

**QUA CHEE GAN, PLAINTIFF AND APPELLEE, VS. LAW UNION AND
ROCK INSURANCE CO., LTD., REPRESENTED BY ITS AGENT,
WARNER, BARNES AND CO., LTD., DEFENDANT AND APPELLANT.**

G.R. No. L-4611. December 17, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Qua Chee Gan, a merchant of Albay, instituted this action in 1940, in the Court of First Instance of said province, seeking to recover the proceeds of certain fire insurance policies totalling P370,000, issued by the Law Union & Eock Insurance Co., Ltd., through its agent, Warner, Barnes & Co., Ltd., upon certain bodegas, and merchandise of the insured that were burned on June 21, 1940. The records of the original case were destroyed duriing the liberation of the region, and were reconstituted in 1946. After a trial that lasted several years, the Court of First Instance rendered a decision in favor of the plaintiff, the dispositive part whereof reads as follows:

"Wherefore, judgment is rendered for the plaintiff and against the defendant condemning' the latter to pay the former—

- (a) Under the first cause of action, the sum of P146,894.48;
- (b) Under the second cause of action, the sum of P150,000;
- (c) Under the third cause of action, the sum of P5,000;
- (d) Under the fourth cause of action, the sum of P15,000; and
- (e) Under the fifth cause of action, the sum of P40,000;

all of which shall bear interest at the rate of 8% per annum in accordance with Section 91 (b) of the Insurance Act from September 26, 1940, until each is paid, with costs against, the defendant.

The complaint in intervention of the Philippine National Bank is dismissed without costs." (Record on Appeal, 166-167.)

From the decision, the defendant Insurance Company appealed directly to this Court.

The record shows that before the last war, plaintiff-appellee owned four warehouses or bodegas (designated as Bodegas Nos. 1 to 4) in the municipality of Tabaco, Albay, used for the storage of stocks of copra and of hemp, baled and loose, in which the appellee dealt extensively. They had been, with their contents, insured with the defendant Company since 1987, and the lose made payable to the Philippine National Bank as mortgage of the. hemp and copra, to the extent of its interest. On , June, 1940, the insurance stood as follows:

Policy No.

Property Insured

Amount

2637164 (Exhibit "LL")...... Bodega No. 1 (Building)....

P15,000.00

2637165 (Exhibit "JJ")..... Bodega No. 2 (Building)....

10,000.00

Bodega No. 3 (Building).....

25,000.00

Bodega No. 4 (Building)....

10,000.00

Hemp Press—moved by steam engine

5,000.00

2687346 (Exhibit "X")..... Merchandise contents (copra and empty sacks of Bodega No. 1)....

150,000.00

2637346 (Exhibit "Y").... Merchandise contents(hemp) of Bodega No. 3

160,000.00

2637067' (Exhibit "GG")... Merchandise contents(loose hemp) of Bodega No. 4

5,000.00

Total

.....

P370,000.00

Fire of undetermined origin that broke out in the early morning of July 21, 1940, and lasted almost one week, gutted and completely destroyed Bodegas Nos. 1, 3 and 4, with the merchandise stored therein. Plaintiff-appellee informed the insurer by telegram on the same date; and on the next day, the fire adjusters engaged by appellant insurance company arrived and proceeded to examine and photograph the premises, pored over the books of the insured and conducted an extensive investigation. The plaintiff having submitted the corresponding fire claims, totalling P398,562.81 (but reduced to the full amount of the insurance, P370,000), the Insurance Company resisted payment, claiming violation of warranties and conditions, filing of fraudulent claims, and that the fire had been deliberately caused by the insured or by other persons' in connivance with him.

With counsel for the insurance company acting as private prosecutor, Qua Chee Gan, with his brother, Qua Chee Pao, and some employees of his, were indicted and tried in 1940 for the crime of arson, it being claimed that they had set fire to the destroyed warehouses to collect the insurance. They were, however, acquitted by the trial court in a final decision dated July 9, 1941 (Exhibit WW). Thereafter, the civil suit to collect the insurance money proceeded to its trial and termination in the Court below, with the result noted at the start of this opinion. The Philippine National Bank's complaint in intervention was dismissed because the appellee had managed to pay his indebtedness to the Bank during the pendency of the suit, and despite the fire losses.

