

**TAN CHUCO, PLAINTIFF, APPELLANT AND APPELLEE, VS.
YORKSHIRE FIRE AND LIFE INSURANCE COMPANY, DEFENDANT,
APPELLANT AND APPELLEE.**

G.R. No. 5069. October 25, 1909

Ponente: CARSON, J.

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CARSON, J.:

Judgment in this action was rendered in the Court of First Instance of Manila against the plaintiff upon his claim under an "open" fire insurance policy for compensation to the full extent of the policy, for the alleged loss by fire of a certain stock of goods insured by the defendant company; and against the defendant company on its counterclaim for losses resulting from the plaintiff's alleged intentional and fraudulent setting on fire of the building wherein the insured goods were kept, thereby as it is alleged causing the destruction by fire of several stocks of goods belonging to third parties, and insured by the defendant company.

The trial court found that the evidence did not sustain defendant's allegation that plaintiff or his agents had intentionally and fraudulently set the building on fire, but was of opinion that not only had the plaintiff failed to establish the value of the goods which he alleges were destroyed by fire but that he had failed in several particulars to live up to the terms of his contract as set out in the policy, thereby voiding the policy and defeating his claim to indemnification thereunder.

Plaintiff and defendant each appealed from so much of the judgment as is against their respective claims.

It is not denied that all of plaintiff's property which was within the building wherein, under the terms of policy, the insured goods were to be kept, was destroyed by fire as alleged in the complaint; and there is no question as to the defendant company's liability to indemnify the plaintiff, under his policy, for the amount of these losses, when duly established, unless it appears that plaintiff's right of recovery was defeated by some failure on his part to live up to the terms of his contract, as set out in the policy; nor is there any question of defendant's right to recover from the plaintiff upon its counterclaim, if it appears from the evidence that the plaintiff, as alleged by the defendant, intentionally and fraudulently set on fire, or caused to be set on fire the building wherein it is alleged the insured goods were kept.

The evidence of record strongly tends to sustain defendant's allegations that the plaintiff, although himself absent in China, caused the building in question to be set on fire, but the trial judge, in whose presence the witnesses testified, appears to have had some doubt as to the credibility of some of the witnesses called by the defendant, and was of opinion that these allegations were not satisfactorily established by the weight of the evidence. Upon a careful review of the whole record, and keeping in mind the fact that the trial judge saw and heard the witnesses testify, we are unable to say that there is such a preponderance of the evidence in support of these allegations as would sustain an affirmative finding in favor of the defendant, and justify us in reversing the finding by the trial court upon this issue. The judgment against the defendant company upon its counterclaim should therefore be affirmed.

The trial court was of opinion, however, that the building wherein the insured goods were stored having been destroyed by fire the origin of which is unknown, the plaintiff failed to prove the value of the insured goods, and that for the fraudulent purpose of recovering the full amount of the policy, he submitted fabricated written evidence and false testimony in support of his claim that the insured goods actually destroyed by fire were worth more than the total amount of the insurance thereon. Plaintiff introduced an inventory of the insured goods alleged to have been taken a short time before the fire, which would leave little room for doubt as to the truth of his allegation as to the amount of his loss if it could be accepted as genuine. But the trial judge was of opinion that this inventory was not genuine and that it had been fraudulently prepared with a view to its use as evidence in support of plaintiff's claim. He was led to reject this alleged inventory as unworthy of belief, partly because of the inherent improbability of the story told by the witnesses for the plaintiff who testified as to the conditions under which it was made and as to the manner in which it had been preserved from destruction, notwithstanding the fact that all other useful documentary evidence, books, and papers were lost in the fire; partly because: the unconvincing and unsatisfactory manner in which these witnesses testified; partly because the evidence of record tends to prove, though not conclusively, that the stock of insured goods at the time of the fire was considerably less than the total amount of the insurance thereon; and partly because the evidence conclusively establishes that defendant's manager and representative, who claims to have made this inventory, was in the building together with his employees when the fire took place, and not only made no effort to extinguish, the fire or to save the insured goods from destruction, although such efforts might have been availing, but that he failed to save from destruction any of the books or papers connected with the business of which he was in charge which would have served in any wise to corroborate the data contained in the alleged inventory, or to give any accurate information upon which a finding could be based as to the true value of the insured goods destroyed by the fire.

