

ORIENT INSURANCE COMPANY, PETITIONER, VS. E. P. REVILLA, JUDGE OF FIRST INSTANCE OF MANILA, AND TEAL MOTOR CO., INC., RESPONDENTS.

G.R. No. 34098. September 17, 1930

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-34098/>

STREET, J.:

```
body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }
```

This is an original petition for writs of certiorari and mandamus filed in this court by the Orient Insurance Company against the respondent judge of the Court of First Instance of Manila and the Teal Motor Co., Inc. The object of the petition is to obtain an order requiring the respondent judge to permit the attorney for the petitioner to examine a letter (Exhibits 49 and 49-A) part of which has been read into the record in the course of the examination of one of the witnesses testifying for the plaintiff in the case of Teal Motor Co., Inc. vs. Orient Insurance Company, now pending in the Court of First Instance of the City of Manila, civil case No. 35825, with which, for purposes of trial, have been consolidated several other cases of similar character. The cause is now before us for resolution upon the complaint and answer interposed by the two respondents.

The respondent Tea} Motor Co., Inc., is plaintiff in a civil action instituted in the Court of First Instance of Manila (civil case No. 35825) for the purpose of recovering upon two fire insurance policies issued by the Orient Insurance Company, aggregating P60,000, upon a stock of merchandise alleged to be of the value of P414,513.56, which, with the exception of salvage valued at about P50,000, was destroyed by a fire on or about January 6, 1929. In one of the clauses of the policies sued upon is a stipulation to the effect that all benefit under the policy would be forfeited if, in case of loss, the claim should be rejected by the insurer and action or suit should not be commenced within three months after such rejection. In the answer of the Orient Insurance Company, interposed in the civil case mentioned, it is alleged, by way of defense, that the company rejected the claim on April 15, 1929, that notice of such rejection was given to the plaintiff by letter on the same day, and that suit was not instituted on the policy until August 3, 1929, which was more than three months after the rejection of the claim.

In a replication to the answer of the defendant, containing the foregoing and other defenses, the plaintiff admitted that the adjusters of the defendant company had, on April 15, 1929, notified the plaintiff that the Orient Insurance Company would not pay the claim, basing refusal upon alleged incendiarism and fraud on the part of the plaintiff; and by way of avoidance, it was alleged in the replication that, after notification of denial of liability by the insurance company, one E. E. Elser, as representative of the company, expressly requested the plaintiff to defer judicial action until after the following July 31, stating that there were great possibilities that an extrajudicial compromise might be arranged in the matter; and it was further asserted, in the replication, that the plaintiff had

deferred action, relying upon this request.

It will thus be seen that the reason for the admitted delay in the institution of the action is an important issue in the case, or cases, now in course of trial.

It further appears that while case No. 35825 was in course of trial, as it still is, before the respondent judge, in the Court of First Instance of Manila, the witness E. M. Bachrach, president of the Teal Motor Co., Inc., while being examined in chief by the attorneys for the plaintiff, and speaking of the circumstances surrounding the institution of the action, said that he had reported certain conversations to plaintiff's attorneys, and he added: "I waited for about a week longer and not having heard anything about it, in the meantime, on the 13th of July, I received a letter from our attorneys, Guevara, Francisco & Recto, urging me to file these cases.' The attorney for the defendant, Orient Insurance Company, thereupon interposed, saying: "I ask that the witness be required to produce the letter referred to from Mr. Guevara, or else his answer be stricken out. (To the witness) Have you got the letter there?" The witness replied that he had the letter with him and that he had no objection to show that part of the letter in which Guevara urged him to proceed with the cases. Upon-being asked about the other part of the letter, the witness said that the other part contained private matter, "between the attorney and ourselves," meaning between the Teal Motor Co., Inc., and its attorneys. Thereupon the attorney for the defendant, Orient Insurance Company, said he would like to see the letter, inquiring as to its date. The witness replied that it bore date of July 13, 1929; and upon the court inquiring whether the witness had any objection to the reading of the letter by the attorney for the defendant, the witness replied that he wished to consult with his attorney. Upon this the attorney for the adversary party, the Orient Insurance Company, suggested that he would like to have the letter marked without his reading it, and it was accordingly marked as Exhibit 49. The attorney then said: "In view of the production of the letter, I withdraw the objection to the statement of the witness as to its contents," and he added: "I now ask the permission of the court to read the letter for my information." The court thereupon inquired of the attorney for the Teal Motor Co., Inc., whether he had any objection, and the attorney observed that he would have no objection to the disclosing of that part of the letter which referred exactly to the point of the urging of the filing of the complaints, and he added: "Unfortunately, the other part of the letter being a communication between a client and attorney, I don't think, if your Honor please, it can be disclosed without the consent of both."