In its first assignment of error, the insurance company alleges that the trial Court should have held that the policies were avoided for breach of warranty, specifically the one appearing on a rider pasted (with other similar

riders) On the face of the policies (Exhibits X, Y, JJ and LL). These riders were attached for the first time in 1939, and the pertinent portions read as follows:

"Memo of Warranty.—The undernoted Appliances for the extinction of fire being kept on the premises insured hereby, and it being declared and understood that there is an ample and constant water supply with sufficient pressure available at all seasons for the same, it is hereby warranted that the said 'appliances shall be maintained in efficient working order during the currency of this policy, by reason whereof a discount of 2 1/2 per cent is allowed on the premium chargeable under this policy.

Hydrants in the compound, not less in number than one for each 150 feet of external wall measurement of buildings, protected, with not less than 100 feet of hose piping and nozzles for every two hydrants kept under cover in convenient places, the hydrants being supplied with water pressure by a pumping engine, or from some other source, capable of discharging at the rate of not less than 200 gallons of water per minute into the upper story of the highest building protected, and a trained brigade of not less than 20 men to work the same."

It is argued that since the bodegas insured had an external wall perimeter of 500 meters or 1,640 feet, the appellee should have eleven (11) fire hydrants in the compound, and that he actually had only two (2), with a further, pair nearby, belonging to the municipality of Tabaco.

We are in agreement with the trial Court that the appellant is barred by waiver (or rather estoppel) to claim violation of the so-called fire hydrants warranty, for the reason that knowing fully all that the number of hydrants demanded therein never existed from the very beginning, the appellant nevertheless issued the policies in question subject to such warranty, and received the corresponding premiums. It would be perilously close to conniving at fraud upon the insured to allow appellant to claims now as void ab initio the policies that it had issued to the plaintiff without Warning of their fatal defect, of which it was informed, and after it had misled the defendant into believing that the policies were effective.

The insurance company was, aware, even before the policies were issued, that in the premises insured there were only two fire hydrants installed by Qua Chee Gan and two others nearby, owned by the municipality of Tabaco, contrary to the requirements, of the warranty in question. Such fact appears from positive testimony for the insured that appellant's agents inspected the premises; and the simple denials of appellant's representative (Jamiczon) can not overcome that proof. That such inspection was made is moreover rendered probable by its being a prerequisite for the fixing of the discount on the premium to which the insured was entitled, since the discount depended on the number of hydrants, and the fire fighting equipment available (See "Scale of Allowances" to which the policies were expressly made subject). The law, supported by a long line of cases, is expressed by American Jurisprudence (Vol. 29, pp. 611-612) to be as follows:

"It is usually held that where the insurer, at the time of the issuance of a policy of insurance, has knowledge of existing facts which, if insisted on, would invalidate the contract from its very inception, such knowledge constitutes a waiver of conditions in the contract inconsistent with the known facts, and the insurer is stopped thereafter from asserting the breach of such conditions. The law is charitable enough to assume, in the absence of any showing to the contrary, that an insurance company intends to execute a, valid contract in return for the premium received; and when the policy contains a condition which renders it voidable at its inception, and this result is known to the insurer, it will be presumed to have intended to waive the conditions and to execute a binding contract, rather than to have deceived the insured into thinking he is insured when in fact he is not, and to have taken his money without consideration." (29 Am. Jur., Insurance, section 807, at pp. 611-612.)

The reason for the rule is not difficult to find.

