of the