In the course of the colloquy which thereupon ensued between the attorney for the plaintiff and the attorney for the defendant, it was stated by the attorney for the plaintiff that only a part of the letter had anything to do with the urging of the presentation of the complaints in the cases to which the witness had testified, and that the other part of the letter referred to the contract of fees, or retaining of the services of plaintiff's attorneys in connection with said cases, a matter, so the attorney suggested, entirely distinct from the urging of the presentation of the cases. The attorney for the defendant thereupon insisted before the court that, inasmuch as all the letter refers to the case then in court, the entire document should be exhibited, in conformity with the rule that when part of a document is offered in evidence, the entire document must be presented.

Upon this the respondent judge ruled as follows: "Objection of the counsel for the plaintiff and the witness, Mr. Bachrach, to the showing or reading of the whole letter in the record is sustained, and it is ordered that only that part of the letter which has been referred to by Mr. Bachrach in his testimony be read and transcribed into the record." To this ruling the attorney for the defendant excepted and the respondent judge then said: "Let that part of the letter pointed out by Mr. Bachrach be transcribed in the record;" whereupon the following part of the letter was read out in court and incorporated in the transcript:

"July 13, 1929

"Dear Sir: As you know, your attorney Mr. Basilio Francisco has turned over to us, prior to his departure, all the papers in connection with the insurance claim of the Teal Motor Co., Inc., on destroyed or burned merchandise, and everything is now ready for the filing of the corresponding complaints in the Court of First Instance."

When the matter above quoted had been thus read into the record,- the attorney for the defendant made the following observation: "In view of the fact that counsel for the plaintiff has just now read into the record and presented as evidence a part of the letter of July 13, I now request that the entire letter be produced." This request was overruled by the court, and the attorney for the defendant excepted. After further discussion, upon the suggestion of the attorney for the defendant and by agreement of counsel for both parties, the second page of the letter was marked 49-A by the clerk of court.

The incident was renewed when it came at turn of the attorney for the defendant to cross-examine the same witness E. M. Bachrach, when the attorney for the defendant, having ascertained from the witness that he still had the letter in his possession, and that he had not answered it in writing, formally offered the letter in evidence. The attorney for the plaintiff again objected, on the ground that the letter was of a privileged nature and that it was the personal property of the witness. Thereupon the court, receiving the letter in hand from the witness, observed that he had already ruled upon it, and after further discussion, the court sustained the objection of the attorney for the plaintiff and refused to admit in evidence so much of the letter as had not already been read into the record. The attorney for the defendant again excepted.

At a later stage of the trial the attorney interposed a formal motion for reconsideration of the ruling of the court in refusing to admit the letter in evidence, or the part of it not already incorporated in the record. The court, however, adhered to its original ruling, and the attorney for the defendant excepted. Another incident that might be noted, though not alleged as a ground of relief in the petition before us, but set forth in the answer of the respondents, is that the attorney for the defendant procured a subpoena duces tecum to be issued by the clerk of court requiring the attorneys for the plaintiff to produce in court certain papers including the letter which, gave rise to the present controversy. The court, on motion of the attorneys for the plaintiff, quashed said subpoena.

