

FRANCISCO GALIAN, PLAINTIFF AND APPELLANT, VS. THE STATE ASSURANCE COMPANY, LTD., DEFENDANT AND APPELLANT.*G.R. No. 8405. February 10, 1915*

Ponente: TRENT, J.

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This is an action upon an open policy of fire insurance of household effects. The property was insured on January 25, 1912, for P3,000. On March 25, 1912, the day following the fire, the insured presented an itemized statement of the [goods contained in the house at the time of the fire, the total value of which he claims to be P4,512. The insured property was not a total loss, and some of it was afterward sold by the insured at public auction for the net amount of P120.40. The complaint prays for the recovery of the total amount of the policy less two-thirds of the P120.40, or P2,919.74.

The insurance company interposed a special defense to the effect that the policy had been forfeited by reason of the fact that the claim presented by the plaintiff was fraudulently false in that (a) the insured had alleged a total loss, (b) that not all the articles listed in the plaintiff's claim of loss were in the house where and when the fire occurred, and (c) that the plaintiff had attributed much greater value to the articles included in the list than they were worth.

Upon trial there was evidence for the plaintiff that the statement presented to the insurance company after the fire was substantially correct, both in quantities and values. The plaintiff testified that the statement was prepared from memory immediately after the fire by himself with the assistance of his brother. The defendant introduced three witnesses, who were sent to the scene of the fire shortly after it occurred to estimate the value of the property contained in the house. From photographs submitted in evidence it appears that the first floor of the plaintiff's residence was not damaged by the fire at all, but did suffer damage from water and breakage. In the parlor on the second floor the rattan work on the chairs was entirely consumed, but the woodwork was probably only charred or scorched. The fire did the most damage in the bedroom, where the roof partly fell in. Articles of clothing contained in the wardrobes in this room are visible in the photograph, they having evidently been taken out for inspection after the fire. Mr. Young testified that upon request of the defendant company he had examined the contents of the house and estimated the loss at P1,000. He said, however, that this was only a casual estimate. They pulled out a few drawers of the wardrobes and examined some of the wearing apparel contained in them. Mr. Dow testified that he made a rough estimate of the damage done. He estimated the value of the goods on the first floor at P500, and said that from what he saw of the remains on the upper floor, P1,500 would be a liberal estimate of the damage done. He did not believe that there was P4,000 worth of property on the second floor. Mr. Laing, agent of the defendant company, estimated the loss at P1,500. This, he thought, was a very liberal estimate. He appears to have made a more careful estimate of the value of the different articles than either of the other witnesses called by the defendant. He testified that nothing had been entirely consumed by the fire. In this he is contradicted by the plaintiff, who claims that some of the furniture, even, was totally consumed. From the appearance of the bedroom, as portrayed by the photograph (Exhibit 4), we are inclined to believe that some, at

least, of the plaintiff's effects were completely destroyed by the fire.

The court below declined to consider as competent the testimony of the plaintiff and his brother as to the value of the property on the ground that neither was qualified to appraise the property. The testimony of the three experts was also dismissed as not being a reliable basis for a finding as to damages. The court then proceeded to determine that the property was worth P1,500 at the time of the fire, based upon an offer of compromise made to the plaintiff by the defendant company at that figure. This offer was introduced in evidence, it is claimed, without objection by the defendant company, and the court held that this failure of the defendant to object to the admission of the offer of compromise rendered it competent evidence. Thereupon, a judgment in favor of the plaintiff was entered for P1,500, with interest from the date the complaint was filed. Both parties excepted to this judgment, and moved for a new trial on the ground that the judgment was manifestly against the weight of the evidence. These motions being overruled, they have brought the case to this court by separate bills of exception.

The main issue on this appeal is as to the value of the property. After a careful examination of the evidence, we are of the opinion that there is no satisfactory evidence that the plaintiff included in his itemized list of property contained in the house at the time of the fire, any property which was not there. The plaintiff prepared the list from memory, and absolute accuracy could hardly be expected. With regard to the fact that the plaintiff claims there were about 26 chairs in the house, it may be said that the remains of 8 chairs may be seen in the photograph (Exhibit 3), and 3 more in the photograph (Exhibit 1). This accounts for nearly half the number claimed and the plaintiff asserts that a bundle of chairs was stored on top of some of the wardrobes in the bedroom. The remaining furniture described is not of an amount or description which convinces us that the floor space in the plaintiff's dwelling was too limited to contain all of it, in the absence of some thing like definite figures as to the size of the house and of the furniture.