"The plain, human justice of this doctrine is perfectly apparent. To allow a company to accept one's money for a policy of insurance which it then knows to be void and of no effect, though it knows as it must, that the

assured believes it to be valid and binding, is so contrary to the dictates of honesty and fair dealing, and so closely related to positive fraud, as to be abhorrent to fairminded men. It would be to allow the company to treat the policy as valid long enough to get the premium on it, and leave it at liberty to repudiate it the next moment. This cannot be deemed to be the real intention of the parties. To hold that a literal construction of the policy expressed the true intention of the company would be to indict it, for fraudulent purposes and designs which we cannot believe it to be guilty of" (Wilson vs. Commercial Union Assurance Co., 96 Atl. 540, 543-544).

The inequitableness of the conduct observed by the Insurance company in this case is heightened by the fact that after the insured had incurred the expense of installing the two hydrants, the company collected the premiums and issued him a policy so worded that it gave the insured a discount much smaller than that he was normally entitled to. According to the "Scale of Allowances," a policy subject to a warranty of the existence of one fire hydrant for every 150 feet of external wall entitled the insured to a discount of 7 1/2 per cent of the premium; while the existence of "hydrants, in compound" (regardless of number) reduced the allowance on the premium to a mere 2 1/2 per cent. This schedule was logical, since a greater number of hydrants and fire fighting appliances reduced the risk of loss. But the appellant company, in the particular case now before us, so worded the policies that while exacting the greater number of fire hydrants and appliances, it kept the premium discount at the minimum of 2 1/2 per cent, thereby giving the insurance company a double benefit. No reason is shown why appellant's premises, that had been insured with appellant for several years past, suddenly should be regarded in 1939 as so hazardous as to be accorded a treatment beyond the limits of appellant's own scale of allowances. Such abnormal treatment of the insured strongly points at an abuse of the insurance company's selection of the words and terms of the contract, over which it had absolute control.

These considerations lead us to regard the parol evidence rule, invoked by the appellant as not applicable to the present case. It is not a question here whether or not the parties may vary a written contract by, oral evidence; but whether testimony is receivable so that a party may be, by reason of inequitable conduct shown, estopped from enforcing forfeitures in its favor, in order to forestall fraud or imposition on the insured.

"Receipt of Premiums or Assessments after Cause for Forfeiture. Other than Nonpayment.—It is a well settled rule of law that an insurer which with knowledge of facts entitling it to treat a policy as no longer in force, receives and accepts a premium on the policy, estopped to take advantage of the forfeiture. It cannot treat the policy as void for the purpose of defense to an action to recover for a loss thereafter occurring and at the same time treat it as valid for the purpose of earning and collecting further premiums." (29 Am. Jur., 653, p. 657.)

"It would be unconscionable to permit a company to issue a policy under circumstances which it knew rendered the policy void and then to accept and retain premiums under such a void policy. Neither law nor good morals would justify such conduct and the doctrine of equitable estoppel is peculiarly applicable to the situation." (McGuire vs. Home Life Ins. Co. 94 Pa. Super. Ct. 457.)

Moreover, taking into account the well known rule that ambiguities or obscurities must be strictly interpreted against the party that caused them,[1] the "memo of warranty" invoked by appellant bars the latter from questioning the existence of "the appliances called for in the" insured premises, since its initial expression, "the under-noted appliances for the extinction of fire being kept on the premises insured hereby, ... it is hereby warranted . . .", admits of interpretation as an admission of the existence of such appliances which appellant cannot now contradict, should the parol evidence rule apply.

The alleged violation of the warranty of 100 feet of fire hose for every two hydrants, must be equally rejected, since the appellant's argument thereon is based on the assumption that the insured was bound to maintain no less than eleven hydrants (one per 150 feet of wall), which requirement appellant is estopped from enforcing. The supposed breach of the water pressure condition is made to rest on the testimony of witness Serra, that the water

supply could fill a 5-gallon can in 3 seconds; appellant thereupon inferring that the maximum quantity obtainable from the hydrants was 100 gallons a minute, when the warranty called for 200 gallons a minute. The transcript shows, however, that Serra repeatedly refused and professed inability to estimate the rate of discharge of the water, and only gave the "5-gallon per 3-second" rate because the insistence of appellant's counsel forced the witness to hazard a guess. Obviously, the testimony is worthless and insufficient to establish the violation claimed, 'specially since the burden of its proof lay on appellant.

