

FRANCISCO JARQUE, PLAINTIFF AND APPELLEE, VS. SMITH, BELL & CO., LTD., ET AL., DEFENDANTS. UNION FIRE INSURANCE CO., APPELLANT.*G.R. No. 32986. November 11, 1930*

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32986/>**OSTRAND, J.:**

The plaintiff was the owner of the motorboat Pandan and held a marine insurance policy for the sum of P45,000 on the boat, the policy being issued by the National Union Fire Insurance Company and according to the provisions of a "rider" attached to the policy, the insurance was against the "absolute total loss of the vessel only." On October 31, 1928, the ship ran into very heavy sea off the Island of Ticlin, and it became necessary to jettison a portion of the cargo. As a result of the jettison, the National Union Fire Insurance Company was assessed in the sum of P2,610.86 as its contribution to the general average. The insurance company, insisting that its obligation did not extend beyond the insurance of the "absolute total loss of the vessel only, and to pay proportionate salvage of the declared value," refused to contribute to the settlement of the general average. The present action was thereupon instituted, and after trial the court below rendered judgment in favor of the plaintiff and ordered the defendant National Union Fire Insurance Company to pay the plaintiff the sum of P2,610.86 as its part of the indemnity for the general average brought about by the jettison of cargo. The insurance company appealed to this court and assigns as errors (1) "that the lower court erred in disregarding the typewritten clause endorsed upon the policy, Exhibit A, expressly limiting insurer's liability thereunder of the total loss of the wooden vessel Pandan and to proportionate salvage charges," and (2) "that the lower court erred in concluding that defendant and appellant, National Union Fire Insurance Company is liable to contribute to the general average resulting from the jettison of a part of said vessel's cargo."

I. As to the first assignment of error, little need be said. The insurance contract, Exhibit A, is printed in the English common form of marine policies. One of the clauses of the document originally read as follows:

"Touching the Adventures and Perils which the said National Union Fire Insurance Company is content to bear, and to take upon them in this Voyage; they are of the Seas, Men-of-War, Fire, Pirates, Rovers, Thieves, Jettison, Letters of Mart and Countermart, Surprisals, and Takings at Sea. Arrests, Restraints and Detainments, of all Kings, Princes and People of what Nation, Condition or Quality soever; Barratry of the Master and Marines, and of all other Perils, Losses and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the said Vessel or any part thereof; and in case of any Loss or Misfortunes, it shall be lawful for the Assured, his or their Factors, Servants, or assigns, to sue, labour and travel for, in and about the Defence. Safeguard, and recovery of the said Vessel or any part thereof, without Prejudice to this Insurance; to the Charges whereof the said Company, will contribute, according to the rate and quantity of the sum herein assured. And it is agreed that this Writing or Policy of Insurance shall be of as much force and Virtue as the surest Writing or Policy of Insurance made in London."

Attached to the policy over and above the said clause is a "rider" containing typewritten provisions, among which

appears in capitalized type the following clause:

"AGAINST THE ABSOLUTE TOTAL LOSS OF THE VESSEL ONLY, AND TO PAY PROPORTIONATE SALVAGE CHARGES OF THE DECLARED VALUE."

At the bottom of the same rider following the typewritten provisions therein set forth are the following words: "Attaching to and forming part of the National Union Fire Insurance Co., Hull Policy No. 1055."

It is a well settled rule that in case repugnance exists between written and printed portions of a policy, the written portion prevails, and there can be no question that as far as any inconsistency exists, the above-mentioned typed "rider" prevails over the printed clause it covers. Section 291 of the Code of Civil Procedure provides that "when an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former controls the latter." (See also Joyce on Insurance, 2d ed., sec. 224, page 600; Arnould on Marine Insurance, 9th ed., sec. 73; Marine Equipment Corporation vs. Automobile Insurance Co., 24 Fed. (2d), 600; and Marine Insurance Company vs. McLahanan, 290 Fed., 685, 688.)

II. In the absence of positive legislation to the contrary, the liability of the defendant insurance company on its policy would, perhaps, be limited to "absolute loss of the vessel only, and to pay proportionate salvage of the declared value." But the policy was executed in this jurisdiction and "warranted to trade within the waters of the Philippine Archipelago only." Here the liability for contribution in general average is not based on the express terms of the policy, but rests upon the theory that from the relation of the parties and for their benefit, a quasi contract is implied by law. Article 859 of the Code of Commerce is still in force and reads as follows:

"Art. 859. The underwriters of the vessel, of the freight, and of the cargo shall be obliged to pay for the indemnity of the gross average in so far as is required of each one of these objects respectively."

The article is mandatory in its terms, and the insurers, whether for the vessel or for the freight or for the cargo, are bound to contribute to the indemnity of the general average. And there is nothing unfair in that provisions; it simply places the insurer on the same footing as other persons who have an interest in the vessel, or the cargo therein, at the time of the occurrence of the general average and who are compelled to contribute (art. 812, Code of Commerce).

In the present case it is not disputed that the ship was in grave peril and that the jettison of part of the cargo was necessary. If the cargo was in peril to the extent of call for general average, the ship must also have been in great danger, possibly sufficient to cause its absolute loss. The jettison was therefore as much to the benefit of the underwriter as to the owner of the cargo. The latter was compelled to contribute to the indemnity; why should not the insurer be required to do likewise? If no jettison had taken place and if the ship by reason thereof had foundered, the underwriter's loss would have been many times as large as the contribution now demanded.

The appealed judgment is affirmed with the costs against the appellant. So ordered.

Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

JOHNSON and STREET, JJ.,

In view of the fact that the policy of marine insurance which is the subject of this action contained a provision to the effect that the risk insured against was "the absolute total loss of the vessel only," the undersigned are of the opinion that the defendant insurance company is not liable to contribute to the gross average incident to the

jettison of some of the freight embarked on the vessel which was the subject of insurance. It is true that article 859 of the Code of Commerce declares that the underwriters of the vessel, of the freight, and of the cargo shall be obliged to pay for the indemnity of the gross average in so far as is required of each one of these objects respectively, but that provision evidently states a general rule to be applied where there are no words in the contract in any wise qualifying the risk. This article, we think, should not be interpreted as abridging the freedom of contract between insurer and the insured; and where, as in the case before us, the words defining the risk plainly show that the risk is limited so as to exclude the obligation to contribute in case of jettison, the intention expressed in the contract ought to be given effect. If the insurance had been written upon the cargo, the case for the plaintiff would have been stronger; but it is certainly anomalous that an insurer of "the vessel only" should be held liable for the jettison of cargo, to which a contract of insurance does not extend. The language used in the policy of insurance in this case clearly limits the risk affirmatively to the vessel only, and the contract should be given effect according to the intention of the parties.

The opinion of the court appears to proceed in part at least upon the idea that the insurer had a real interest in the vessel, and that the insurance company was necessarily benefited by a jettison of cargo, since the act may possibly have resulted in saving the vessel from destruction. This idea appears to us to ignore the most fundamental conception underlying the law of insurance, which is that the contract of insurance is of an aleatory nature. By this is meant that the contract is essentially a wager. It results that the insurer has no real interest whatever in the thing insured; and the question of the liability of the insurer limits itself to the question whether the contingency insured against has occurred. The circumstance that the vessel may have been saved by jettison of the cargo is irrelevant to the risk. We are of the opinion that the judgment appealed from should be reversed and the defendant absolved from the complaint.

Judgment affirmed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.