

LIM CUAN SY, PLAINTIFF AND APPELLEE, VS. THE NORTHERN ASSURANCE COMPANY, LIMITED, DEFENDANT AND APPELLANT.*G.R. No. 31952. November 13, 1930*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the City of Manila, on May 5, 1927, by Lim Cuan Sy, for the purpose of recovering from the Northern Assurance Company, Limited, the sum of P10,000, upon a policy of insurance issued through its Manila agency upon a stock of textiles stored in a bodega located at No. 62, Calle Urbiztondo, San Nicolas, Manila, which goods, it was alleged in the complaint, had been destroyed by fire on December 28, 1926. In its answer the defendant company set up a general denial and several special defenses directed to the following points: false representation by the insured with respect to the ownership of the insured property, incendiarism on the part of the insured, and the submission of false and fraudulent proof with respect to the amount and value of the destroyed merchandise. Upon hearing the cause the trial court gave judgment for the plaintiff to recover of the defendant the sum of P10,000, the full amount of the policy, with lawful interest from the date of the filing of the complaint, and with costs. From this judgment the defendant appealed.

At the time of the fire which gave rise to this lawsuit there was a Chinese firm engaged in the business of selling textiles at 174 Rosario Street, in the City of Manila. This business was conducted indifferently, in Chinese fashion, under the names of "Hong Liong," "Lim Cuan Sy," and "Lim Cuan Sy & Co.," though it was organized and registered as a mercantile partnership under the designation last above given. The name "Lim Cuan Sy," one of the designations of the business, is the name of one of the partners in the business, who actually owned, at the time this action arose, about one-third of the business. At the time of the incident with which we are concerned, the partner Lim Cuan Sy was in China, and his son, one Lim Tec Suan, was acting as his agent and as manager of the business at 174 Rosario Street. Owing to the cramped quarters of the place where the concern did business, it was necessary for the firm to store a large part of its stock, such as was not necessary for actual exhibition to purchasers, in places apart from its store. One of these places of storage was an interior compartment in the Poizat Bodega located on Urbiztondo and Barraca Streets in the District of San Nicolas, Manila. This bodega was of considerable size with exterior parts of cement. In the center there was originally an open patio, but in response apparently to demands for space, this interior area had been converted into compartments for the storage of goods. In the autumn of 1926 the plaintiff acquired possession of the interior compartment of the bodega designated as A-1, No. 62, Urbiztondo Street. This compartment was 10 or 12 meters long, with a breadth of 5 meters and height of 5A- meters. Here the plaintiff stored a large quantity of textiles prior to November 23, 1926, upon which date he procured the policy of insurance, which is the basis of this action, to be issued by the local agent of the

defendant insurance company in the amount of P10,000, insuring the effects stored in said bodega from loss by fire. At or about the same time additional policies of insurance, aggregating P60,000 and underwritten by other companies, were taken out, making all together P70,000 of insurance on the same stock of textiles. All of these policies were written in the name of the plaintiff Lim Cuan Sy, as the insured.

At the hour of about 1.45 a. m. on the morning of December 28, 1926, a destructive fire occurred in the Poizat Bodega, which burned with fury for perhaps a couple of hours and destroyed most of the contents of the building, leaving only the exterior walls standing. This fire appears to have originated in the northeastern corner of the bodega, at a point somewhat removed from the compartment where the plaintiff's goods were stored. A breeze happened, at the time, to be blowing from the northeast, with the result that the flames were carried in a southwestwardly direction, giving the fire the full sweep of the bodega. The plaintiff's compartment was directly in the course of the progress of the fire; and although some remnants of the textiles were found in the debris, the destruction was so complete that even the places occupied by the rows of boxes are not discernible in the photographs taken of the ruins.

After the fire occurred the plaintiff, in due time, put in a claim of loss against the various insurance companies concerned for 155 boxes of textiles, with an alleged value of P91,425.46. The claim was disallowed by the insurer, upon the advice of its adjuster and its attorneys, and as a consequence this action was instituted.

It is not questioned that at the time the insurance policies were written the plaintiff had goods stored in his compartment in the Poizat Bodega of the value claimed; and no serious attempt has been made to fasten upon the plaintiff the charge of having set fire to the bodega. The defenses urged in this instance by the appellant revolve mainly around two propositions, namely, first, that there was a misrepresentation by the insured as to the nature and extent of his interest in the insured goods, and, secondly, that immediately prior to the fire, the plaintiff caused a large part of the goods to be removed surreptitiously from the bodega and that the goods so removed were included in the claim of loss, thereby rendering the claim fraudulent. These defenses will be dealt with in turn.

