

UY HU & CO., PLAINTIFF AND APPELLANT, VS. THE PRUDENTIAL ASSURANCE CO., LTD., DEFENDANT AND APPELLANT.*G.R. No. 27778. December 16, 1927*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27778/>**STATEMENT**

Plaintiff alleges that it is a general mercantile copartnership duly registered in the mercantile register of the City of Manila, engaged in the sale and purchase of general merchandise, with its principal office at 1001 Calle Aceyteros in the City of Manila. That defendant is a foreign insurance company duly licensed to do business in the Philippine Islands, where it is represented by F. E. Zuellig, Inc., 90 Calle Rosario, Manila. That on April 20, 1926, the defendant undertook to and did insure against loss and damage by fire the property, goods, wares and merchandise of the plaintiff for the sum of P30,000, -all of which is evidenced by its policy No. 90119. That on May 10, 1926, and while the policy was in full force and effect, the property therein described was destroyed by fire without the fault or negligence of the plaintiff. That in accord with the terms and conditions of the policy, plaintiff notified the defendant of the fire and of its loss, and requested payment of the P30,000, the full amount of the policy, and at the same time submitted evidence to verify its claim, but that defendant, without any legal or just ground, refused to pay the claim or any part of it. Wherefore, plaintiff prays for a corresponding judgment against the defendant, with interest and costs.

For answer the defendant makes a general and specific denial, and as a special defense alleges that in the policy in question, it was agreed that in the event of loss, should the plaintiff make a fraudulent claim or any false declaration or use any fraudulent means or devices to obtain payment for its loss, the policy should become null and void. That after the fire plaintiff did present a claim under oath of its manager for P30,000, the alleged amount of its loss. That said claim was false and fraudulent, in that it was therein represented that the value of merchandise at the time of the fire was P32,523.30, whereas in truth and in fact a large part of the merchandise claimed and represented in plaintiff's proof of loss was not in the building at the time of the fire, and that the value of the merchandise which was actually consumed or damaged by the fire was a very small part of the claim made by the plaintiff, "and by reason of such fraudulent claim and false declaration made and used in support thereof, all benefit under said policy has been forfeited." Defendant prays that plain tiff's complaint be dismissed, and that it have judgment for costs.

As a result of the trial, the lower court rendered judgment for the plaintiff for P16,000, with legal interest from June 10, 1926, and costs, to which both plaintiff and defendant duly excepted and filed their respective motions for a new trial which were overruled, and exceptions duly taken, from which both parties appeal, and the plaintiff assigns the following error:

"The lower court erred in rendering judgment against the defendant, sentencing it to pay the plaintiff the sum of sixteen thousand pesos (P16,000) only instead of thirty thousand pesos (P30,000), which is the amount stipulated in the insurance policy, and to which the plaintiff has a right, in the light of the evidence adduced in this case."

The defendant assigns the following errors:

"I. The trial court erred in admitting in evidence in this case over the objections of counsel for the defendant the alleged Chinese books of the plaintiff, Exhibits H and G, and the supposed translations of parts of said books, Exhibits L and M, the Secret Service report, Exhibit E, the alleged invoices of the plaintiff, Exhibits N-1 to N-104, with the supposed translations of those in the Chinese language.

"II. The trial court erred in finding that the reasonable amount of the loss suffered by the plaintiff in this case by reason of the fire in question was P16,000, instead of the sum of P4,823.20, as claimed by the defendant.

"III. The trial court erred in failing to hold under the evidence in this case that the plaintiff's claim for loss in the sum of P30,000, under the policy in question, was fraudulent, and that false declarations and proofs had been made and used in support of said claim, by reason of which all benefits under the policy had been forfeited by the plaintiff.

"IV. The trial court erred in failing to hold that the plaintiff had violated condition 11, of the policy, Exhibit B, by refusing to produce and deliver to the defendant the invoices or duplicates thereof of the merchandise upon demand of the adjusters.

"V. The trial court erred in rendering judgment in this case in favor of the plaintiff and against the defendant for the sum of P16,000, with legal interest thereon from June 10, 1926, and costs, and in not dismissing the complaint, with costs against the plaintiff."