The inventory which the plaintiff gives of the wardrobe of himself and wife covers an amount and quality of clothing which counsel is quite correct in saying is not usually possessed by persons in the station of life of the plaintiff. It may be well to state here that the evidence shows the plaintiff to have been a cashier of a local business house with a salary of P175 per month. In addition to this he and his wife each had shares of stock in a commercial concern which brought them between P25 and P30 per month dividends. He had inherited about P15,000 from his father, and was administrator of his father's estate. While the family wardrobe denotes what might be considered a high degree of extravagance, we cannot say from the evidence before us that there was less or other clothing than that described by the plaintiff. From the photograph (Exhibit 4) it is evident that there was considerable clothing which had not been consumed and was only damaged by water or smoke. It appears that the plaintiff's claim wherein this extraordinary list of wearing apparel was set forth was submitted to the defendant before any of the three experts made his examination of the property. The defendant was consequently well aware of the claim which the plaintiff intended to make and could very easily have made an exact list of the quantity and quality of the clothing which had not been consumed by the fire, and which would doubtless have aided us considerably in determining whether the plaintiff's description of the family clothing was correct. The cross-examination of the plaintiff at the trial did not develop anything material in the way of contradiction to the list of property submitted by him.

As to the values set out opposite the various items in the plaintiff's list, much the same reasoning must be applied. If furniture or clothing of the kind and quality described is not worth the amounts set out by the plaintiff, it would have been easy for the experts introduced by the plaintiff to take each item separately and show wherein and how much the price was erroneous. After an inspection of each separate article in the list, we are not prepared to say that the prices are fabulous.

The testimony of the three witnesses introduced by the defendant we decline to accept for two reasons: First,

because it appears that some of the plaintiff's property was entirely consumed by the fire and some was so badly damaged that it was impossible to judge of its value. In the second place, the inspection made by these several witnesses was so superficial, in view of their opportunity, that their conclusions do not carry conviction.

As to the ruling of the trial court that the plaintiff and his brother were not qualified to appraise the value of the household effects of the former, we must say that we do not agree with the learned trial court on the point. There is nothing in the whole list, except the jewelry, but what may be legitimately described as household effects—furniture, clothing, dishes, kitchen utensils, etc. They are articles with which all people of ordinary education and refinement are reasonably familiar. Such articles are on sale in retail shops everywhere and the prices are readily available to anyone seeking the information. Not only this, but most of them are articles which persons with a reasonably fair income purchase for their own convenience and comfort. Hence, information as to their value must necessarily be acquired by all such individuals. While the knowledge of some persons on the subject may be greater than that possessed by others, this is true of all other branches of knowledge and equally as true of experts. For these reasons we cannot subscribe to the proposition that none but experts can testify as to the value of ordinary household articles.

"The knowledge of values in most cases does not depend upon professional or other special skill; and witnesses without having any special experience or training as would entitle them to be called experts, may yet have gained such knowledge of the land, or other subject under inquiry, as to aid the court or jury in arriving at a conclusion. * * * Persons by their common experience and observation necessarily gain some knowledge as to the values of those articles which are in common use by all or nearly all; and their evidence as to such values is not excluded by the fact that experts may have more accurate knowledge as to such values. Obviously the witness must have some means of knowledge as to the nature and quality of the articles in question before he is qualified to express an opinion as to values. It would be an idle ceremony to allow witnesses to give their opinions in evidence, unless they had better means of knowledge as to the subject matter of their testimony than the jury might possess in common with all other persons. The qualification of the witness is, of course, a question for the court." (Jones on Ev., sec. 363.)

