
(1963) 02 CAL CK 0014
In the Calcutta High Court

Planters Airways Co. Ltd.

APPELLANT

Vs

New India Assurance Ltd.

RESPONDENT

Date of Decision : 15-02-1963

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : 68 CWN 368

Hon'ble Judges : Arun K. Mukherjea, J

Bench : Single Bench

Advocate : A. Mitter, for the Appellant; S. Roy, for the Respondent

Judgement

Arun K. Mukherjea, J.—This is a suit on a policy of fire insurance. The plaintiff is a transport agent for forwarding goods by air and is a lessee of two godowns situate at premises Nos. 119 and 121, Motor Stand Road, Agartala, Tripura. As a matter of convenience, I shall hereinafter refer to these godowns merely by the aforesaid numbers of the premises where they were situate. In connection with its said business the plaintiff used to store stationery goods and patent medicines in the said two godowns. As the plaintiff was responsible for the safety of the goods of his clients which were entrusted to it for transport and which were stored by the plaintiff in the said godowns the plaintiff used to keep them under the cover of insurance policies effected from year to year with the defendant company. In course of such insurance the defendant company issued in 1952 two policies, being policies Nos. 562506 and 562507 dated 21st May, 1952 in favour of the plaintiff. These two policies were renewed with effect from 1st June, 1953 when in the first instance the defendant company issued two provisional cover notes, viz. 40430 and 40431 and subsequently issued two policies Nos. 563383 and 563384 respectively, their period of cover being from 1st June, 1953 to 1st June, 1954. The property covered under the said insurance policies is shown in details in the respective policies. On 12th June, 1953 during the subsistence of the said two policies the stationery goods and patent medicines stored in the said go-downs of the plaintiff were damaged and or destroyed by a fire which started in a neighboring godown belonging to the B.C.C. The plaintiff claims that because

of that fire the plaintiff suffered loss and damage which amounts to Rs. 19,995/6/3. The plaintiff asked the defendant company to compensate it for that amount. As the defendant refused to do so the plaintiff has filed this suit. The plaintiff asks for a decree for Rs. 19,995/6/3 and alternatively, an enquiry for damages, and a decree for the sum to be found due thereupon. The defendant insurance company has taken various defences in its written statement. Firstly, the defendant contends, the plaintiff has no insurable interest in the goods that were damaged. Secondly, clause (19) of each of the policies is a bar to the plaintiff's claim. Thirdly, the defendant states, the fire in, question started in a godown which was situate in the same building in which the plaintiff's godown is situate and therefore under the terms of the policy the policy stands avoided and the defendant has no liability under the policy. Finally, the defendant contends, the plaintiff has not suffered any loss or damage.

2. On these pleadings of the parties the following issues were settled for determination: --

1. Were any goods damaged or destroyed by fire as alleged in paragraph 11 of the plaint?

2. Were such goods held by the plaintiff in trust and/or on commission and was the plaintiff responsible in case of damage or loss to such goods?

3. Did the plaintiff have any insurable interest in the goods that were damaged?

4(a). Was the godown in which the fire started in the same building in which the plaintiff's godown is situate?

(b) Did the building where the fire started communicate with the building where the plaintiff's godown was situated?

(c) If the answer to (a) or (b) is in the affirmative are the policies avoided?

5(a). Is clause 19 of the Policies a bar to the plaintiff's claim?

(b) Is the defendant estopped from relying on clause 19 of the said policies?

6. Did the plaintiff suffer any loss or damage?

7. To what relief, if any, is the plaintiff entitled?

3. Another issue had at first been raised by the defendant in the following form:--

Did the plaintiff conceal from the defendant the fact that petroleum used to be stored or treated in another part of the same building in which his godown was situated? If so, did the policy thereby become void?

4. Subsequently, however, Mr. S. Roy, counsel appearing for the defendant, abandoned this issue.

5. Two witnesses were examined on behalf of the plaintiff. Nirendra Nath Roy, an employee of the B.O.C. agent of Agartala gave evidence as to the relative

position of the plaintiff's godown and the godown of the B.O.C. at Agartala where petroleum used to be stored. He also gave evidence regarding the fire that broke out on June 12, 1953. He said that the plaintiff's go-down and the godown of the B.O.C. agent were side by side. Both the plaintiff's godown as well as the B.O.C. godown are covered by insurance policies taken out with the assistance of the same agent viz., one Bikash Chandra Saha. The witness said that as a result of the fire, the B.O.C. godown sustained damage on June 12, 1953. A claim was made before the insurance company in respect of this damage and the claim was duly paid. In cross-examination the witness said that the godown of the plaintiff was adjacent to the godown of the B.O.C. agent and under the same roof with only a wall intervening. The wall was a pucca brick-built wall. The fire broke out in the B.O.C. godown. The witness does not know how the fire started. He only knows that one boy by the name of Radhaballav died as a result of the fire.