JOHNS, J.:

The policy in question purports to insure plaintiff's goods, wares and merchandise against loss by fire in the amount of P30,000 between April 20, 1926, and April 20, 1927. Among other conditions, the policy provides:

"11. On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company, and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company

"(a) A claim in writing for the loss and damage containing as particular an account as may be reasonably practicable of all the several articles or items of property damaged or destroyed, and of the amount of the loss or damage thereto respectively having regard to their value at the time of the loss or damage, not including profit of any kind.

"12. On the happening of any loss or damage the Company may, so long as the claim is not adjusted, and without incurring any liability, (a) Enter and take and keep possession of the building or premises where the loss or damage has happened, (b) Take possession of or require to be delivered to it any property of the Insured in the building or on the premises at the time of the loss or damage, (c) Examine, sort, arrange or remove all or any of such property, (d) Sell or dispose of, for account of whom it may concern, any salvage or other property taken possession of or removed.

"13. If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy; or, if the loss or damage be occasioned by the wilful act, or with the connivance of the Insured; or, if the Insured or anyone acting on his behalf shall hinder or obstruct the Company in doing any of the acts referred to in Condition 12; or, if the claim be made and rejected and an action or suit be not commenced within three months after such rejection or (in case of an Arbitration taking place in pursuance of the 18th Condition of this Policy) within three months after the Arbitrator or Arbitrators or Umpire shall have made their award, all benefit under this Policy shall be forfeited."

The fire in question occurred on the 10th of May, 1926, and on the 14th of May, the plaintiff submitted proof of its loss in the usual form verified by the oath of its manager, known in the record as Exhibit F, to which was attached what is known as the "Particulars of the Claim," which among other things recites:

"When Goods are the subject of the claim the quantities and prices must be verified by Account Books and Vouchers, or by Independent Persons, the prices being the net market prices immediately before the fire, exclusive of any profits." And follows a description of the property lost and damaged in the fire, and its "Value before the fire," amounting to P32,523.30, together with a statement of the "Amount Claimed" as P30,000.

It is vigorously contended by the defendant that this proof of loss and the "Particulars of the Claim" are false and fraudulent, and that they were made with the intent to mislead and deceive as to the amount and value of the goods in the building at the time of the fire, and that by reason thereof, under the terms and conditions of the policy, the plaintiff is not entitled to recover anything. From our point of view, that is the important and decisive question in this case. If plaintiff's proof of loss was made in good faith and is substantially correct, then it should have a judgment for the full amount of its policy. If, on the other hand, it is false and fraudulent and was knowingly and willfully made with intent to deceive and commit a fraud, plaintiff ought not to recover anything on its policy.

On the morning of the fire the manager of the insurance agent and a Mr. Heintsch, one of its employees, went to the building in question for the purpose of making an inspection, after which and upon return to their office, Henry Hunter Bayne & Co., certified public accountants and adjusters of fire losses, were employed to take an inventory of the damaged merchandise and to adjust the amount of the loss. James R. Herridge and James Chalmers Glegg of that firm also went at once to the scene of the fire and placed a guard around the premises to see that nothing was removed. The evidence shows that the fire was an ordinary one, and that it did not start in plaintiff's bodegas but in those marked M and N on the plan Exhibit D. Plaintiff's bodegas were constructed mostly of stone, and the roof was of iron and strong materials, to which very little damage was done. In truth and in fact, plaintiff was damaged much more by water than by fire. May 11th p. m. Glegg and Zulueta of the firm of Bayne & Company went to the plaintiff's premises where the fire occurred, and took an actual, detailed inventory of all of the merchandise found in plaintiff's store and bodegas. The merchandise in the store was not damaged either by fire or water, and all of it was turned over to, and accepted by, the plaintiff, with an estimated value of P1,453.13. It appears from the inventory which they made, known in the record as Exhibit 8, that the merchandise and effects in plaintiff's bodegas after the fire was of the value of P4,823.20, and under the heading of the "Name of Article," is listed all of the different articles and merchandise found in the bodegas after the fire, and under the heading of "Quantity definitely ascertained" is given the amount of each specific article found there at that time, and under another heading is a statement of "Quantity estimated including that definitely ascertained" showing the different estimates as to articles that may have been mutilated or destroyed by the fire, and under the heading of "Total Loss" is given the value of the amount of each article, making a total of P4,823.20, as compared with the total of "P32,523.30," as claimed by the plaintiff. For example, in plaintiff's proof of loss, claim is made for 100 cases of sardines of the value of P915, and under this heading in the inventory of Glegg and Zulueta, Exhibit 8, appears 15 full cases, 2 broken cases and loose tins 25 cases of the value of P228.75. Plaintiff claims 60 cases of salmon of the value of P630. There is no salmon at all in Exhibit 8. Plaintiff claims 30 cases of condensed milk of the value of P523, and on Exhibit 8, there is no condensed milk. Plaintiff claims 10 cases of Bear milk of the value of P165. On Exhibit 8 appear 2 cases only of Bear brand milk of the value of P33. Plaintiff claims 500 sacks of Mayaban rice of the value of P4,700, 200 sacks of Makan rice of the value of P1,840, and 350 sacks of Tikitiki of the value of P1,225. The corresponding entry on Exhibit 8 is Mayaban rice and Makan rice 20 sacks of both kinds actually found and 150 sacks of both kinds estimated of the value of P1,380. Tikitiki 492 sacks found and 500 sacks estimated of the value of P1,750. Plaintiff claims chocolates and candies of the value of P3,500, cigars and cigarettes of the value of P8,500, fixtures in the bodega of the value of P800. On Exhibit 8, it appears that there are 3 cases of candy figs of the value of P15, and there are no cigars or cigarettes. Such is a fair comparison between the two statements as to the articles destroyed by the fire, from which it is very apparent that either plaintiff's claim or the inventory made after the fire is false and fraudulent.