The inventory was dated as of the 1st of January, although it appears that it was not the custom of the plaintiff or his manager, who are Chinese persons, to make an inventory on the first day of the New Year under the Gregorian calendar, and no reason was given or suggested which would satisfactorily explain the making of the inventory upon that date on this particular occasion; while the fact that the plaintiff and owner of the store left for China in the month of November immediately prior thereto, and that the Chinese New Year occurs in the month of February, and that in the ordinary course of business, inventories, if taken at all, would naturally be taken upon those occasions, renders it, to say the least, highly improbable that a third inventory would, in the ordinary course of business, be taken within less than two months after the former, and two months before the latter date.

Plaintiff's manager testified that after the taking of the inventory it was turned over to a friend who was about to leave for China to be taken to plaintiff, and he thus attempted to account for the fact that it was not destroyed together with the other books and documents relating to the business; but it appears that the friend to whom it had been intrusted had not yet departed for China in the month of February when the fire took place, so that the manager immediately after the fire was able to secure the return of the inventory for the purpose of making his report to the insurance company. No explanation was offered which would account for the remarkable conduct of plaintiff's manager in preparing an inventory less than two months after his employer had left for China and then instead of forwarding it at once by mail to his principal, intrusting it for transmission to a friend who had not left for China when the fire took place several weeks later.

Evidence was introduced at the trial which showed that as a result of adverse conditions in the sugar market the business of the plaintiff for some time prior to the fire was at a low ebb, and this evidence strongly tended to prove that because of these adverse business conditions the stocks of goods of the plaintiff, as well as those of all the Chinese merchants in the town wherein the fire took place, were far below the average at the time the fire occurred; and it was proven that not long before the fire the plaintiff had sought and secured a reduction in his rent, because of the admittedly adverse business conditions then existing. Plaintiff at the trial sought to

corroborate the contents of the inventory by introducing copies of various alleged invoices of goods made to him during the course of several months preceding the fire, but these invoices, as the trial judge points out, not only failed to establish the fact that the goods were actually delivered to the building wherein the insured goods were kept, but amounting as they do to but a small fraction of the loss claimed by the plaintiff, tended rather to raise a doubt as to the probability of the existence in the store of such a stock of goods as is set out in the inventory, than to corroborate the truth of plaintiff's claims, since the plaintiff, who well knew the persons with whom he dealt, should not have found any serious difficulty in proving the purchase and delivery of any goods which may have been received by him prior to the fire and during the existence of the insurance contract.

We think that the action of the trial court in rejecting the proof offered by plaintiff as to the amount of the loss must be sustained, and the contract of fire insurance being a contract of indemnity, and the plaintiff only entitled therefore to recover the amount of the actual loss sustained by him, there being no express valuation in the policy, judgment was properly entered against him for lack of satisfactory proof of the amount of his loss. (Franklin F. Ins. Co. vs. Hamill, 6 Gill (Md.), 87; Marchesseau vs. Merchants Ins., Co., 1 Rob. (La.), 438; Eagle Ins. Co. vs. Lafayette Ins. Co., 9 Ind., 443.)

It is not necessary for us to examine the assignments of error by counsel for plaintiff appellant which are directed to the findings and conclusions of the trial court as to the failure of the plaintiff to live up to various provisions of the contract set out in the policy (which in the opinion of the trial court defeated plaintiff's right of recovery even had he established the amount of his loss with satisfactory evidence), because even if all these assignments of error were sustained, it would be our duty nevertheless to affirm the decision of the court below upon the grounds already set out.

The judgment appealed from should be, and is, therefore, affirmed, without costs to either party.

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

[1] Cause No. 5070, Tan Chuco vs. Mercantile Fire Insurance Company, involving the same subject matter, was considered and decided at the same time with the same result.

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