The plaintiff was intimately acquainted with the articles described by him. He, no doubt, had purchased most of them. One could hardly expect to be in much better position to estimate the value of the articles than this. We conclude, therefore, that the preponderance of the evidence is to the effect that the quantity and quality of the goods contained in the house at the time of the fire were substantially those described by the plaintiff in his claim of loss. Having reached this conclusion, we presume that the defendant company will no longer insist upon the remainder of its points, which would, if decided favorably to its contention, tend to reduce the total value of the plaintiff's household effects, but not to a figure which would make the company's liability under the policy less than that which they would be held liable under the coinsurance clause of the policy.

We do not understand that the plaintiff at any time alleged a total loss. The list presented by him the day after the fire is designated as a "Statement of household furniture and personal effects * * * on hand" at the time of the fire. He later offered to abandon the remains of the fire, and still later caused these remains to be sold at public auction. These facts clearly negative the assertion that he alleged a total loss.

Clause 17 of the conditions of the policy reads: "If the property hereby insured shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference, and shall bear a ratable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition."

The property was worth P4,512. The salvage amounted to P120.40. This leaves a partial loss amounting to P4,391.60. As the property was insured for only P3,000, the insurer must bear a portion of the loss represented by

a fraction the numerator of which is the amount of the insurance and the denominator of which is the value of the property at the time of the fire. This entitles the insured to a judgment against the insurer for P2,919.92. Let judgment be entered accordingly, without costs in this instance. So ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

CONCURRING

MORELAND, J.,

The facts in this case are fully stated in the foregoing opinion. I desire to add only one or two other facts appearing in the record which have to do with the ideas which I desire to present in this opinion.

The policy on which this action is brought reads as follows:

"This policy of insurance witnesseth that Mr. Francisco Galian, of Manila (hereinafter called the insured), having paid to the undersigned, as authorized agent of The State Assurance Company, Limited (hereinafter called the company), the premium as above noted for insuring against loss or damage by fire or lightning as hereinafter mentioned, the property hereinafter described, in the sum or several sums following, namely:

"(Then follows description of the property insured consisting of household goods exclusively.)

"The company hereby agrees with the insured (but subject to the conditions on the back hereof, which are to be taken as part of this policy) that if the property above described, or any part thereof, shall be destroyed by fire or lightning, at any time between the 24th January, 1912, and four o'clock in the afternoon of the 24th January, 1913, or at any time afterwards so long as and during the period in respect of which the insured or the insured's representatives in interest shall have paid to the company, and it shall have accepted, the sum required for the renewal of this policy, on or before the date of renewal in each succeeding year, the company will, out of its capital stock, and funds, pay or make good to the insured the amount of such loss or damage, but not exceeding in respect of each or any of the several matters above specified, the sum set opposite thereto respectively, and not exceeding in the whole the sum of three thousand pesos Philippine currency. And also not exceeding, in any case the amount of the insurable interest therein of the insured at the time of the happening of such fire.

"In witness whereof, this is subscribed by the authorized agent of the company, this 25th January, 1912.

"For Warner, Barnes & Co., Ltd.:

(Sgd.) "J. T. FIGUERAS,
Manager. "Per power of attorney."

As is clear from this policy, which is the contract signed by the parties, the company agrees to pay to the insured whatever loss he may suffer on the household goods by reason of the causes mentioned not to exceed P3,000. In other words, the company agrees to pay all (not a part only) of the loss or damage which the property may suffer to the amount of P3,000. This is the essential stipulation of the policy, the one on which the minds of the parties really met, and, in reality, the only contract to which the signatures' of the parties are attached. However, when we examine the back of the policy, we find there, in fine print, a clause (called clause 17) by means of which the company withdraws the agreement which forms the body of the policy, which is signed by the parties and is the one on which the minds of the parties really met, and substitutes another in its place wholly different in terms, nature and effect. This clause is quoted in the opinion of the court and is as follows:

"17. If the property hereby insured shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference, and

shall bear a ratable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition."