In connection with the first of these defenses the appellant calls attention to the fact that the true owner of the insured goods was the mercantile entity Lim Cuan Sy & Co., whereas the policies were written in the name of Lim Cuan Sy only, without any revelation having been made to the insurer of the fact that Lim Cuan Sy was only one of several partners in the business and that he was not the sole owner. The proof, however, shows that the agent who wrote the policy made no inquiry as to the interest of Lim Cuan Sy in the insured goods, and he merely asked in, what name the insurance should be written. The proof further shows that, in accordance with the Chinese genius for mixing names, the name Lim Cuan Sy was commonly used to indicate the business pertaining to the mercantile entity Lim Cuan Sy & Co. Thus, the store at 174 Rosario Street was rented in the name of Lim Cuan Sy; the goods in the same store are insured in the name of Lim Cuan Sy; and the obligations contracted by the concern with the Philippine National Bank for goods bought on credit were contracted in the name of Lim Cuan Sy. There is no question but that when this policy of insurance was written, the agent of the company knew that he was insuring a stock of goods the identity of which was not in doubt, and which pertained to a business commonly known as the business of Lim Cuan Sy; and inasmuch as the defendant was content to take the premium corresponding to the insurance on goods of the value of those then contained in the bodega, the company should not now be permitted to escape responsibility merely upon the lack of conformity between the name used in the policy and the true name of the legal entity existing under our law. If questions had been put to the agent of the insured at the time the policies were written and misrepresentation had been deliberately made with respect to the ownership, a different problem would have been presented.

A point somewhat similar to that here presented was raised by the defendant in the case of *Acriche vs. Law Union*

& Rock Insurance Co. (48 Phil., 592), and although the point was not necessary to the decision in the case, it was suggested that "if the claim had been in all other respects fair and honest, the objection with respect to the ownership of the insured goods would probably not have been a fatal obstacle to a recovery." The very strict doctrine built up on this point in the courts of America has resulted from the effort of the courts to protect insurance companies by withdrawing the cases so far as possible from the jury, it being notorious that juries are very prone to see matters of this kind in the light of the insured. As the jury system is not in vogue in this country, this idea should not here control. The defendant, we think, should be considered estopped from defeating its policy on the ground stated. In arriving at this view we are not unmindful of the practices of the mercantile community, including both bankers and merchants, in dealing with Chinese firms. We are of the opinion, therefore, that the contract of insurance cannot be avoided upon the ground suggested. It is evident that the misrepresentation complained of was not fraudulently made, and it could only have resulted from ignorance on the part of the insured. If considered material, the error would no doubt have given rise to an equity on the part of the insured to have the contract reformed in conformity with the intention of both insurer and insured, but we consider such a course unnecessary.

The difficult question in the case, and the one upon which the defense has mainly concentrated its force, is, whether the plaintiff, after having surreptitiously removed a great part of the insured goods from the bodega already mentioned, falsified its claim and proof of loss by including the goods so removed, with intent to defraud the insurer. Upon this question the defendant introduced two witnesses, Gabriel Ykal and Fernando Bayan, who testified that, as laborers, they assisted in removing some 65 cases of goods from the bodega on December 23, 24, 26, and 27, 1926, immediately preceding the fire. These witnesses state that a truck was used to effect the removal of the boxes mentioned, and they further state that a carretela was used to transport some goods which were taken from boxes in the bodega, the boxes being left in the place. The boxes and goods thus removed from the bodega were taken, so the witnesses say, to the store at 174 Rosario Street, where they were unladen and carried in through the front door. They were then taken, so these witnesses say, through the back yard of No. 174 and stored in No. 176. A certain verisimilitude was imparted to this narrative by the circumstance that the defendant first obtained from the witness Ykal information concerning the use of No. 176 as a place of storage for the occupant of No. 174. But of course his ability to reveal this circumstance might have originated from, a single visit to the place upon some other occasion. The antecedents of the witness Ykal appear to be bad, if repeated enforced visits to Bilibid Prison may be taken as suggestive; and the other witness was procured by him. Upon the whole the trial judge was so unfavorably impressed by the story told by these two that he refused to give credence to it.

