

**PRATS & COMPANY, A REGISTERED PARTNERSHIP, PLAINTIFF
AND APPELLANT, VS. PHOENIX INSURANCE COMPANY, HARTFORD,
CONNECTICUT, A CORPORATION, DEFENDANT AND APPELLEE.**

G.R. No. L-28607. February 21, 1929

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Prats & Co., a mercantile partnership, for the purpose of recovering from the Phoenix Insurance Co., of Hartford, Connecticut, the sum of P17,800.60, with interest, by reason of a loss alleged to have been sustained by the plaintiff, on August 21, 1924, from a fire, it being alleged that said loss was covered by policy of insurance No. 600217, for the sum of P200,000, issued by the defendant company to the plaintiff. For answer, the defendant, Phoenix Insurance Co., admitted the issuance of the policy of insurance but, by way of special defense, alleged, among other things, that the fire in question had been set by the plaintiff, or with its connivance, and that the plaintiff had submitted under oath to the defendant a fraudulent claim of loss, in contravention of the express terms of the policy. Upon hearing the cause the trial court absolved the defendant from the complaint with respect to the obligation created by the policy which was the subject of the suit, but ordered the defendant to pay to the plaintiff the sum of P11,731.93, with interest from the filing of the complaint, upon account of moneys received from salvage sales, conducted by the defendant, of remnants of the insured stock. From this judgment the plaintiff appealed.

So far as liability under the policy of insurance which is the subject of this action is concerned, we are of the opinion that the defendant has sufficiently established two defenses, either of which would be fatal to the right of recovery, namely, first, that the fire which caused this loss was of incendiary origin, and that it was set by the procurance or connivance of the plaintiff for the purpose of defrauding the insurer; and, secondly, that the plaintiff, after the fire, submitted to the defendant a fraudulent claim, supported by false proof, in violation of the terms of the policy. Of these defenses the trial judge sustained the second but passed the first without express finding. We consider it important, however, briefly to exhibit the salient facts on both points, not only because of the considerable sum of money involved, but because the facts appearing in evidence supply a typical illustration of the manner in which frauds of this character against insurance companies may be constructed with some hope of success, when insurance agents are accessible who, under the incentive of writing large amounts of insurance, can be induced to close their eyes to obvious dangers.

On July 10, 1923, Francisco Prats, Elias Hanna and Isidro Bejar registered two mercantile partnerships in the Bureau of Commerce and Industry for the purpose of engaging in mercantile business. The articles of co-partnership of these two entities were the same except in the firm names. It was apparently contemplated, in so far as any legitimate function may have been intended, that Prats & Co. should be an importing firm, while Hanna, Bejar & Co. should engage in retail business. As events show, the existence of the parallel entities, controlled by the same individuals, supplied, undeniably, suitable engines for accomplishing an exploit of the kind that was here attempted. Of the three individuals mentioned Elias Hanna and Isidro Bejar were Turkish subjects of

unsavory reputation in insurance circles of Manila, while Francisco Prats was a Spanish subject who had had some success as a merchant and, prior to his connection with the two associates above mentioned, apparently enjoyed a fair reputation. Another individual, who figures in the case as an instrument of the three partners, is one Domingo Romero, who at the time with which we are here concerned, was an employee of the Bureau of Internal Revenue, with a salary of P150 per month. Ramon Prats, a son of Francisco Prats, was united in marriage to a daughter of Domingo Romero, with the result that social relations between Francisco Prats and Domingo Romero were close. Francisco Prats appears to have acted as manager for both Prats & Co. and Hanna, Bejar & Co.

On May 27, 1924, Prats, acting for Hanna, Bejar & Co., purchased a one-story building at 95 Plaza Gardenia, Manila; and soon thereafter he began to assemble in this place the stock of merchandise which was the subject of insurance in this case. The building referred to was purchased outright for the sum of P1,600. It was old and was scarcely more than a shed but had been used in times past for human habitation. It was located in a part of the city which was inconvenient of access to traders and out of the ordinary channels of business activity. After purchasing the building, Prats knocked out the partitions, removed the floor, and laid a new cement floor on the ground. He then installed shelving along the center. The main part of the structure was thus converted into a single store, or bodega, though certain adjuncts, consisting of kitchen and closets, remained unchanged in the rear of the building. A sign was then set up over the entrance bearing the firm name "Hanna, Bejar & Co." In effecting the purchase of this building Prats availed himself of the service of Domingo Romero, who lived only two doors away at 97 Plaza Gardenia.