As to, maintenance of a trained fire brigade of 20 men, the record is preponderant that the same was organized, and drilled, from time to time, altho not maintained as a permanently separate unit, which the warranty did not require. Anyway, it would be unreasonable to expect the insured to maintain for his compound alone a fire fighting force that many municipalities in the Islands do not even possess. There is no merit in appellant's claim that subordinate membership of the business manager (Co Cuan) in the fire brigade, while its direction was entrusted to a minor employee, renders the testimony improbable. A business manager is not necessarily adept at fire fighting, the qualities required being different for both activities.

Under the second assignment of error, appellant insurance company avers, that the insured violated the "Hemp Warranty" provisions of Policy No. 2637165 (Exhibit JJ), against the storage of gasoline, since appellee admitted that there were 36 cans (latas) of gasoline in the building designed as "Bodega No. 2" that was a separate structure not affected by the fire. It is well to note that gasoline is not specifically mentioned among the prohibited articles listed in the so-called "hemp warranty." The cause relied upon by the insurer speaks of "oils (animal and/or vegetable and/or mineral and/or their liquid products having a flash point below 300° Fahrenheit", and is decidedly ambiguous and uncertain; for in ordinary parlance, "Oils" mean "lubricants" and not gasoline or kerosene. And how many insured, it may well be wondered, are in a position to understand or determine "flash point below 300° Fahrenheit. Here, again, by reason of the exclusive control of the insurance company over the terms and phraseology of the contract, the ambiguity must be held strictly against the insurer and liberally in favor of the insured, specially to avoid a forfeiture (44 C. J. S, pp. 1166-1175; 29 Am. Jur. 180). ,

"Insurance is, in its nature, complex and difficult for the layman to understand. Policies are prepared by experts who know and can anticipate the bearing and possible complications of every contingency. So long as insurance companies insist upon the use of ambiguous, intricate and technical provisions, which conceal rather than frankly disclose, their own intentions, the courts must, in fairness to those "who purchase insurance, construe every ambiguity in favor of the insured." (Algoe vs. Pacific Mut. L. Ins. Co., 91 Wash. 324, LRA 1917A, 1237.)

"An insurer should not be allowed, by the use of obscure phrases and exceptions, to defeat the very purpose for which the policy was procured" (Moore vs. Aetna Life Insurance Co., LRA 1915D, 264).

We see no reason why the prohibition of keeping gasoline in the premises could not be expressed clearly and unmistakably, in the language and terms that the general public can readily understand, without resort to obscure esoteric expression (now derisively termed "gobbledy-gook"). We reiterate the rule stated in, *Bachrach vs. British American Assurance Co.* (17 Phil. 555, 561):

"If the company intended to rely upon a condition of that character, it ought to have been plainly expressed in the policy."

This rigid application of the rule on ambiguities has become necessary in view of current business practices. The courts cannot ignore that nowadays monopolies, cartels and concentrations of capital, endowed with overwhelming economic power, manage to impose upon parties dealing with them cunningly prepared "agreements" that the weaker party may not change one whit, his participation in the "agreement" being reduced to the alternative to take it or leave it" labelled since Raymond Baloilles "contracts by adherence" (contracts

d'adhesion), in contrast to these entered into by parties bargaining on an equal footing, such contracts (of which policies of insurance and international bills of lading are prime examples) obviously call for greater strictness and vigilance on the part of courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwary (New Civil Code, Article 24; Sent., of Supreme Court of Spain, 13 Dec. 1934, 27 February 1942).

