43 Phil. 633

[G. R. No. 18090. July 25, 1922]

GO LU, PLAINTIFF AND APPELLEE, VS. YORKSHIRE INSURANCE COMPANY, DEFENDANT AND APPELLANT.

GO LU, PLAINTIFF AND APPELLEE, VS. THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

The plaintiff was a merchant engaged in the purchase and sale of bolt goods in the city of Manila , with his place of business in a *bodega* at 926-930 Calle Jaboneros, which he occupied in common with the Eastern Asia Commercial Company. The building was constructed of stone with an upper framework of wood and an iron roof.

The defendants are fire insurance companies duly licensed to do business in the Philippine Islands .

On March 31, 1919 , the Northern Assurance Company, for a premium of P250, issued its policy against loss from fire for the period of one year to and in favor of the plaintiff for P10,000 on his stock of piece goods in the bodega, subject to certain terms and provisions therein stated. On the same day and for a like premium, the Commercial Assurance Company, Limited, issued its policy on the same property for the same period for $10,000. April 7, 1919 , the Yorkshire Insurance Company issued its policy on the same goods for another P10,000 for the same period. April 14, 1919 , the Scottish Union and National Insurance Company also issued its policy to him on the same goods for P10,000 for the period of one year.

June 24, 1919 , about 4.40 a. m., while all of the policies were in force and effect, a fire occurred in that portion of the building occupied by the Eastern Asia Commercial Company,

resulting in a loss and damage to the plaintiff's goods, which were insured. At the time of the fire, he claims that he was the owner of 66 cases of bolt goods in the bodega, and that there was a total loss of 50 cases, and that the remaining 16 were seriously damaged. After making proof of his claims and the failure to agree witb the insurance companies after some negotiations as to the amount of his loss, the plaintiff commenced this action against the Yorkshire Insurance Company and the Scottish Union and National Insurance Company, in which he seeks to recover from each of them the full amount of their respective policies.

For answer, the companies admit the issuance of the policies and that they were in force and effect, but contend that not more than 16 cases of plaintiff's goods were destroyed from which he received P6,888, the amount of their salvage value, and, in substance, admit their liability for the difference between the actual value of the 16 cases and their salvage value. As a further and separate defense, they allege that plaintiff submitted fraudulent proof of the amount of his loss, and that, for such reason, he is not entitled to recover anything. They also contend that the plaintiff violated the express terms of the policies in keeping his goods in the same building where hemp was stored.

As a result of the trial, the lower court rendered judgment against each defendant for P8,373.10, from which both appeal, assigning eight different errors, the first four of which go to the weight of the evidence. Fifth, that the court should have found that plaintiff made a fraudulent claim. Sixth, that the court erred in not finding that the policies were violated by the storing of plaintiff's goods in the same building where hemp was stored. Seventh, that the policies should have been forfeited, because of the storage of gasoline in violation of their terms, and, eighth, in denying the defendants' motion for a new trial.

Johns, J.:

The only question involved is one of fact over which there is a sharp conflict in the evidence, and upon which the lower court found for the plaintiff. By agreement between the parties, the piece goods remaining after the fire were sold for P6,888, which, after deducting the expenses, left a net sum of P6,507.60, which plaintiff received. Neither is there any dispute about the issuance of the policies or any of their terms or provisions. All parties agree that, after the fire, 16 cases of piece goods were found in the building, all of which were more or less damaged, and which the defendants admit at the time of the fire were of the value of P14,102.27. In his proof of claim, the plaintiff contended that when the fire occurred, he had 66 cases of piece goods in his place of business, which were of the value of P51,427.96, and that, after deducting the salvage, his net loss was P44,539.96, and that the total amount of

insurance which he should receive under the four policies was P33,492.40. Hence, the only question involved is the amount and value of the goods which plaintiff had in the building at the time of the fire.

