

PHILIPPINE MANUFACTURING CO., PLAINTIFF AND APPELLANT, VS. UNION INSURANCE SOCIETY OF CANTON, LTD., DEFENDANT AND APPELLEE.

G. R. No. 16473. November 22, 1921

Ponente: JOHNS, J.

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JOHNS, J.:

The plaintiff is a corporation duly organized under the laws of the Philippine Islands with its principal office and place of business at Manila, and at the times alleged was the owner of the steel tank lighter named Philmaco. The defendant is an insurance company organized under the laws of Hongkong and duly authorized to transact business here.

July, 1917, the defendant insured plaintiff's lighter for the sum of P16,000, and issued its policy for such insurance, which recites that the steel tank lighter Philmaco is insured "for and during the space of twelve calendar months from July 6, 1917 to July 5, 1918, both dates inclusive, upon the hull, machinery, tackle, apparel, boats or other furniture of the good ship or vessel," and that "the assured is and shall be rated and valued on hull, engine and pumping machinery, whereof this policy insures pesos sixteen thousand, P. I. C. Warranted against the absolute total loss of the lighter only. Warranted trading between Bitas, Tondo, or Pasig River and steamers in the Bay of Manila or harbor." In consideration thereof, the plaintiff paid the defendant P960 as a premium for such insurance. About July 1, 1918, and during the life of the policy and as a result of a typhoon, the lighter was sunk in the Manila Bay, of which the plaintiff notified the defendant and demanded payment of the full amount of its policy, which the defendant refused, and denied its liability. On February 25, 1919, the plaintiff commenced this action and, among other things, alleged in the complaint :

"That during the period of said insurance the said steel tank lighter Philmaco became a total loss by sinking in the waters of the Bay of Manila while operating within the places noted in the said insurance policy. "That the loss of the said steel tank lighter was total and the full amount for which it was insured upon such loss immediately became due and payable," and prayed for judgment for the sum of P16,000, with legal interest and costs. For answer the defendant admits the issuance and delivery of the policy, and, as a further and separate defense, alleges that, under its terms, the defendant was only liable for an absolute total loss, and that there was not a total destruction of the lighter.

After the testimony was taken, the lower court sustained this contention and rendered judgment for the defendant, from which the plaintiff appeals, claiming that the trial court erred in holding that there was not an absolute total loss, and/in refusing to hold that the policy covered a "constructive total loss, as well as an actual total loss," and that under the facts, it was entitled to recover the full amount of the policy.

As a result of a typhoon the vessel was sunk in the Manila Bay in front of the Manila Hotel. The plaintiff at once notified the defendant that the lighter was of no value, and offered to abandon the wreck as an absolute total loss to the plaintiff. The defendant refused the offer, and instructed plaintiff to salvage the wreck, if it was possible to do so. Under such instructions, the plaintiff employed a third party to proceed with the salvage, which was

commenced some time in July, 1918. After several attempts and on September 20, 1918, the storm-beaten hull was finally raised and between two barges was taken to the Pandacan Slipway.

Upon the evidence for the plaintiff, the trial court found, and upon that point the testimony is conclusive, that the cost of salvage and the necessary repairs were substantially equal to the original cost of the lighter and its value as stipulated in the policy. The findings did not take into consideration any damages to the plaintiff for being deprived of the use of the lighter or the interest on the investment. Although the evidence is clear that the lighter was raised and floated to the slipway on September 20, 1918, it does not appear how long it remained there or when it was finally reconstructed and again placed in commission. The plaintiff having finally raised the lighter, reconstructed and placed it in commission, and having used a large portion of its hull in such reconstruction, the defendant claims that the loss was not an absolute total loss under the terms and provisions of the policy. That plaintiff having reconstructed a new lighter out of the remains of the old one, it cannot claim or assert that the old one was a total loss. The defendant did not offer any evidence. The question is thus squarely presented whether, under the facts shown, the loss is an absolute total loss within the terms and provisions of the policy. The testimony is conclusive that the hull itself was very seriously damaged, and that in the reconstruction of the lighter the damaged hull was repaired, and that the lighter with such repaired hull was eventually placed in commission. Through the violence of the storm and the action of the waves, a large portion of its machinery and other equipment were lost or destroyed.