The defense insists, however, that the testimony of these two witnesses is corroborated by the circumstance that when the attorneys for the respective parties, in company with the clerk of court, visited No. 176 Rosario Street, for purposes of inspection on March 19, 1928, they found in that compartment an empty box bearing the same number as one of the cases included in the claim of loss, that is to say, the number "3790." This certainly looks suspicious. But the defendant produced and exhibited in court shipping documents showing that in the early part of the year 1928, that is to say, more than a year after the fire occurred, two boxes of goods, purchased in England, arrived at the port of Manila, consigned to Lim Guan Sy, and were entered through the Bureau of Customs soon after their arrival. In connection with this entry, the defendant exhibited the customhouse documents by means of which the admission of the goods was effected. We believe that these documents are authentic. And the numbers of the two boxes so entered were "3790" and "3890." After the boxes were received at the plaintiff's store and the contents removed, the two empty cases were stored, so the Chinese witnesses say, in No. 176. This must have occurred just before the place was inspected by the clerk of the court and the attorneys for the two litigants on March 19, for the reason that when the inspecting party examined this place on said date, they found 32 boxes, one of which was the box bearing the number "3790," already mentioned. Two other boxes

found on the same occasion bore an identical number, namely, "3890." This shows that a consignment of, two boxes was received by the plaintiff in 1928, in which the numbers on the boxes duplicated the numbers of two boxes previously received; and one of these numbers happened to correspond with the number on one of the boxes consumed in the fire. The reason for this coincidence is not apparent. It may have resulted from a mere duplication of orders upon an identical exporter. That the duplication occurred is established beyond a reasonable doubt.

In reflecting upon this circumstance we have not overlooked the fact that the Chinese witnesses testified that the two boxes imported in March, 1928, were, after the removal of their contents, stored in No. 176 Calle Rosario on March 20, 1928, or one day later than the inspection above-mentioned. But this must have been a mere mistake due possibly to the difference between Gregorian and Chinese calendars. It could not reasonably have been due to a deliberate intent to give a false date, because the truth would have been more in the interest of the side by which the witnesses were called. Upon the whole it must be apparent that the proof relative to the finding of box No. 3790 in this place of storage is far from adding any weight to the defendant's contention.

But the defense further relies upon the results of an examination of the debris left by the fire, and the deductions drawn therefrom. In this connection we note that there were found in the compartment where the plaintiff had its goods stored in the Poizat Bodega certain remnants of textiles that had not been entirely consumed, as well as some iron bands, or wires, from around boxes that had been consumed in the fire. Of these bands enough pieces were found to have served, as is supposed, for about 73 boxes; and as the plaintiff claims that 155 boxes were destroyed, it is therefore insisted by the appellant that there were not in the place at the time of the fire as many boxes as the plaintiff claims. With respect to the remnants of textiles found in the debris, it appears that no vestige remained of 14 kinds of goods comprising the 30 items included in the claim of loss, and it is therefore insisted by the appellant that there could not reasonably have been in the place anything like the quantity of goods claimed by the plaintiff.

We are of the opinion, however, that the inference which the appellant draws from the data supplied by the debris are not sufficiently convincing to justify this court in reversing the judgment; for although some remnants of unconsumed textiles were found in the ruins, the fire was undoubtedly of great intensity, as more than one member of the fire department stated. In the light of this testimony it cannot be considered wholly incredible that half of the iron bands might have been entirely destroyed. The suspicions engendered by the aspects of the proof above discussed, and by other circumstances upon which counsel for the defense places stress, do not, in the opinion of a majority of the court, amount to a clear preponderance of the evidence, such as ought to be demonstrated before the findings of a trial court can be reversed.

Error No. 11 calls in question the propriety of the action of the trial court in excluding the deposition of A. H. Wells. In this connection it appears that the taking of the proof in this case extended over a considerable period of time, in the course of which the defendant's attorneys became informed that one of its witnesses, Dr. Albert H. Wells, was planning to leave the Philippine Islands for the United States. Immediately upon learning of this fact, the attorneys for the defendant, on December 2, 1927, gave notice to the plaintiff and his attorneys that they would take the deposition of Doctor Wells at 10.30 a. m., Monday, December 5, before a notary public. Said notice was accompanied by the usual affidavit setting forth that Doctor Wells was to leave the city on December 6, 1927, as he in fact did, and that he would be absent when his testimony would be required in court. The notification of the taking of this deposition was in due form and the time fixed was in accordance with law, since full two days' notice was given exclusive of the intervening Sunday. No member of the firm of attorneys representing the plaintiff appeared at the taking of said deposition, as the particular member of the firm who was acting in this case apparently had other professional matters requiring his attention at that time. When, however,

the deposition was produced in court, said attorney objected to its use and moved for its suppression. This motion was acceded to by the trial judge, on the ground that the attorneys for the defendant had not advised the court that one of its witnesses was about to leave the Islands; and that, if immediate application had been made to the court, it would have allowed the witness to be examined in court on the afternoon of the same day when the deposition was in fact taken.