For the purpose of proving the number of cases of goods in the building, the plaintiff offered and introduced in evidence certain original books of entry which were kept in the Chinese language, together with a translation of them into Spanish, from which it appears that in the month of March, 1919, he had 50 cases in stock, and that during the months of April, May, and June, he bought 87 cases, making a total of 137 cases of piece goods, during which time he sold 71 cases, and, hence, it is claimed that at the time of the fire, he had 66 cases left, of which 16 only were salvaged.

It appears that the trial court attached much importance to the original entries in plaintiff's books. It may be that he did purchase 87 other cases in the months of April, May, and June, and that from and out of the total, he sold only 71 cases, but the vital question here is the number of cases of piece goods that were in the *bodega* at the time of the fire. The books offered in evidence might tend to prove that, during the months of April, May, and June, the plaintiff purchased 87 cases of goods, and that he had 50 cases in stock in the month of March, from and out of which he sold 71 cases, but the entries made in the books are not any evidence that the goods when purchased were delivered to, and placed in, this particular *bodega*, or that when sold, they were taken from, and out of, that *bodega*.

It appears that the fire alarm was promptly turned in, and that the fire department reached the building within two or three minutes after the alarm, and that it guarded and remained in possession of the premises for about three days, and that at intervals during that period, it threw water on the remains of the building to prevent the fire from spreading. All witnesses, both for the plaintiff and the defendants, agree that, after the fire, there were about 16 cases of piece goods found, 3 of which were in a burned condition. It further appears that the cases were baled in boxes and contained goods of different kinds and quality, and were more or less in the form of bolt goods. Although numerous persons were at and around the fire, no witness was called or testified that there was any evidence remaining of the 50 cases of piece goods, which the plaintiff claims were destroyed. The stubborn fact remains that 16 cases were found, 3 of which were a total loss as to the value of the goods which they contained, but there is no evidence anywhere in the record that, after the fire, anything was found or remained of the 50 cases, and it is the theory of the plaintiff that the 50 cases were completely destroyed and consumed by the fire, and, for such reason, there was not any physical evidence left of their destruction. In the very nature

of things, there would be some evidence of the existence of the other 50 cases. It appears that all of the cases were piled or thrown together in the same portion of the building. It was a common, ordinary fire, which, at all times, the fire department had under control, and there was only a partial destruction of the building. The walls were of stone, and remained standing. Portions of the floor were of cement, and the ceiling and roof fell inside the walls and were largely consumed. Although plaintiff's goods were in the same building, they were in a separate and distinct portion from that which Was occupied by the Eastern Asia Commercial Company where hemp was stored. The burden was upon the plaintiff to prove the amount of his loss by a preponderance of the evidence. It is admitted that 16 cases were found in the building after the fire, 3 of which were seriously damaged, and that, outside of the damage from smoke and water, the other 13 were intact. The record shows that all of the 66 cases were together in one and the same portion of the building. There is no evidence which shows or tends to show why all of the 50 cases in dispute were completely consumed by the fire, and no particle of any one of them was left remaining, and why the other 16 cases were found in the building after the fire and were not totally destroyed, and, yet, it is admitted that 16 cases were found in the building after the fire. It is common, ordinary, horse sense that, in a fire of that nature, something would have been left or found after the fire, which would tend to show the loss and destruction of portions of some of the other 50 cases, and that all evidence of the existence of everyone of them would not be completely destroyed and consumed by the fire. In other words, it is not reasonable that the identity of the 50 cases would be completely destroyed and wiped out of existence, and that the identity of the other 16 should remain, 13 of which were intact. It stands to reason that, if the 50 cases were totally destroyed, the other 16 cases would also have been destroyed, and that there would not have been any evidence left of their identity. It is not reasonable that a fire of that nature and volume would destroy every identity and particle of 50 cases of bolt, piece goods, and leave 16 other cases in the same part of the building partially injured, only three of which were a total loss as to their value.