"Si pudiera estiroarse que la condici6n 18 de la p6liza de seguro envolvia alguna oseuridad, habra de ser tenido en cuenta que al segaro es, practicamente Tin ontrato de los llamados de adhesion y por consiguiente en caso de duda sobre la signification de las clausulas generates de una poliza—redactada por las companias sin la intervencion alguna de sus clientes—se ha de adoptar de acuerdo con el articulo 1268 del Codigo Civil, la interpretacion mas favorable al asegurado, ya que la oscuridad es imputable a la empresa aseguradora, que debia haberse explicado mas claramante." (Dec. Trib. Sup. of Spain 13 Dec. 1934)

The contract of insurance is one of perfect good faith (uferrimal fidei) not for the insured, alone, but equally so for the insurer; in fact, it is mere so for the latter, since its dominant bargaining position carries with it stricter responsibility.

Another point that is in favor of the insured is that the gasoline kept in Bodega No. 2 was only incidental to his business, being no more than a customary 2 day's supply for the five or six motor vehicles used for transporting of the stored merchandise (t. s. n., pp. 1447-1448). "It is well settled that the keeping of inflammable oils on the premises, though prohibited by the policy, does not void it if such keeping is incidental to the business." *Bachrach vs. British American Ass. Co.*, 17 Phil. 555, 560; and "according to the weight of authority, even though there are printed prohibitions against keeping certain articles on the insured premises the policy will not be avoided by a violation of these prohibitions, if the prohibited articles are necessary or in customary use in carrying on the trade or business conducted on the premises." (45 C. J. S., p. 311; also 4 Couch on Insurance, section 966b). It should also be noted that the "Hemp Warranty" forbade storage only "in the building to which this insurance applies and/or in any building communicating therewith", and it is undisputed that no gasoline was stored in the burned bodegas, and that "Bodega No. 2" which was not burned and where the gasoline was found, stood isolated from the other insured bodegas.

The charge, that the insured failed or refused to submit to the examiners of the insurer the books, vouchers, etc. demanded by them was found unsubstantiated by the trial Court, and no reason has been shown to alter this finding. The insured gave the insurance examiner all the data he ' asked for (Exhibits AA, BB, CCC and Z), and the examiner even kept and photographed some of the examined books in his possession. What does appear to have been rejected by the insured was the demand that he should submit "a list of all books, vouchers, receipts and other records" (Page 4, Exhibit 9-c); but the refusal of the insured in this instance was well justified, since the demand for a list of all the vouchers (which were not in use by the insured) and receipts was positively unreasonable, considering that such listing was superfluous because the insurer was not denied access to the records, that the volume of Qua Chee Gan's business ran into millions, and that the demand was made just after the fire when everything was in turmoil. That the representatives of the insurance company were able to secure all the data they needed is proved by the fact that the adjuster Alexander Stewart was able to prepare his own balance sheet (Exhibit L of the criminal case) that did not differ from that submitted by the insured (Exhibit J) except for the valuation of the merchandise, as expressly found by the Court in the criminal case for arson. (Decision, Exhibit WW).

How valuations may differ honestly, without fraud being involved, was strikingly illustrated in the decision of the arson case (Exhibit WW) acquitting Qua Choc Gan, appellee in the. present proceedings. The decision states (Exhibit WW, p. 11) :

"Alexander D. Stewart declaro que ha examinado los libros de Qua Choc Gan en Tabaco asi como su existencia de copra y abaca en las bodegas al tiempo del incendio durante el periodo comprendido desde el 1.º de enero al 21 de junio de 1940 y ha eneentrado que Qua Choc Gan ha sufrido una perdida de P1,750.76 en su negocio en Tabaco. Segun Stewart al llegar a este conclusion el ha tenido en cuenta el balance de comprobacion Exhibit 'J' que le ha entregado el mismo acusado Que Choc Gan en relacion con bus librpys y lo ha eneentrado correeto a excepcion do los precios de abaca y copra que alli aparecen que no estan de acuerdo con los preeios en el mercado. Esta comprobacion apareee en el balance mercado exhibit J que fue preparado por el mismo testigo."

