

MOISES ACRICHE ET AL., PLAINTIFFS AND APPELLANTS, VS. THE LAW UNION & ROCK INSURANCE CO., LTD., THE LIVER-POOL & LONDON & GLOBE INSURANCE CO., LTD., AND THE GLOBE & RUTGERS FIRE...*G.R. Nos. 24454-24456. January 12, 1926*

Ponente: STREET, J.

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These three actions were instituted in the Court of First Instance of the City of Manila by Moises Acriche for the purpose of recovering certain sums of money from the three defendant insurance companies, namely, the Law Union & Rock Insurance Co., Ltd., the Liverpool & London & Globe Insurance Co., Ltd., and the Globe & Rutgers Fire Insurance Co., according to their respective proportional liabilities under policies of insurance issued by them on a stock in trade of Moises Acriche, consisting principally of dry goods, and which had been damaged by fire on the night of September 21, 1922. In addition to the alleged direct liability of the defendant insurance companies under the policies of insurance, the plaintiff sought, in the same complaints, to recover certain proceeds resulting from the sale of salvaged stock effected by the defendant companies after the fire, and which proceeds have been retained by the defendants. In their answer the defendants denied liability under the policies, alleging, among other grounds of defense, that the fire causing the loss was of incendiary origin and had been set by or with the procurement and connivance of the plaintiff with a view to imposing of a fraudulent liability on the defendants; and, further, that the defendants had been relieved of all liability by reason of the fact that the plaintiff had submitted false proofs of loss. After the original pleadings had been submitted, Leon Acriche was joined in the action as coplaintiff with the original plaintiff, Moises Acriche. In his opinion, the trial judge passed without deciding the question whether the plaintiff, or plaintiffs, had in fact caused or connived at the setting of the fire which resulted in the loss but absolved the defendants from liability under their several policies, on the ground that the plaintiff, or plaintiffs, had submitted false proofs of loss. Nevertheless the trial court recognized the right of the plaintiffs to recover the sum of P8,207 which had been retained in the possession of the defendant companies from the proceeds of the sale of the salvaged merchandise. He accordingly gave judgment against the defendants for the last named amount only, dismissing the complaints with respect to the loss caused by the fire. From this judgment the plaintiffs appealed.

It appears that, prior to the occurrence with which we are here concerned, a mercantile business had been conducted in Manila under the name of Acriche & Co., consisting of David Acriche, Marcos Abolafia, Julio Busto, and one or two others. In November, 1920, Moises Acriche, a Spanish speaking Jew from Gallipoli, arrived in Manila and here joined his brother, David Acriche. Moises claims to have brought with him a sum of money with which he was able to purchase an interest in the business of Acriche & Co.; and later he purchased from one Eskenazi, a share in the same business that had belonged to Julio Busto, now dead. The principal establishment of Acriche & Co. was located at 132-134 Escolta, Manila, where miscellaneous merchandise, principally dry goods, was dealt in. David and Moises Acriche have an uncle, named Leon Acriche, who has

stores in Iloilo and Cebu, as well as an establishment in Manila; and by reason of the intimate relations of the Acriches among themselves there appears to have been from time to time considerable shifting around of stock from one place to another. It is to be inferred from the proof that the principal function of the concern at 132-134 Escolta was the handling of job lots acquired at forced and bankrupt sales and odds and ends collected from various sources.

By changes in the membership of Acriche & Co. the ownership of the business at 132-134 Escolta had by June 1, 1922, come to be vested in Leon Acriche and Moises Acriche; but Moises had the exclusive management of said business, and the policies of insurance with which we are here concerned were issued in 1921 and 1922 in his name.

One of the defenses relied upon in the answer is that the insurable interest in the stock was not vested in Moises Acriche at the time of the fire, and Leon Acriche was in fact made a party plaintiff in view of his proven interest in the merchandise which was the subject of loss. We note, however, that the policies sued upon are expressly so written as to cover property held in trust or on commission by Moises Acriche, or held by him on joint account with others and for which he was responsible. It is the contention of the defendants that the stock which was damaged by the fire really belonged to the entity, Acriche & Co., and that it cannot be truly said that Moises Acriche held that stock in any of the characters indicated in the policy, and in particular that the stock was not held by Moises Acriche upon joint account with his uncle, Leon Acriche. At the close of his opinion the trial judge appears to have accepted this view of the case, since he observes that the plaintiffs had not satisfactorily shown an ownership consistent with the terms of the policy. Nevertheless we note that in the end he placed his decision on the ground that the defendants were released by the act of the plaintiffs in submitting fraudulent proof. In the view we take of the case, it is unnecessary to pass upon the precise issue as to the ownership of the insured stock. It is enough to suggest that if the claim had been in all other respects fair and honest, the objection referred to would probably not have been a fatal obstacle to a recovery. The really determinative questions in the case are the two which have relation to the origin of the fire and the nature of the proof submitted by Moises Acriche in support of the claim.