By August 21, 1924, there had been assembled and stored by Prats in the place above described a stock of goods which, according to the documents exhibited by him, had a valuation of P211,329.72, on which he had taken out insurance to the extent of P410,000. At midnight of the day mentioned a fire occurred at 95 Plaza Gardenia, which destroyed the building and ruined its contents, the amount realized from the salvage of the stock being P11,731.93. With respect to the insurance upon this stock at the time of the fire, the following facts appear: In the month of June preceding the fire, nine policies aggregating P160,000 were taken out by Prats in the name of Hanna, Bejar & Co. on merchandise stored at 95 Plaza Gardenia. At the time these policies were taken out the valuation of the goods then in said store could not have been more than P68,753. On June 28, 1924, Prats procured from the agent of the defendant in this case policy of insurance No. 600217 in the amount of P200,000 on merchandise stored in the same place. The nine policies already procured had been taken out, as we have seen, in the name of Hanna, Bejar & Co.; but when Prats applied to the agent of the defendant for the P200,000 policy last above mentioned, the agent told him that if Hanna or Bejar had any interest in the stock to be insured the policy could not be issued for the reason that, in such case, the defendant would not be able to obtain reinsurance for any part of the policy, owing to the bad reputation of Hanna and Bejar. Accordingly, at the request of Prats, the policy for P200,000 was now made out in the name of Prats & Co.; and Prats at the same time assured the agent that Hanna and Bejar were not partners in Prats & Co. With the writing of this policy the amount of insurance on the merchandise at 95 Plaza Gardenia was increased to P360,000, while the value of the stock at that time was not probably much in excess of P158,000. On August 11, 1924, or just ten days before the fire, Prats took out an additional policy for P50,000 in the name of Prats & Co. on the same stock. This made a total insurance of P410,000 on the contents of the store at 95 Plaza Gardenia. At the same time, according to Prats himself, the valuation of the merchandise then in the place was not in excess of P230,000. Furthermore, Prats, about this time, caused the first nine policies which had been taken out in the name of Hanna, Bejar & Co. to be indorsed to Prats & Co., thereby making this firm the sole insured firm with respect to this stock of merchandise.

With respect to the origin of the stock thus assembled, we find that part had been purchased in Europe by Prats; and in connection with its importation from abroad it is noteworthy that on June 18, 1924, Prats & Co. procured a policy of marine insurance to be issued by Meerkamp & Co., Ltd., as agents of the East India Insurance Co., Ltd.,

upon twenty-two cases of silk, of a supposed value of P43,400. At the time this policy was procured Prats informed the insurer that the goods were soon to arrive from France by the steamer Suwa Maru, For this policy of insurance Prats paid out the sum of P736.25. Nevertheless, it now appears that the twenty-two cases of silk covered by this marine policy were fictitious, as no such purchase of silk had been made by Prats & Co. in France or elsewhere. This fact was offered in evidence by the defendant, as tending to reveal a scheme by which, if a destructive fire should occur, the plaintiff would be able to mislead the defendant as to the quantity of goods stored in the bodega. This item of proof, though circumstantial in its nature, was undoubtedly competent and should have been admitted by the trial court.

The proof submitted by the defendant tends to show that obscure manipulations were used by the plaintiff in the storing of merchandise at 95 Plaza Gardenia and in the removal of part of the contents of the bodega before the fire. In this connection it appears that forty-five cases of old stock of Hanna, Bejar & Co., at Legaspi, P. I., were shipped to Manila before the fire, but instead of being taken directly to 95 Plaza Gardenia, they were housed for a time in the back part of the lower floor of the Bazar Filipino in which Prats & Co. and Hanna, Bejar & Co. had their offices. Moreover, a quantity of merchandise purchased from Talambiras Brothers by Prats & Co. was taken to the same place shortly before the fire, instead of directly to 95 Plaza Gardenia; and it is the theory of the defendant that new merchandise purchased from Talambiras Brothers was substituted for the old stock in boxes from Hanna, Bejar & Co. at Legaspi, leaving the old goods to be deposited in the bodega to swell the debris of the fire. There is evidence also, which was credited by the court, to the effect that on various occasions before the fire goods were removed from the bodega to the store of B. Abolafia, at Manila, where they were received without invoice. Some of these goods were subsequently sent away by Abolafia for sale in the provinces.