In view of the discrepancy in the valuations between the insured and the adjuster Stewart for the insurer, the Court referred the controversy to a government auditor, Apolonio Ramos; but the latter reached a different result from the other two. Not only that, but Ramos reported two different valuations that coul'd be reached according to the methods employed" (Exhibit WW, p. 35):

"La ciencia de la contabilidad es buena, pues ha tenido sus muchos usos buenos para promover el comercio y la finanza, pero en el caso presente ha resultado un tanto cumplicada y acomodaticia, como lo prueba el resultado del examen hecho por los contadores Stewart y Ramos, pues el juzgado no alcanza a ver como habiendo examinado las mismas partidas y loa mismos libros dichos contadores hayan de llegara dos conclusiones que difieron sustancialmente entre si. En otras palabras, no solamente la comprobacion hecha por Stewart difiere de la comprobacion hecha por Ramos sino que, segun este ultimo, su comprobacion ha dado lugar a dos resultados diferentes dependiendo del metodo que se emplea."

Clearly then, the charge of fraudulent overvaluation cannot be seriously entertained. The insurer attempted to bolster its case with alleged photographs of certain pages of the insurance book (destroyed by the war) of insured Qua Chee Gan (Exhibits 26-A and 26-B) and allegedly showing abnormal purchases of hemp and copra from June 11 to June 20, 1940. The Court below remained unconvinced of the authenticity of those photographs, and rejected them, because they were not mentioned nor introduced in the criminal case; and considering the evident importance of said exhibits in establishing the motive of the insured in committing the arson charged, and the absence of adequate explanation for their omission in the criminal case, we cannot say that their rejection in the civil case constituted reversible error.

The next two defenses pleaded by the insurer,—that the insured connived at the loss and that he fraudulently inflated the quantity of the insured stock in the burnt bodegas,— are closely related to each other. Both defenses are predicted on the assumption that the insured was in financial difficulties and set the fire to defraud the insurance company, presumably in order to pay off the Philippine National Bank, to which most of the insured hemp and copra was pledged. Both defenses are, fatally undermined by the established fact that, notwithstanding the insurer's refusal to pay the value of the policies the extensive resources of the insured (Exhibit W) enabled him to pay off the National Bank in a short time; and if he was able to do so, no motive appears for attempt to defraud the insurer. While the acquittal of the insured in the arson case is not res judicata on the present civil action, the insurer's evidence, to judge from the decision in the criminal case, is practically identical in both cases and must lead to the same result, since the proof to establish the defense of connivance at the fire in order to defraud the insurer "cannot be materially less convincing than that required in order to convict the insured of the crime of arson" (Bachrach vs. British American Assurance Co., 17 Phil. 536).

As to the defense that the burned bodegas could not possibly, have contained the quantities of copra and hemp stated in the fire claims, the insurer's case rests almost exclusively on the estimates, inferences and conclusions of its adjuster investigator, Alexander D. Stewart, who examined the premises during and after Jhe fire. Hia testimony, however, was based on inferences from the photographs and traces found after the fire, and must yield to the contradictory testimony of engineer Andres Bolinas, and specially of the then Chief of the Loan Department

of the National Bank's Legaspi branch, Porfirio Barrios, and of Bank Appraiser Loreto Samson, who actually saw the contents of the bodegas shortly before the fire, while inspecting them for the mortgagee Bank. The lower Court was satisfied of the veracity and accuracy of these witnesses, and the appellant insurer has failed to substantiate its charges against their character. In fact, the insurer's repeated accusations that these witnesses were later "suspended for fraudulent transactions" without giving any details, is a plain attempt to create prejudice against them,, without the least support in fact.

Stewart himself, in testifying that it is impossible to determine from the remains the quantity of hemp burned (t. s. n., pp. 1468, 1470), rebutted appellant's attacks on the refusal of the Court below to accept its inferences from the remains shown in the photographs of the burned premises. It appears, likewise, that the adjuster's calculations of the maximum contents of the destroyed warehouses rested on the assumption that all the copra and hemp were in sacks, and on the result of his experiments to determine the space occupied by definite amounts, of sacked, copra. The error in the estimates thus arrived at proceeds from the fact that a large amount of the insured's stocks were in loose form, occupying less space than when kept in sacks; and from Stewart's obvious failure to give due allowance, for the compression of the material at the bottom of the piles (t. s. n., pp. 1964, 1967) due to the weight of the overlying stock, as shown by engineer Bolinas. It is probable that the errors were due to inexperience, (Stewart himself admitted that this was the first copra fire he had investigated); but it is clear that such errors render valueless Stewart's computations. These were in fact twice passed upon and twice rejected by different judges (in the criminal and civil cases) and their concordant opinion is practically conclusive.