The insured merchandise was contained in a store at the corner of the Escolta and David street, in Manila. Immediately above it was a room occupied for business purposes by one Sam Weingarten, for some time a resident of Manila prior to the fire but who has since absconded. At about 8.30 on the night of September 21, 1922, pedestrians in the vicinity heard an explosion which appeared to have- come from the direction of this store. Immediately smoke and flames were seen to issue from the window of the room occupied by Weingarten. The policeman who happened to be on duty at the corner of the two streets mentioned immediately turned on the fire alarm; and a detachment of firemen, with appropriate apparatus, reached the place within two or three minutes. As the center of the conflagration appeared to be in Weingarten's room, the firemen broke open the door, which was locked from the outside, and turned on the hose. Admittance was, in like manner gained into Acriche's store, and water was turned into that apartment. In this way the flames were subjugated before they had attained much headway.

An inspection of the premises followed, with the result that the fire was seen to have been indubitably of incendiary origin; and by putting things together, the following facts have been satisfactorily made out: On the afternoon preceding the fire, Weingarten brought a large demijohn from his sleeping apartment in another part of the city to his room above Acriche's store. On the same afternoon a five- gallon can of gasoline was delivered to Weingarten at the same place; and a muchacho carried the tin up by Weingarten's direction, while the driver of the carretela making the delivery waited below. The can was then opened by Weingarten and the contents poured into the demijohn, upon which the muchacho was directed to take the empty can back to the person waiting below.

This was done. The same afternoon Moises Acriche had a secret and extended interview with Weingarten in the latter's room. The fire had evidently originated in Weingarten's room and a quantity of rags of mosquito netting, saturated with inflammable liquid was found on the floor of this room after the fire was extinguished. The demijohn also was found to have been shattered.

The noise of the explosion, which attracted attention at the very beginning of the fire, finds its explanation in the following facts: The floor of Weingarten's room was made of wood and the planks were not close enough together to prevent leakage. Moreover, at a certain place in the floor, there was a hole through which any liquid that might be poured on the floor would readily flow into the space below. The ceiling of Acriche's store was formed of metal sheets, so closely joined together that any liquid admitted from above would be retained as in a receptacle. Now, the gasoline which had been in the demijohn had evidently been emptied in the floor of Weingarten's room, with the result that a considerable quantity had trickled through the floor and had probably formed a puddle on the metal roofing of the store below. The gasoline, being a substance which evaporates freely, had quickly saturated with its gas the air in the enclosed space, with the result that when the fire, started in some unknown manner, had reached the spot an explosion occurred, as in the chamber of a gas engine. The physical effect of the explosion was to blow a large hole in the metal ceiling, splattering liquid gasoline over the contents of the store. The hole thus formed was about 2 feet in diameter. Upon examination of the goods found on the counter and shelves of the store, a smell similar to that emitted by gasoline or petroleum was perceived.

That the fire was started by an incendiary, who could be none other than Weingarten, is self-evident, and circumstantial proof points to Moises Acriche as a probable instigator of the act. Among these circumstances it may be noted that Weingarten had nothing insured from which he could expect to profit by such a fire, while Acriche had on his hands an unsalable stock of self-worn goods, and his sales during the month preceding the fire had been small in amount. Acriche denies having had any intimacy with Weingarten, but this pretense must be considered disproved, as he is shown to have visited Weingarten's living room in another part of the city upon more than one occasion prior to the fire.

