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[G.R. No. 982. January 04, 1904]

LIM-JUCO, PLAINTIFF AND APPELLANT, VS. LIM-YAP, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

The plaintiff, Lim-Juco, sued the defendant, Lim-Yap, for damages in the sum of 13,000 pesos for breach of a contract to insure a cargo of rice. The defendant in his answer denied that he was under any obligation to pay this sum, upon the ground that the second contract of insurance represented by the policy introduced in evidence by the plaintiff is void.

The court below, in view of the evidence adduced by the parties and in consideration of the facts admitted and agreed upon between them, rendered judgment for the defendant, with the costs against the plaintiff.

The complaint upon which it is sought to recover this sum of 13,000 pesos as damages is based upon the failure of the defendant to fulfill his obligation of executing a valid and enforceable policy of insurance upon a cargo of rice.

The parties litigant agree that long prior to June 14, 1900, when a contract of insurance was entered into between the plaintiff, Lim-Juco, and the defendant, Lim-Yap,as representative of the King Yuen Insurance Company, Limited, insuring 3,000 sacks of rice, valued at 13,000 pesos, loaded on the barkentine *Registro,*
they had entered into the agreement which appears in section 9, page 2 of the bill of exceptions. This agreement, the plaintiff contends,

constituted a contract of insurance between him and the firm of Germann & Co., the agents of La Federal Insurance Company, for the insurance of the same 3,000 sacks of rice above referred to for their total value.

The brig in question, which sailed from the port of Dagupan June 15, 1900, for this city, carrying the 3,000 sacks of rice so insured, was wrecked on the following day, the 10th, near the port of Vigan, Island of Luzon, the entire cargo being lost. On the 17th of the same month Pio Acosta, the skipper, together with some of the members of the shipwrecked vessel, entered, before the customs inspector in the port of Vigan, a ship's protest in due form, with respect to the said shipwreck. Upon their arrival in this city this protest was repeated before the notary public, Enrique Barrera. Of all these facts the defendant had immediate notice.

The plaintiff has been completely indemnified for the loss of the 3,000 sacks of rice which went down in the wreck of the brig *Registro.*
On the 11th of August, 1901, he received from the firm of Germann & Co. the sum of 13,000 pesos, the amount of insurance underwritten by that firm in favor of the plaintiff. (Bill of exceptions, pp. 6 and 7.)
The manager of the firm testified to this fact, and stated that he had written a letter to the defendant notifying him that he had paid the amount of the insurance on the lost rice belonging to the plaintiff, Lim-Juco.

Article 782 of the Code of Commerce provides that if different contracts of insurance have been entered into concerning the same thing, in the absence of fraud only the first contract shall subsist, provided it covers the full value of the thing insured. Subsequent insurers shall be relieved from responsibility, and receive one-half of 1 per cent of the amount insured.

If the first contract does not cover the entire value of the thing insured, then the liability for the excess shall fall upon the subsequent insurers in order of priority.

The only error assigned by the appellant is that the court erred in

rendering judgment for the defendant and in imposing the costs upon the plaintiff, Lim-Juco.

The plaintiff has not demanded from the defendant, Lim-Yap, the value of the rice insured by him as agent of the Panag Khean Guan Insurance Company, Limited, nor has he affirmed or denied the validity or enforceability of the policy executed in his favor by the defendant, notwithstanding the fact that it was the second contract of insurance upon the same thing.

The plaintiff, Lim-Juco, realizing that no action had accrued to him and that his policy was unenforceable from his point of view—that is, for the reason that it was defective in form and not because of the existence of a former contract of insurance covering the same 3,000 sacks of rice—commenced this suit against the insurance agent to recover damages for the amount of the injury occasioned by the loss of the rice. The action was based upon the alleged nullity of the policy, which in the opinion of the plaintiff was deficient and had been executed without the formalities required by law.

We do not deem it necessary to make any decision as to the conditions of the said policy, inasmuch as the plaintiff has not suffered damage by reason of the deficiency resulting from a failure to comply with the formal requisites prescribed by article 738 of the Code of Commerce.

The unenforceability of this policy, even if all the legal formalities had been complied with in its execution, is due to the prohibition established by the law against the double recovery of the value of a cargo of property insured and lost by any maritime accident.

It is a fact disclosed by the evidence that the plaintiff has recovered the entire amount of the value of 3,000 sacks of rice insured and subsequently lost by the wrecking of the vessel. Therefore, in accordance with the provisions of article 782 of the Code of Commerce, the second or subsequent insurer, the defendant herein, is free from all liability. The law will not permit Lim-Juco, after having collected

from Germann & Co. an amount in excess of the value of the rice insured, to collect for the second time from a second insurer. The latter's obligation in the premises has been annulled by the provisions of the law.

It is unnecessary to discuss the conditions of the contract of insurance signed by Germann & Co. on behalf of the Federal Insurance Company, in view of the unquestionable fact that the plaintiff collected and received from the said firm more than the entire value of the rice lost. For this reason, whatever may have been the defects in the policy issued by the insurer, no action has accrued to the plaintiff for the recovery of damages. Upon the facts of the case there is no law which sanctions such an action. It is a demand as unjust as it is immoral, and seeks to elude the prohibition of a double recovery of the value of property insured.

As the second contract of insurance entered into is null and void and therefore, by express provision of the law, produces no obligation with respect to the Chinese company represented by the defendant, the plaintiff having recovered the total amount of the insurance from the first insurer, there is no legal reason upon which the agent of the company can be compelled to pay the amount of the second policy of insurance, from which, as above stated, this agent was freed by operation of law. Neither can an action for damage be successfully maintained against the agent, as none of the articles of the Code of Commerce which deal with commission agents, factors, and clerks create such an obligation. Nor is such an obligation created by any of the articles of the same code concerning marine insurance.

For the reasons given, the action against the defendant, Lim-Yap, is dismissed and the judgment below affirmed, with the costs to the plaintiff. Judgment will be entered and the case remanded to the court below twenty days from the date of the Notification of this decision. So ordered.

Arellano, C.J., Cooper, Willard, Mapa, and *McDonough, JJ.,* concur.

Johnson, J., did not sit in this case.

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