It is clear that the deposition was taken upon proper notice, and we are of the opinion that the deposition ought to have been admitted as proof for the defendant. It is true that the court might have suspended the order of proof at the hearing of the same case in the afternoon of the day when the deposition was taken, but the plaintiff was then submitting its case. The attorneys for the defendant had no means of knowing that the court would suspend the order of the taking of the proof with a view to the examination of this particular witness, for the party who was then out of turn; and it might well have been considered unwise to take this chance. At any rate the deposition was taken according to law and should not have been suppressed. The circumstance that none of the lawyers of the firm representing the plaintiff were present at the taking of the deposition, whether for good reason or for none, did not make the deposition inadmissible, and notice having been properly given, it was the duty of the attorneys for the plaintiff either to have some one present to represent the firm at the taking of the deposition or to let it be read without cross-examination by them. His Honor, therefore, erred in excluding the deposition, and we have accordingly treated it upon this hearing as competent proof for the defendant.

For the reasons stated, the appealed judgment, in so far as relates to the fundamental issues of the case, is affirmed, and it is so ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Villamor and Villa-Real, JJ., concur.

DISSENTING

Johns, J., with whom concurs Ostrand, J.:

We agree that the fire was not incendiary. We also agree that the lower court committed an error in refusing to receive in evidence the deposition of Dr. A. H. Wells, and that it "ought to have been admitted as proof for the defendant." We also agree with the majority opinion when it says: "The destruction was so complete that even the places occupied by the rows of boxes are not discernible in the photographs taken of the ruins." But we are clearly of the opinion that the proof of plaintiff's claim was both false and fraudulent.

As to the deposition of Doctor Wells, the majority opinion says: "We have accordingly treated it upon this hearing as competent proof for the defendant."

Plaintiff's claim of loss is founded upon the destruction by the fire of cases and bolts of textile goods, and the real and decisive question in this case is whether or not, with some few marked exceptions, they could be or were totally lost and consumed in and by the fire. That is to say, whether a fire of this nature would consume, wipe out, and destroy every vestige of the cases, iron bolts, bands, and wrappings in which, it is admitted, the textiles were bound. Upon that question the only competent evidence offered by either party was the deposition of Doctor Wells. He testified that he was 42 years of age. That his occupation was chief, division of organic chemistry, Bureau of Science, and then as follows:

"Q. What course of study did you take which qualified you for the position as chief of the division of organic chemistry, Bureau of Science?—A. Seven years, Stanford University, studying organic chemistry. Organic chemistry covers work with textiles.

"Q. How long have you been chief, division of organic chemistry, Bureau of Science?—A. About ten years.

"Q. State whether or not you examined the damaged merchandise now stored at No. 427 Calle Pinpin, Manila, and said to be the remains of the merchandise of Lim Cuan Sy & Company damaged in the fire of the Poizat bodega?— A. I did.

"Q. State whether or not all the boxes or cases containing damaged merchandise were opened up for your inspection?—A. All of the cases were opened up and the merchandise taken out.

"Q. In what form was the merchandise which was taken from the boxes ?—A. Tightly wrapped bolts, some of which were covered with heavy paper wrappings tied with string

"Q. That is to say that they were in their original packages of paper and the paper had not been burned?—A. Yes in some cases.

"Q. What can you say as to whether or not the paper labels of some of the bolts were still on the bolts?—A. They were still intact, in their original form.

"Q. Speaking generally of all the bolts of goods which you inspected there, state to what extent the various bolts had been consumed by fire?—A. Some of the bolts were consumed over 50 per cent; others about 5 to 10 per cent and others were not consumed at all, still having their original wrappings.

"Q. Did you make a rough estimate at the time you examined the bolts of merchandise as to what percentage of the entire damaged goods that were inspected by you were consumed by fire?—A. After inspecting all the bolts, including those that were not damaged by fire, I estimated approximately 25 per cent of the total to be consumed by fire.