But most convincing of the circumstances suggestive of Acriche's participation in the starting of the fire is found in what appears to be a preconceived plan on his part for proving a greater loss than such as would probably result from a destructive fire. The insurance policies which were the subject of suit together cover the amount of P55,000 and were taken out, as already stated, by Moises Acriche at the end of the year 1921 and beginning of 1922. Upon the demand of the adjuster, the insured supplied a document purporting to be an inventory of stock, dated May 31, 1922. (Exhibit F.) In addition to this various invoices were produced, showing additions to the stock between that date and the date of the fire, on September 21. (Exhibits K-1 and K-66.) After the fire had occurred the stock was examined, and some of the goods, as set forth in the Exhibit L-1, were found to be un-injured. These were turned over by the adjuster to the insured. The damaged goods were listed in the Exhibit L, which shows the character and quantity of the merchandise, as well as its value. The adjuster verified this list as to kind and quantity of articles listed, and the values shown were either added upon the sole responsibility of the insured or taken without question from data supplied by him. The Exhibit L, a list of the damaged goods, was submitted by the insured as the basis of his claims against the defendant insurance companies. According to this list the value of the damaged stock at the time of the fire was ₱=37,359.77. Not satisfied with the valuation fixed by Acriche, the insurance companies caused an independent appraisal to be made by two disinterested persons, with the result that the same goods were appraised by them at ₱28,537.78, showing that the valuations fixed in the Exhibit L were probably excessive, due account being taken of the character of the goods.

A comparison of the inventory and invoices with the lists L and L-1 reveals the fact that goods shown in the inventory and invoices to the value of P52,708.73 had disappeared from the stock during the interval between

May 31 and September 21; and as the trial court declared, no satisfactory showing has been made by the assured as to the disposition made of said goods. Certainly they cannot be accounted for on the supposition that they had been sold, since the books show that the gross sales between May 31 and September 21 were about P20,918.43. (Exhibit J.) Further examination of the same documents reveals the fact that goods to the value of P16,899.22 were found in the stock upon the date of the fire which were not listed at all in the inventory or invoices. The proper inference to be drawn from this showing in our opinion is that the inventory was in a great measure false, and it is impossible to believe that the assured has acted in good faith.

The incredible proof connected with the stock of mosquito netting strongly tends to the same conclusion. The Exhibit G purports to show that in the month of May, 1922, the Escolta store received from Leon Acriche 116 bales, each containing 100 mosquito nets of the value of P1.20 per net, and amounting in all to the value of 913,920. These mosquito nets are not listed in Exhibit F, and their disappearance has not been accounted for. Other exhibits show that between May 31 and the date of the fire mosquito netting of the value of P9,969.60 was purchased from Leon Acriche and other small purchases of the same sort of goods were bought from one Epstein and one Goldstein, amounting (with that purchased from Leon Acriche) to the value of P10,465.56. If to this be added the mosquito netting received in May from Leon Acriche, we have merchandise of this sort to the value of P24,385.56. Yet in the lists L and L-I only a trivial amount of these goods, if any, is listed. Exhibit S, dated August 8, 1922, shows that upon that date various effects were consigned from the Escolta store to the house of one Isaac Acriche on Rosario street, in the City of Manila, of a total value of P3,169.10. Among the goods so consigned appear three bales of mosquito netting of a total value of P435. The Exhibit T shows a similar consignment in June to Leon Acriche and Marcos Chucran, in Cebu, of thirty bales of mosquito netting valued at 93,200.

We believe the Exhibit G to be fictitious, at least as to a great part of the quantity of mosquito netting stated therein; and upon a review of the whole evidence we find no reason to doubt the correctness of the conclusion of the trial court that the inventory of May 1 is in great part false and that the plaintiffs have submitted false evidence in support of their claim. It must also be considered established by a preponderance of evidence, though only of a circumstantial nature, that the plaintiff, Moises Acriche, is responsible for the fire which gave rise to this action.

The insurance policies which are the subject of suit in these cases contain a provision expressly declaring that all benefit thereunder shall be forfeited if the loss be occasioned by the willful act or with the connivance of the insured, or if the claim be in any respect fraudulent or if any fraudulent means are used by the insured or any one acting in his behalf to obtain any benefit under the policy. This provision is fatal to any recovery by the plaintiffs; and the cause is not aided by the circumstance that the plaintiff, or plaintiffs, in fact suffered loss by the damage done to the goods listed in Exhibit L, Supposing Moises Acriche to have acted fraudulently, a thing which is in our opinion established, it must be remembered that the object in view was totally to destroy the stock at 132- 134 Escolta by fire; and it was not designed that the fire should be put out before the work of the fire was fully accomplished. If the manifest purpose had been attained, the books and documents submitted by the plaintiffs would have shown a loss far in excess of the amount of the policies, and the companies would have been defrauded of a large sum of money in excess of the real loss. The situation is to be judged not so much in the light of what actually happened as in the light of the purpose intended to be effected.

In our opinion there was no error in the judgment appealed from, and the same is affirmed, with costs against the appellants. So ordered.

Avancena, C. J., Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.
Johnson, J., did not take part.

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