This clause, if valid between the parties, creates a contract, as I have stated, different in every conceivable aspect from the contract of the policy. By virtue of this clause we have this situation presented: Mr. Rogers has a library of the value of P2,000. Not desiring to incur the expense of insuring it for full value, he insured it against loss or damage by fire to the amount of P1,000. He paid the insurance premium on P1,000 for ten years. At the end of that time a fire occurs by which the library is damaged in the admitted sum of P1,000. He goes to the insurance company, confidently expecting that he will receive the amount of the damage, P1,000, for which his library had been insured and on which sum he has been paying premiums for ten years. Arriving at the office of the company he is informed that the company did not agree to pay the full loss suffered but that, by virtue of clause 17 above quoted, it agreed to pay only P500; "For," says the company to him, "the value of your library was P2,000. We were an insurer for P1,000 and you for the other P1,000. You being a coinsurer with the company in equal amount, you must stand with the company an equal share of the loss. The loss being P1,000, we pay you P500, although we admit that, for ten years, you have been paying premiums on P1,000" Stated concisely, the company pays only one-half of what, in the contract signed by both parties, it had agreed to pay.

By virtue of this clause, therefore, a person who insures his property for less than its value is required to become an insurer himself. In other words, unless he insures for full value or more, he becomes himself an insurer (this is the inexplicable part of it), not for his own benefit but for the benefit of the insurance company. In addition to having bought the goods and paid for them, he himself insures the uncovered portion so that he may enjoy the privilege of relieving the company from paying the sum it has solemnly agreed to pay and on which sum and for the payment of which by the company he has been paying premiums since the insurance was created. This amounts to the proposition that, in order to secure what the company has agreed to pay him, the insured must not only lose P1,000 worth of books but he must lose all the books he has. To obtain payment for the loss of half of his property he must lose all of his property. This is very like the assertion of an accident insurance company that it would pay the insured only half the sum agreed on for the loss of a leg on the ground that he had escaped with his life. Having lost his leg instead of his life, he should reduce by one-half or more the amount of the insurance to which he was entitled under the terms of the policy for the loss of a leg. So with the one insured against loss by fire; having had the good fortune to save half of his property, he must pay for his good fortune by donating to the insurance company one-half of the value of the property saved.

Whether this condition of affairs is permitted by the laws of the Philippine Islands now in force I do not stop to inquire. The question was not directly presented or argued. The validity of the clause creating that condition has been assumed in default of a challenge thereto. It is clear, however, that the principle involved in sustaining the legality of such a clause provides a method of payment of loss in insurance cases quite different from that found in article 428 of the Code of Commerce, which seems to require full payment of the loss regardless of the value of the property at the breaking out of the fire. It is possible, however, that, under article 385, such a clause is legal and enforceable. I have not gone into the matter deeply, as it seems from a casual reading that such a situation as I have described above will be difficult under section 164 of the new insurance law, which is to take effect on the 1st of July next. I do not, therefore, undertake, at this time, to pass on the question of the validity of the clause, particularly as my brethren on the court are unanimous in the opinion that clause 17 is legal and proper.

I am aware that such clauses are earnestly defended by insurance companies. But, in spite of that defense, such clauses are directly opposed to the ordinary meaning of the contract as written and signed. Their very existence is unknown in most cases, and where known they are not understood. They are violative of the fair intent of the agreement and, as a natural consequence, deceive the insured in the majority of cases. After an insurance

company has solemnly agreed, in an instrument signed by the parties, to pay an insured P1,000 if his loss is P1,000, and then, when his loss is admittedly P1,000, offers him only P500, clauses permitting such a result are deceptions and explanations supporting them without effect. Dissertations on community of interest, ownership in common, inability to ascertain which portion of the insured goods was destroyed, the protection to all the property by an insurance on only half, etc., are metaphysical rather than substantial and, in the great majority of cases, form no part of the contract which the insured believes, and has the right to believe, he is entering into. When the company agrees to pay the whole loss, one must go outside the understanding of the ordinary man to defend the payment of only half the loss; and when one is insured by an insurance company, common reason fails and explanations are a burden when he is informed that by the act of being insured by the insurance company, he became an insurer of the insurance company. In making contracts with public corporations citizens are entitled to plain words with plain meanings. They should not be compelled to call upon a dialectician to plead their cause or a metaphysician to secure their rights. Common sense and ordinary understanding should be their recourse, and not metaphysics—that fertile field of delusion propagated by language.

JOHNSON, J., dissenting:

I cannot secure my consent to either the argument or the law applied in the present case.

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