"Q. What percentage of the bolts would you say had been consumed to an extent of more than 50 per cent?—A. I would say possibly 5, not over 10 per cent.

"Q. I call your attention to a book of samples of merchandise, one column of the samples of which consists of new samples of goods claimed by the insured to have been in the bodega at the time of the fire and the other outside column of the samples are samples of the goods actually found in the debris after the fire, and which book of samples has heretofore been referred to in the trial as Exhibit 8. Now, referring to item No. 6 of this book of samples described as 4 cases containing 10,827 yards of colored striped madras, 199 pieces (bolts), I will ask you to state whether, in your opinion, there could have been 4 cases of 199 bolts, containing 10,827i yards of that kind of cloth totally consumed in that bodega by the fire, taking into consideration the condition of the bolts of goods which were examined by you at No. 427 Calle Pinpin and which went through the same fire?—A. It would be impossible, taking into consideration the intensity of heat and duration of the fire indicated by the specimens we inspected at the bodega; there would have been some of the original material left if there had been such a Quantity in the bodega at the time of the fire.

"Q. I call your attention to item No. 9 in the same book of samples—Exhibit 8—consisting of 5 cases, 9,619f yards of Halburnic Gingham, contained in 240 bolts, and will ask you to state whether or not, in your opinion, there could have been as large a quantity of that class of merchandise in the bodega at the time of the fire without there having been left any vestige thereof in the debris, taking into consideration the condition of the merchandise which you inspected and which, according to your information, went through the same fire?—A. The answer to the last question applies equally to this.

"Q. I call your attention likewise to items Nos. 12, 14, 19, 22, 23, 24, 25, 26, 29 and 30, after each of which numbers appears the word 'None,' meaning that no vestige of the material designated by those items were found in the debris after the fire, and ask you to state whether or not in your opinion the quantities of merchandise designated in these items could have been totally consumed, leaving no vestige thereof, by the same fire through which the damaged merchandise inspected by you at No. 427 Calle Pinpin went?—A. The

same holds true in these cases as in the previous answer.

"Q. Please state whether or not merchandise rolled tightly in bolts and boxed in cases burns rapidly or slowly and why?—A. It burns slowly, not only for the reason that the bolts are tightly wrapped and boxed, but also because of the small quantity of oxygen contained in the bolts to allow of combustion—combustion being oxidation.

"Q. Doctor, do you remember if among the bolts of merchandise which you inspected at No. 427 Calle Pinpin, there was some coco Pajarito?—A. Yes, sir.

"Q. Please state whether or not, in your opinion, judging from the condition in which the bolts you examined were found, there could have been 150 more bolts of the same class of goods totally consumed by the fire through which the pieces inspected by you went?—A. It is my opinion that it would have been impossible for the same fire to have entirely consumed 150 bolts more of the same kind of goods.

"Q. Referring to item No. 17 in the book of samples, consisting of 10 cases of 2,000 blankets, which, when new, would fill a space of 284.56 cubic feet, please state whether or not, judging from the damage to the blankets that you examined at No. 427 Calle Pinpin, the blankets could have been reduced by the fire to such an extent that the remains thereof would fill a space of but 115.359 cubic feet?—A. Blankets of this nature are not easily combustible, particularly when compressed in packing cases, and it is my opinion, judging from the appearance of those found in the bodega, that such a reduction would be impossible, or highly improbable.

"Q. Doctor, how do you account for the fact that some of the bolts of goods which you inspected at No. 427 Calle Pinpin were consumed to a larger extent than others by the fire?—A. Because there was naturally some variation in the intensity of the heat in the different parts of the bodega.

"Q. Taking into consideration the fact that this bodega was but 13 meters in length by 5 meters in width, what would you say as to whether or not the difference in the intensity of heat which may have prevailed at the time of the fire in the bodega would have been sufficient to totally destroy certain classes of goods to which your attention has heretofore been called, and at the same time consume or damage the goods which you inspected only to the extent found by you?—A. In my opinion, the difference in the intensity of heat which might have prevailed in the fire in the different parts of the bodega would be insufficient to totally consume such large quantities of one class of merchandise and leave the merchandise inspected by me in the condition in which it was found."