6. Nil Kumar Roy Chowdhury, the managing director of the plaintiff company was the next witness to be examined on behalf of the plaintiff. He also speaks of the two godowns belonging to the plaintiff where the plaintiff used to store goods which it brought from Calcutta or which it sent from Agartala to Calcutta. He says that one gentleman by the name of Bikash Chandra Saha approached the company and induced it to take out an insurance policy. The witness signed a proposal form along with which the witness also annexed a sketch indicating the boundaries of the premises. On the eastern boundary of the plaintiff's godown was shown the godown and office of the B.O.C. The plaintiff's godown at No. 119 is adjacent to the godown of the B.O.C. which is also numbered 119 but there is no other intercommunication between the two godowns and there is a pucca wall intervening the two. The roof was also pucca. So far as the other godown at premises No. 121 is concerned the plaintiff said that it was at some distance from the building where the B.O.C. godown was situate. The goods in respect of which the plaintiff has claimed against the insurance company were stored in both the two godowns at No. 119 and 121. The goods in question were medicines and stationery. The witness stated that the plaintiff stored these goods as a custodian for transhipment and delivery. The plaintiff did not itself store any petroleum or any other hazardous goods in the plaintiff's godown either at No. 119 or at No. 121. After the fire in June 1953 the insurance company appointed as surveyor Messrs. Landale & Clarke Ltd. who visited the spot and surveyed the damage. The witness said that all materials for the purpose of assessing the damage were duly handed over by the plaintiff to the surveyors. According to him the plaintiff has accepted the assessment of the damage by the surveyors which was Rs. 10291/6/- in respect of godown No. 121 and Rs. 3081/12/- in respect of godown No. 119. The witness further said that all papers and invoices necessary for assessing the damages were placed in the hands of the surveyor when they visited Agartala and that they brought them to Calcutta and never returned the same to the plaintiff. In answer to a question as to why there was so much delay in filing the suit for damages against the insurance company the witness said that there was correspondence between the parties and the

insurance company always kept on saying that the matter was receiving consideration (q. 42). The witness also said that the goods which had been damaged by the fire were being held by the plaintiff as custodian on behalf of the plaintiff's customers. The customers asked for damages. On my asking him whether such claims for damages were made by letters or orally the witness said that the plaintiff's clients met them and asked for damages, that is to say, the claims were oral and upon such oral claims being made the plaintiff told the claimants that the plaintiff had already filed a suit against the insurance company and if the plaintiff got any claim from the insurance company then the plaintiff would also pay the claims of its customers. The witness was severally cross-examined by Mr. S. Roy, counsel for the defendant on the statement that he had made that all invoices and papers in connection with the goods had been handed over to the surveyors who had failed to return the same to the plaintiff. The witness stuck to his story. He was also cross-examined about the various parties who had claims against the plaintiff and though he says many letters were exchanged between himself and third parties (q. 111) such papers as would show the correspondence are now missing. Some of them, he said, had been eaten up by white ants. He, however, said that there was a list lying with the plaintiff's solicitors Roy Chowdhury & Co. He admitted that the plaintiff company kept books of account but could not give any reason for non-disclosure of the books of account in this case.

7. The brief of documents with the exception of plaintiff's document No. 15 was tendered and marked as Ext. A by consent. Apart from this the two insurance policies and cover notes in force during the relevant period were tendered and marked as Exts. B, C, D and E respectively.

8. There are certain admitted facts in this case. Nobody contests the fact that there was a fire on June 12, 1953 nor is it contested that the plaintiff was not responsible for the breaking out of the fire. The fire broke out in a godown belonging to the B.O.C. It is also admitted that Messrs. Landale & Clarke went and assessed the damage of the plaintiff. The defendant, however, does not accept the correctness of the survey report of Messrs. Landale & Clarke. In particular, the defendant denies the correctness of the assessment of damages made by Messrs. Landale & Clarke.

9. Before dealing with the issues I shall deal with three contentions raised by Mr. S. Roy for the defendant, which, in my opinion, are fatal to the plaintiff's case. These are the three contentions of Mr. Roy:--

1. Clause 19 of each of the policies is a bar to the plaintiff's claim.
2. The plaintiff could not suffer any loss or damage.
3. The plaintiff had no insurable interest in the goods that were damaged.

