

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLEE, VS. ANTONIO VALLEJO Y VALENCIA, DEFENDANT AND APPELLANT.

G. R. No. 3562. August 15, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

To a complaint of the plaintiff for goods sold, of the total value of P8,517.21, the defendant as a counterclaim demanded judgment for such balance as might be due upon insurance money collected by the plaintiff on a policy on a launch once belonging to the defendant's principal, Rafael Molina, but lost in the typhoon of September 22, 1905.

This launch, Concha, was insured for 40,000 francs and the policy assigned as collateral security to the account in suit to the plaintiff, who advanced the insurance premiums and continued to advance them for a portion of the year 1904, after the launch was sold to Antonio de la Riva.

In order to maintain this counterclaim it was necessary for the defendant to prove that at the time of the loss of the launch the policy was alive and was carried for his benefit in such a manner that he was entitled to its proceeds after satisfying the pledge thereof, or at least that the plaintiff was bound to keep it in force. In these particulars there is a complete failure of proof and the appeal appears to present no real question for our consideration.

The agreement between the parties expressly stipulated for interest at the rate of 8 per cent per annum, but the plaintiff has not appealed from that portion of the judgment allowing him interest at the rate of 6 per cent only. The judgment of the Court of First Instance of the city of Manila is therefore affirmed with costs. So ordered.

Arellano, C. J., Torres, Johnson, and Willard, JJ., concur.

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