It will be noted that this evidence is clear, positive, definite, and certain, and that nowhere in the record is it impeached or questioned. In fact upon those points no other witness testified or was called by either party. The question as to whether or not a fire of this nature would totally wipe out and destroy every vestige of the textiles is one of science, and in the absence of any other testimony upon that point how can this court find as a scientific fact that the evidence of Doctor Wells is not true? It appears from his deposition that he has made a life study of organic chemistry which covers the burning of textiles, and he testified as a fact that taking in consideration the intensive heat and duration of the fire "there would have been some of the original material left if there had been such a quantity in the bodega at the time of the fire." That some of the bolts were consumed over 50 per cent; others about 5 to 10 per cent; and others still have their original wrappings, and that the percentage of the entire damaged goods was "possibly 5, not over 10 per cent," and that it would have been impossible "for the same fire to have entirely consumed 150 bolts more of the same kind of goods." That is a scientific fact upon which the only competent evidence in the record is that of Doctor Wells. Yet, in the final analysis, the majority opinion of this court has set up its own judgment as to the force and effect of the fire against his, and found as a fact, based on its own judgment, that there was almost a total destruction and loss of textiles which plaintiff claims was in the bodega at the time of the fire. In other words, the majority opinion holds that the deposition of Doctor Wells was competent, and that it should have been received in evidence, but without any evidence to overcome or contradict

it finds that it is not true. Yet it was given by a man who has devoted his whole life to the study of his profession, with a lifelong experience, who is fair and impartial, and has no personal interest in the result.

We have been taught that questions of fact should be tried and decided upon the evidence in the record, and that the testimony of one credible witness is sufficient to establish any fact, in particular, when it is not controverted and there is no evidence to dispute it.

The testimony of Doctor Wells was given after a personal inspection by him of everything which remained of all of the textiles after the fire, which were later sold for P7,000, and his testimony is founded on that personal inspection. How then can this court, after an inspection of a small portion of the remaining textiles, set up its own judgment against a person who has made a lifelong study of his profession, and who personally examined all of the remaining evidence of the textiles after the fire?

The majority opinion says:

"That the inference which the appellant draws from the data supplied by the debris are not sufficiently convincing to justify this court in reversing the judgment; for although some remnants of unconsumed textiles were found in the ruins, the fire was undoubtedly of great intensity, as more than one member of the fire department stated. In the light of this testimony it cannot be considered wholly incredible that half of the iron bands might have been entirely destroyed. The suspicions engendered by the aspects of the proof above discussed, and by other circumstances upon which counsel for the defense places stress, do not, in the opinion of a majority of the court, amount to a clear preponderance of the evidence, such as ought to be demonstrated before the findings of a trial court can be reversed."

It will be noted that the majority opinion says:

"In the light of this testimony," but it does not point out or specify any of the testimony upon which it relies. In truth and in fact the only competent evidence upon that point is the testimony of Doctor Wells who has made a lifelong study of the decisive question involved in this case.

Again it appears that in testifying, Doctor Wells was shown samples of the textiles which were supposed to be in the bodega at the time of the fire, together with the samples of the textiles which were "actually found in the debris after the fire," known as Exhibit 8, and his evidence is based on his personal inspection of those samples which this court has never seen. As stated, the decisive question in this case is whether the kind and quality of the textiles which plaintiff claims were in the bodega at the time of the fire, as evidenced by the samples submitted to Doctor Wells, would be consumed and all evidence wiped out and destroyed by the fire, and again we repeat that the only evidence in the record on that point is that of Doctor Wells, and if his testimony is true, it must follow that plaintiff's claim was false and fraudulent. How can this court ignore and entirely overlook the testimony of Doctor Wells? In the face of his testimony, how can this court find as a fact that the textile goods were wholly consumed, wiped out, and destroyed by the fire? Upon what legal principle can this court set up its own judgment against a man who has made organic chemistry his chosen profession and in which he has had a lifelong experience, in particular, when on that vital point his evidence is not refuted by any other witness? As the majority opinion finds "the destruction was so complete that even the places occupied by the rows of boxes are not discernible in the photographs taken of the ruins." If Doctor Well's testimony is true, "the rows of boxes" were not discernible after the fire, for the simple reason that the "rows of boxes" were not in the bodega at the time of the fire.

We are clearly of the opinion that plaintiff's claim was false and fraudulent, and for such reasons the judgment of the lower court should be reversed.

Romualdez, J.:

I vote that the judgment appealed from be reversed.

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