The essential character of this incident, which we have perhaps narrated with unnecessary prolixity, is readily discernible. A witness for the plaintiff made an oral statement as to the substance of part of a letter which had been received by the plaintiff from its attorney, and when the fact was revealed that the communication had been made by letter, the attorney for the defendant requested that the witness be required to produce the letter in court, . and if not, that his answer should be stricken out. This in legal effect was a demand for the production of "the best evidence." it being a well-known rule of law that a witness cannot be permitted to give oral testimony as to the contents of a paper writing which can be produced in court. In response to this request that portion of the letter to which the witness had supposedly referred was read into the record.

The respondent judge appears to have considered that the excerpt from the letter thus incorporated in the record was either proof of the defendant, its production having been demanded by defendant's counsel, or that at least the legal responsibility for the incorporation of said excerpt into the record was attributable to the defendant. We are unable to accept this view. The incorporation of this excerpt from the letter was a necessary support of the oral statement which the witness had made, and if this basis for such statement had not been laid by the incorporation of the excerpt into the record, the oral statement of the witness concerning the tenor of the letter should properly have been stricken out. But instead of withdrawing the oral statement of the witness concerning the nature of the written communication, the witness produced the letter and the part of it already quoted was read into the record. The excerpt in question must therefore be considered as proof submitted by the plaintiff; and there can be no question that, part of the letter having been introduced in behalf of the plaintiff, the whole of the letter could properly be examined by the other party, in accordance with the express

provision of section 283 of the Code of Civil Procedure.

It was stated in court by the attorney for the plaintiff, in opposing the introduction of other portions of the letter in proof, that the other parts were privileged, because they related to the terms of employment between attorney and client, or to the fee to be paid to the attorney. With respect to this point it is difficult to see how a contract for fees could be considered privileged. Irrelevant it might, under certain circumstances, certainly be, but not privileged. Of course contracts between attorneys and clients are inherently personal and private matters, but they are a constant subject of litigation, and contracts relating to fees are essentially not of a privileged nature. Privilege primarily refers to communications from client to attorney, an idea which of course includes communications from attorney to client relative to privileged matters.

But, even supposing that the matter contained in the letter and withheld from the inspection of the adversary was originally of a privileged nature, the privilege was waived by the introduction in evidence of part of the letter. The provision in section 283 of the Code of Civil Procedure making the whole of a declaration, conversation, or writing admissible when part has been given in evidence by one party, makes no exception as to privileged matter; and the jurisprudence on the subject does not recognize any exception. Practically every feature of the question now under consideration was involved in the case of *Western Union Tel. Co. vs. Baltimore & Ohio Tel. Co.* (26 Fed., 55), which in 1885 came before Wallace,., a distinguished jurist presiding in the Federal Circuit Court of the Southern District of New York. The substance of the case is well stated in the note to *Kelly vs. Cummins* (20 Am. & Eng. Ann. Cases, 1283, 1287), from which we quote as follows:

"In *Western Union Tel. Co. vs. Baltimore, etc., Tel. Co.* (26 Fed., 55), it appeared that upon a motion in the cause, which was in equity for a preliminary injunction, one of the questions involved was whether a reissued patent upon which the suit was founded was obtained for the legitimate purpose of correcting mistake or inadvertence in the specification and claims of the original, or whether it was obtained merely for the purpose of expanding the claims of the original in order to subordinate to the reissue certain improvements or inventions made by others after the grant of the original patent and before the application for the reissue. To fortify its theory of the true reasons for obtaining the reissue, the complainant upon that motion embodied in affidavits extracts from communications made by a patent expert and attorney in the office of the solicitor general of the complainant, to the president and the vice-president of the complainant, when the subject of applying for a reissue was under consideration by the officers of the complainant, and while the proceedings for a reissue were pending. After the cause had proceeded to the taking of proofs for final hearing the defendant sought to introduce in evidence the original communications, extracts from which were used by the complainant upon the motion for an injunction, on the ground that the parts of the communication which were not disclosed had an important bearing upon the history of the application for a reissue and indicated that it was not made for any legitimate purpose. The complainant resisted the efforts of the defendant to have the original communications admitted, on the ground that they were privileged as made to its officers by its attorney, but it was held that the defendant was entitled to introduce them in evidence, the court saying: The question, then, is whether the complainant can shelter itself behind its privilege to insist upon the privacy of the communications between its attorney and its other officers as confidential communications, when it has itself produced fragmentary part of them, and sought to use them as a weapon against the defendant to obtain the stringent remedy of a preliminary injunction. Assuming that the communications addressed to the president and vice-president of the complainant by Mr. Buckingham were communications made to the complainant by its attorney, and as such privileged at the option of the complainant, it was competent for the complainant to waive its privilege. It would hardly be contended that the complainant could introduce extracts from these communications as evidence in its own behalf for the purpose of a final hearing, and yet withhold the other parts if their production were required by the defendant. A party cannot waive such a privilege partially. He cannot remove the seal of secrecy from so much of the privileged communications as makes for his advantage, and insist that it shall not be removed as to so much as makes to the advantage of his adversary, or may neutralize the effect of such as has been introduced. Upon principle it would seem that it cannot be material at what stage of the proceedings in a suit a party waives his right to maintain the secrecy of a privileged