After Exhibit 8 was completed showing that the value of the merchandise in the bodegas at the time of the fire was P4,823.20, Glegg, Zulueta and Heintsch, as the representative of the insurance company, went with Tan Chong U, the manager of the plaintiff, and F. M. Britto to plaintiff's bodegas for the purpose of checking the inventory made by the adjusters and comparing it with the claim made by the plaintiff. Arriving upon the scene, they asked Tan Ghong U to point out to them where the missing merchandise and effects had been stored which he was unable" to do, and the only explanation which he could make was that the missing merchandise and effect had been completely consumed by the fire, and that no trace of them whatever was left. It also appears that Mr. Herridge on behalf of the adjusters made demand upon Tan Chong U as the manager of the plaintiff to furnish him with all the invoices of the merchandise which the plaintiff claims to have stored in his bodegas at the time of the fire, with the exception of the alleged invoices of the cigars, cigarettes and candies, which were previously delivered, in response to which Tan Chong U stated that it was impossible for him to deliver the invoices because many of them were not in his possession as he had made the purchases in cash.

It further appears that immediately after the fire four different photographs were taken of the merchandise as it appeared after the fire, all of which corroborate the inventory known as Exhibit 8 as to the amount, kind and quality of the merchandise in the bodegas at the time of the fire, and are conclusive proof that plaintiff's claim for P30,000 is both false and fraudulent.

While it is true that a small portion of the merchandise might have been consumed, and the evidence of its existence completely destroyed by the fire, yet in the very nature of things, a large portion of it would not be destroyed, and some evidence would be left by which the amount, kind and quality of it could be substantially ascertained and determined.

Photography is an exact science. Witnesses pro and con may testify falsely, but a photograph of a scene is not a false witness, and is conclusive evidence of the actual facts appearing on the photograph.

Based upon the oral evidence of the defendant, together with the photographs in question, which convincingly show the actual conditions in the bodegas immediately after the fire, we are clearly of the opinion that plaintiff's claim is false and fraudulent within the terms and definitions of the policy, and that the value of the merchandise destroyed by the fire would not exceed P5,000.

Although much latitude should be given to the insured in presenting his proof of claim as to the value of his loss, in particular as to the price, kind and quality of the property destroyed, yet where the proof is conclusive, as in this case, that the insured made a claim for a large amount of property which was never in the bodegas at the time of the fire and for a much larger amount of property than was actually in the bodegas, it makes the whole claim false and fraudulent, the legal effect of which is to bar plaintiff from the recovery of the amount of its actual loss.

The judgment of the lower court is reversed and the complaint dismissed, with costs. So ordered.

Avanceña C. J., Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

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