The adjusters' reports, Exhibits 9-A and 9-B, were correctly disregarded by the Court below, since the opinions stated therein were based on ex parte investigations made at the back of the insured; and the appellant did not present at the trial the original testimony and documents from which the conclusions in the report were drawn.

Appellant insurance company also contends that the claims filed by the insured contained false and fraudulent statements that avoided the insurance policy. But the trial Court found that the discrepancies were a result of the insured's erroneous interpretation of the provisions of the insurance policies and claim forms, caused by his imperfect knowledge of English, and that the misstatements were innocently made and without intent to defraud. Our review of the lengthy record fails to disclose, reasons, for rejecting these conclusions of the Court below. For example, the occurrence of previous fires in the premises insured in 1939, altho omitted in the claims, Exhibits EE and FF, were nevertheless revealed by the insured in his claims Exhibits Q (filed, simultaneously with them), KK and WW. Considering that all these claims were submitted to the same agent, and that this same agent had paid the loss caused by the 1939 fire, we find no error in the trial Court's acceptance of the insured's explanation that the omission in Exhibits EE and FF was due to inadvertance, for the insured could hardly expect under such circumstances, that the 1939 would pass unnoticed, by the insurance agents. Similarly, the 20 per cent overclaim on 70 per cent of the hemp stock, was explained by the insured as caused by his belief that he was entitled to include in the claim his expected profit on the 70 per cent of the hemp, because the same was already contracted for and sold to other parties before the fire occurred. Compared with other cases of over-valuation recorded in our judicial annals, the 20 per cent excess in the case bt..the insured is not by itself sufficient to establish fraudulent intent. Thus, in *Yu Cua vs. South British Ins. Co.*, 41 Phil. 154, the claim was fourteen (14) times (1,400 per cent) bigger than the actual loss; in *Go Lu vs. Yorkshire Insurance Co.*, 43 Phil., 638, eight (8) times (800 per cent); in *Tuason vs. North China Ins. Co.*, 47 Phil. 14, six (6) times (600 per cent); in *Tan It vs. Sun Insurance*, 51 Phil. 212, the claim totalled ("31,860.85 while the goods insured were inventoried at P13,113. Certainly, the insured's overclaim of 20 per cent in the case at bar, duly explained by him to the Court a quo, appears puny by comparison, and can not be regarded as "more than misstatement, more than inadvertence of mistake, more than a mere error in opinion, more than a slight exaggeration" (*Tan It vs. Sun Insurance Office*, ante) that would entitle the insurer to avoid the policy. It is well to note that the overcharge of 20 per cent was claimed only on a part (70

per cent) of the hemp stock; had the insured acted with fraudulent intent, nothing prevented him from increasing the value of all of his copra, hemp and buildings in the same proportion. This also applies to the alleged fraudulent claim for burned empty sacks, that was likewise explained to our satisfaction and that of the trial Court. The rule is that to avoid a policy, the false swearing must be wilful and with intent to defraud (29 Am. Jur., pp. 849-851) which was not the cause. Of course, the lack of fraudulent intent would not authorize the collection of the expected profit under the terms of the policies, and the trial Court correctly-deducted the same from its award.

We find no reversible error in the judgment appealed from, wherefore the same is hereby . affirmed. Costs against the appellant. So ordered.

Paras, C. J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, and Concepcion, JJ., concur.

[1] Old Civil Code, Article 1288; New, Civil Code, Article 1377; 44 G. J. S. 1169; 29 Am. Jur., p. 180, section 186.

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