If overinsurance and the assemblage of goods at inflated values in the bodega at 95 Plaza Gardenia, together with the surreptitious abstraction of goods therefrom by the insured, have suggested a possible intention on the part of its manager to realize improperly on its insurance policies, this inference is, in our opinion, put beyond reach of reasonable doubt by facts relative to the destruction of the place. In this connection we note that at about the time the bodega at 95 Plaza Gardenia had been purchased, Domingo Romero assisted one Ramon Osete to rent No. 69 Calle Gardenia, which was close to the rear of the building at 95 Plaza Gardenia. Osete appears to have been the individual chosen for the role of incendiary, and he slept at the place mentioned until the night of the fire. A night or two before the fire this Osete, accompanied by one Antonio Prats, appears to have brought two cans of petroleum to his lodging place at 69 Calle Gardenia. After these cans had been taken to Osete's bathroom by his muchacho, the latter was sent out on an errand; and while he was gone the petroleum disappeared. After the fire had been started in the plaintiff's bodega shortly after midnight on August 21, 1924, Osete conveyed this boy in his automobile to the fire alarm box on Plaza Gardenia. Reaching this place, Osete planted the boy there with instructions to stop anyone who might attempt to turn in the alarm by telling him that he (the boy) had already done so; and in fact, after the fire had gained some headway, one Joaquin Silos, who lived near the bodega, ran to the box to turn on the alarm but was stopped in the act by a person who stated that he had already given the alarm. Nevertheless, when Fire Chief Vanderford reached the scene of the fire a few minutes later, he found that the box had not been disturbed and he himself turned on the alarm. The boy stated that when he was on the way with Osete to the alarm box, as just stated, an-explosion took place in the bodega and a dull sound was emitted. Vanderford says that upon his arrival he saw that the smoke issuing from the bodega was black, suggesting the combustion of some inflammable material like petroleum. He also noted the odor of petroleum, as did also some of the firemen who reached the scene. It may be added that when the debris of the fire was subsequently searched, merchandise soaked with petroleum was found in the ruins.

Domingo Romero, who had been living at 97 Plaza Gardenia, had before the fire taken his family temporarily to the home of Prats in Pasay. But after the fire was over the family moved back to 97 Plaza Gardenia, although that

place had been considerably damaged by the flames.

Among those who suffered from the fire were the members of the Artigas family, living at 93 Gardenia, on the side opposite Romero's house. Another neighbor who likewise suffered from the fire was one Juan Atayde, occupant of 67 Calle Gardenia, at the side of the house occupied by Osete. Soon after the fire Domingo Romero quietly passed a 100-peso bill into the hand of Maria Luisa Artigas, a daughter belonging to the Artigas family. Romero likewise gave the same amount to Juan Atayde. It is selfevident that the gifts thus made by Romero to Luisa Artigas and Juan Atayde had other motives than pure charity and that the money probably came from some other source than his own modest earnings. After the fire was over the suspicions of incendiarism were so strong that a special investigation was made by the police department with the result that Deputy Chief Lorenzo came to the conclusion that the fire had originated from an intentional act. Reflection upon the proof before the court engenders in us the same belief and conducts us to the further conclusion that Prats & Co. was not alien to the deed.

The finding of the trial court to the effect that the plaintiff had submitted false proof in support of his claim is also, in our opinion, well founded. That conclusion appears to have been based upon three items of proof and, with respect to at least two of these, we think that the conclusion of his Honor was correctly drawn. These two facts are, first, that the plaintiff had submitted a claim for jewelry lost in the fire as of a value of P12,800 when the true value of said jewelry was about P600; and, secondly, that the plaintiff had sought to recover from the insurance company the value of goods which had been surreptitiously withdrawn by it from the bodega prior to the fire. Neither of these two facts are consistent with good faith on the part of the plaintiff, and each constituted a breach of the stipulations of the policy against the use of fraudulent devices and false proof with respect to the loss.