Although it is true that, where there is a sharp conflict in the evidence, the decision of the trial court, which saw and heard the witnesses testify, should have some weight, yet, after careful thought, as we construe the record, the plaintiff has failed to prove his case by a preponderance of the evidence, except as to the 16 cases, the loss of which is admitted by the defendants. The fire was seen by a large number of people, and if it be a fact that the plaintiff had 66 cases of piece goods in the building at the time, it was his duty to have offered the evidence of some disinterested eyewitness as to the identity of the pieces or particles remaining of the 50 cases, and of the physical facts, for the purpose of showing

that the 50 cases were in the *bodega* at the time of the fire.

Although the original entries in plaintiff's books would be evidence which should have some weight as to the amount of stock which he had in March, and which he purchased during the months of April, May, and June, and what he sold during that time, such entries are of but little, if any, value as to the amount of goods which he had in the *bodega* at the time of the fire. In any event, they are not sufficient to overcome the absence of any evidence of the physical facts existing after the fire, and the rule of reason that the 50 cases of goods would not be consumed and completely wiped out of existence, without leaving some evidence of their destruction, which could be found among the remains and debris in the building after the fire.

The plaintiff did not offer any evidence of the remains or physical conditions of the 50 cases after the fire, or anything which was found or left from the effects of the fire, tending to show that the 50 cases were destroyed and consumed by the fire. His evidence was confined and limited to proof of the number of cases which from time to time were in the bodega before the fire for the purpose of proving the number of cases which were in the building at the time of the fire, and upon that point there is a material conflict in the evidence of his own witnesses, and their testimony is not clear or convincing.

The defendants' evidence was largely confined to the physical conditions existing at the time of the fire, and on that question all of their witnesses are clear and emphatic, that no evidence remained tending to show the existence and loss of the 50 cases.

George B. Blake was foreman of the fire department, was there a few minutes after the alarm, and had charge of the fire. He was called as a witness for the defense, and his evidence of what he saw and the surrounding circumstances is clear and convincing. He testified that he did not see more than 16 cases, and that there was no evidence of any loss, destruction, or damage of any more than 16 cases.

On account of its importance, we have given this case careful thought and consideration. All the members of this court are of the opinion that the plaintiff lost 16 cases only in the fire which are of the admitted value of P14,102.27, from which he received P6,507.60 net, as salvage, leaving his actual loss at P7,594.67. Upon all those questions, this court is a unit.

Among other conditions of the policy, section 13 provides:

> "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy; or, if the loss or damage be occasipned by the wilful act, or with the connivance of the Insured; or, if the Insured or anyone acting on his behalf shall hinder or obstruct the Company in doing any of the acts referred to in Condition 12; or, if the claim be made and rejected and an action or suit be not commenced within three months after such rejection, or (in case of an Arbitration taking place in pursuance of the 18th Condition of this Policy) within three months after the Arbitrator or Arbitrators or Umpire shall have made their award, all benefit under this Policy shall be forfeited."

Under all of the surrounding facts and circumstances, it is the opinion of the writer that this section should not be enforced, and that the plaintiff should have judgment for the amount of his actual loss. Be that as it may, the majority of the court are of the opinion that the above analysis of the facts not only establishes the amount of plaintiff's actual loss, but that it also is conclusive that plaintiff's claim was fraudulent, and that he knew it was fraudulent when he made it. His proof of claim was for 66 cases of piece goods of the actual value of P51,427.96 and this court finds the amount of his actual loss to be P7,594.67.

The validity of the clause above quoted is sustained by numerous uniform decisions, and is valid.

Here, the facts existing at and after the fire are conclusive evidence that there were only 16 cases of goods in the bodega at the time of the fire, and the majority of this court are of the opinion that plaintiff's claim is not only fraudulent, but that he knew it was fraudulent at the time it was made, and that, for such reason, he is not entitled to recover anything.

The judgment of the lower court is reversed, and the complaint dismissed, with costs in favor of the appellants. So ordered.

Araullo, C. J., Johnson, Street, Avancena Villamor, Ostrand, and *Romualdez, JJ.,* concur.

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[1]Case No. 18073, Go Lu *vs*. The Northern Assurance Co. and The Commercial Union

Assurance Co. was decided on his same date upon the same principles as this case.

Date created: June 05, 2014