The policy was executed at Manila and the lighter was sunk in the Manila Bay, and, under the rule of construction, the physical conditions then and there existing should be read into and become a part of the policy.

"An act revising the insurance laws and regulating insurance business in the Philippine Islands," No. 2427, was enacted by the Philippine Legislature December 12, 1914, and, under the heading of "Loss," contains the following provisions:

"Sec. 120. A loss may be either total or partial.

"Sec. 121. Every loss which is not total is partial.

"Sec. 122. A total loss may be either actual or constructive.

"Sec. 123. An actual total loss is caused by:

"(a) A total destruction of the thing insured;

"(b) The loss of the thing by sinking, or by being broken up;

"(c) Any damage to the thing which renders it valueless to the owner for the purposes for which he held

Whatever may be the rule in other jurisdictions, the policy having been issued at Manila, it must be construed under the terms and provisions of those sections, and section 122 specifically says that "a total loss may be either actual or constructive," and that "the loss of the thing by sinking, or by being broken up," is an actual loss, or that "any damage to the thing which renders it valueless to the owner for the purposes for which he held it" is an actual loss.

As we construe the record, at the time the lighter was sunk and in the bottom of the bay under the conditions then and there existing, it was of no value to the owner, and, if it was of no value to the owner, it would be an actual total loss. To render it valueless to the owner, it is not necessary that there should be an actual or total loss or destruction of all the different parts of the entire vessel. The question here is whether, under the conditions then and there existing, and as the lighter laid in the bottom of the bay, was it of any value to the owner. If it was not of any value to the owner, then there was an actual loss or a "total destruction of the thing insured" within the

meaning of the above sections of Act No. 2427 of the insurance code.

The lighter was sunk about July 1, 1918. After several futile attempts, it was finally raised September 20, 1918. It is fair to assume that in its then condition much further time would be required to make the necessary repairs and install the new machinery before it could again be placed in commission. During all that time the owner would be deprived of the use of its vessel or the interest on its investment. When those questions are considered the testimony is conclusive that the cost of salvage, repair, and reconstruction was more than the original cost of the vessel or its value at the time the policy was issued. As found by the trial court "it is difficult to see how there could have been a more complete loss of the vessel than that which actually occurred." Upon the facts shown here, any other construction would nullify the statute, and, as applied to the conditions existing in the Manila Bay, this kind of a policy would be worthless, and there would not be any consideration for the premium.

In their able brief, the distinguished counsel for the defendant point out that the policy itself provides that it "shall be of as much force and effect as the surest writing or policy of insurance made in London," and contend that the policy should be construed under the Marine Law of Great Britain, but as to what may be the law there is not alleged or proven.

In *Liverpool and Great Western Steam Co. vs. Phenix Iris. Co.* (129 U. S., 397; 32 L. ed., 788, 793), the court says:

"The law of Great Britain since the Declaration of Independence is the law of a foreign country, and, like any other foreign law, is matter of fact, which the courts of this country cannot be presumed to be acquainted with, or to have judicial knowledge of, unless it is pleaded and proved.

"The rule that the courts of one country cannot take cognizance of the law of another without plea and proof has been constantly maintained at law and in equity, in England and America."

That rule was followed by this court in *Sy Joe Lieng vs. Encarnacion* (16 Phil., 137, 139), where it is said:

"When in a litigation the application of a foreign law, for example the law of China, is sought, it is necessary to prove before the courts of the Islands, in a satisfactory manner, the existence of such a law as a question of fact; and when proof of such a law is lacking, it is improper to apply unknown laws to suits pending before the courts of the Islands."

The notes to *The Great Western Insurance Company vs. Fogarty* (86 U. S., 216), say:

"In the English practice, a ship is a total loss when she has sustained such extensive damage that it would not be reasonably practical to repair her. The ordinary measure of prudence which the courts have adopted is this: If the ship, when repaired, will not be worth the sum which it would be necessary to expend upon her, the repairs are, practically speaking, impossible, and it is a case of total loss." (Citing a number of English authorities.)

After a careful consideration of this important case, we hold that the decision of the trial court should be reversed, and that a judgment should be entered here in favor of the plaintiff and against the defendant for P16,000, with interest thereon, from February 25, 1919, at the rate of 6 per cent per annum, and the costs and disbursements of this action in this and the lower court. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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