The other point relied upon by his Honor to sustain the conclusion that the plaintiff had attempted to deceive the defendant with respect to the extent of the loss was at least competent in its general bearing on the good faith of the plaintiff, even if, as is probably true, not alone sufficient

to constitute a breach of the same stipulations. The point is this: After the fire the plaintiff presented to the adjuster certain cost sheets and copies of supposed invoices in which the prices and expenses of importation of a quantity of goods were stated at double the true amount. The adjuster soon discovered the artificial nature of these documents, and, with his consent, they were withdrawn by Prats and subsequently destroyed. At the hearing Prats stated that these documents had been fabricated in order that they might be exhibited to intending purchasers of the goods, thereby making it appear to them that the cost of the merchandise had been much greater than it in fact was—a ruse which is supposed to have been entirely innocent or at least not directed against the insurer. But a question naturally arises as to the purpose which these documents might have been made to serve if the fire, as doubtless intended by its designers, had been so destructive as to remove all vestiges of the stock actually involved. Upon the whole we are forced to state the conclusion, not only that the plaintiff caused the fire to be set, or connived therein, but also that it submitted fraudulent proof as the trial judge found.

Before concluding this opinion we are constrained to make a few observations with reference to the trial of this case and the inordinate amount of time consumed in the proceedings. We are told in the appellant's brief that the trial of this case covered a period of almost two years, in which fifty separate sessions were held, without counting the numerous hearings upon the taking of the deposition of Francisco Prats, a partner in the plaintiff firm, whose testimony was taken at the instance of the defendant. Taken all together, the time thus consumed was out of all proportion to the difficulties of the case. An examination of the voluminous transcript reveals at least part of the reason for this inordinate consumption of time; since we find that far too much of the space in the transcript is taken up with the record of petty skirmishes in court resulting from objections over the admission of

evidence.

In the course of long experience we have observed that justice is most effectively and expeditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the form of the questions should be avoided. In a case of any intricacy it is impossible for a judge of first instance, in the early stages of the development of the proof, to know with any certainty whether testimony is relevant or not; and where there is no indication of bad faith on the part of the attorney offering the evidence, the court may as a rule safely accept the testimony upon the statement of the attorney that the proof offered will be connected later. Moreover, it must be remembered that in the heat of the battle over which he presides a judge of first instance may possibly fall into error in judging of the relevancy of proof where a fair and logical connection is in fact shown. When such a mistake is made and the proof is erroneously ruled out, the Supreme Court, upon appeal, often finds itself embarrassed and possibly unable to correct the effects of the error without returning the case for a new trial,—a step which this court is always very loath to take. On the other hand, the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this court then has all the material before it necessary to make a correct judgment.

In this connection it should be remembered that many of the technical rules of evidence which are often invoked in our courts were originally worked out in England and the United States, where the jury system prevails. These rules were adopted for the purpose of keeping matter from juries which—it was supposed—might unduly influence them in deciding on the facts. They have little pertinence to a system of procedure, like ours, in which the court is judge both of the law and facts, and in which accordingly it is necessary for the court to know what the proof is before it rules upon the propriety of receiving it. Apart from these considerations is the circumstance mentioned above that the time consumed in the trial on such collateral points is generally many times greater than would be consumed if the questionable testimony should be admitted for what it is worth. What has been said above finds special relevancy in this case in view of the action of the trial court in refusing to consider the proof referred to in the opinion showing that the plaintiff, while engaged in assembling its stock, procured maritime insurance upon a fictitious importation of silk. We earnestly commend the maintenance of a liberal practice in the admission of proof.

Our examination of the case leads to the conclusion that the result reached by the trial court was correct.

The appealed decision will therefore be affirmed, and it is so ordered, with costs against the appellant.

Avanceña, C. J., Villamor, and Ostrand, JJ., concur

Romualdez, J., concurs for the affirmance of the appealed judgment.

Villa-Real, J., concurs in the result.

CONCURRING

MALCOLM, J.:

I concur in the result and agree with the clear decision of the trial judge sustaining the defense of false proof, but desire to make of record my nonconformity as to a discussion of questions not involved in the disposition of the assignment of errors.

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