communication. All the proceedings in the cause are constituent parts of the controversy, and it is not obvious how any distinction can obtain as to the effect of waiver when made by a party for the purpose of obtaining temporary relief and when made by him to obtain final relief.' "

From the foregoing decision and other cases contained in the note referred to, we are led to the conclusion that the attorney for the defendant in the court below was entitled to examine the whole of the letter (Exhibits 49 and 49-A), with a view to the introduction in evidence of such parts thereof as may be relevant to the case on trial, and the respondent judge was in error in refusing to permit the inspection of the letter by said attorney.

It is suggested in the argument for the respondents that the question of the admissibility in evidence of the parts of the letter not already read into the record was prematurely raised, and that the attorney for the defendant should have waited until it became his turn to present evidence in chief, when, as is supposed, the question could have been properly raised. We are of the opinion, however, that if the attorney for the defendant had a right to examine the letter, it should have been produced when he asked for it on the cross-examination of the witness who had the letter in his possession. Besides, in the lengthy discussions between court and attorneys, occurring at different times, there was not the slightest suggestion from the court that the parts of the letter which were held inadmissible would be admitted at any time. Furthermore, the action of the court in quashing the subpoena duces tecum for the production of the letter shows that the court meant to rule that the letter could not be inspected at all by the attorney for the defendant.

Objection is also here made by the attorney for the respondents to the use of the writ of mandamus for the purpose of correcting- the error which is supposed to have been committed. The situation presented is, however, one where the herein -petitioner has no other remedy. The letter which the petitioner seeks to examine has been ruled inadmissible, as to the parts not introduced in evidence by the defendant in the court below, and the respondent judge has not permitted the document to become a part of the record in such a way that the petitioner could take advantage of the error upon appeal to this court. It is idle to discuss whether other remedy would be speedy or adequate when there is no remedy at all. This court is loath, of course, to interfere in course of the trial of a case in a Court of First Instance, as such interference might frequently prolong unduly the litigation in that court. But this case has been pending before the respondent judge for a considerable period of time, and, undoubtedly the probatory period will be necessarily extended much longer. Under these circumstances, the action of this court in entertaining the present application will either be conducive to the speedy determination of the case, or at least will not appreciably extend the proceedings.

It goes without saying that the subject matter of the contention is of a nature which makes the use of the writ of mandamus appropriate, since the right from the exercise of which the petitioner is excluded is one to which it is entitled under the law and the duty to be performed is one pertaining to the respondent judge in his official capacity.

From what has been said it follows that the writ of mandamus prayed for will be granted, and the respondent judge is directed to permit the attorney for the defendant (petitioner here) to inspect the letter (Exhibits 49 and 49-A) with a view to the introduction in evidence of such parts thereof as may be relevant to the issues made by the pleadings in civil case No. 35825 and other cases which have been consolidated with it for trial. So ordered, with costs against the respondent Teal Motor Co., Inc.

Avanceña, C. J., Villamor, Ostrand, Johns and Romualdez, JJ., concur.

CONCURRING

Villa-Real, J.:

I concur solely on the ground that the portion of the letter alleged to be privileged is not so.

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.