10. I would deal with these questions seriatim.

11. Clause 19 of each of the insurance policies is in identical terms and is as

follows:--

19. In no case whatever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration.

12. In the instant case fire took place on June 12, 1953. Therefore whatever damage the plaintiff suffered must have been caused on that day. Unless therefore a suit was filed or arbitration started by June 12, 1954, clause 19 would release the company from further liability in respect of any loss or damage. The provision of clause 19 is a customary provision of most of the usual fire insurance policies and similar clauses have come up for judicial consideration in a long list of cases. Mr. S. Roy referred me to some of these cases. It is enough if I refer to only one such case viz., the case of the Ruby General Insurance Co. Ltd. v. Bharat Bank Ltd. and others (1) reported in AIR 1950 E.P. 352. That is also a case dealing with a claim under a fire insurance policy. In that case a fire occurred on the night between 20th and 21st of March 1948 and certain cotton goods stocked in a godown and pledged with the Bharat Bank Ltd. were destroyed as a result of the fire. The goods were covered by a policy of fire insurance issued by the Ruby General Insurance Company. This policy contained a clause in exactly identical words as clause 19 of the policies in this suit. It appears there was some difference between the parties with regard to the quantum of damage which had been caused by the fire and there was a correspondence between the parties as regards the appointment of an arbitrator. A certain offer also appears to have been made by the insurance company which was rejected by the bank. On 18th March 1949, an application u/s 20 of the Arbitration Act was filed by the bank praying that the agreement as contained in the policy be filed and an arbitrator be appointed and an award obtained from him which would be made a rule of the court. The insurance company objected inter alia on the ground that on the expiry of 12 months from the happening of the alleged loss, the claim being neither the subject matter of pending action or arbitration, the company could no longer be held liable for any loss and the policy was not, in the circumstances, enforceable. The trial Judge held against the insurance company. The insurance company appealed against that order to the High Court of East Punjab. The appeal was allowed. Kapoor, J. held that it was not illegal to stipulate that a claim should not be made, because the claim ceases unless made within a certain time. After reviewing various English decisions as well as various decisions of the Indian Courts, Kapoor, J. held:

It is open to any two parties to agree that the promisor would only be liable if he is informed of the indemnification within the stipulated period and there seems to be a good deal of sense in it, particularly in the case of fire insurance or insurance against accident where the liability to the extent of the damage caused, when the matters are fresh, can be measured with a certain amount of accuracy. Lapse of time in such cases may result in all kinds of claims which are not capable of determination with any amount of exactitude and when memories

of men may become rather hazy.

13. Kapoor, J. also held that such a provision did not operate either to defeat the provisions of the law of limitation or of any other law.

14. Mr. Mitter appearing for the plaintiff contended that the defendant was estopped from taking this plea. Apparently he was relying for this contention on an averment made in paragraph 18 of the plaint which is as follows:

The defendant company has so long kept the plaintiff in the belief that they will settle the claim with the plaintiff and that there is no dispute regarding the amount of the plaintiff's claim and therefore made the plaintiff wait and act on the same belief.

15. Apart from the question whether such conduct as the plaintiff has imputed to the defendant company could amount to an estoppel in law and would debar the defendant from relying upon the provisions of clause 19, I am of the opinion that the evidence in this case does not bear out the plaintiff's contention. Not one document has been shown which would even remotely suggest that the defendant company at any stage held out any hope to the plaintiff that the plaintiff's claims would be settled. Mr. Mitter referred to a letter dated 1st September 1955 (at page 32 of Exhibit A) addressed by the defendant company to Messrs. Roy Chowdhury & Co., solicitors for the plaintiff. I do not see how that letter can be construed as holding out any hope for the plaintiff. In that letter, the defendant company tells the plaintiff's solicitors that the plaintiff "is not liable or responsible for the loss in the circumstances causing the same." The defendant company is obviously taking the plea that the plaintiff has not suffered any loss or damage, because the plaintiff can not be made liable for the loss of the goods by the owners of the goods. Any doubt on this point would be immediately dissipated by the statements made by the defendant company in the lines immediately following this statement. I may as well set out those lines here:

We requested the assured to forward to us all notices and summons if received by them on account of any claim made upon them on account of the loss on 12th June 1953 from any court, and we undertook to defend the assured at our cost. If any liability would have been fixed on your client in any suit after contest by any court, we would have met that liability. There has as yet been no occasion for the same as the assured did not send us any such summons. We still maintain the position.

16. It is apparent that the defendant company is taking the position that the plaintiff company cannot be held responsible for the loss caused by the fire and therefore the plaintiff company cannot claim any damages for loss. The defendant company merely states that in the event of the plaintiff company being successfully sued for damages by any of its clients, the defendant company would indemnify the plaintiff. The defendant company also agreed to defend the plaintiff company against any attempt on the part of its clients to make the

plaintiff responsible for the loss of the goods. I should have thought that it is a clear refusal on the part of the defendant company to take any responsibility unless the plaintiff company were held liable by a clear adjudication of a court of law. I do not see how the plaintiff company can treat this letter as holding out any hope. It is not as if the plaintiff states that there are any decrees pending against the plaintiff or that the plaintiff has already paid out any of the claims of its clients either as a result of any action or as a result of any threat of action on the part of its clients. In the same letter the defendant company also writes:

There has arisen no dispute between ourselves and the assured. There has not arisen any difference about any amount in connection with any claim. So there is no question of appointment of any arbitrator, sole or joint, under condition No. 18 of the policies.

17. Mr. Mitter argued strenuously that these lines show that the defendant company was accepting the claim of the plaintiff. I am afraid, I cannot put the same construction on these lines. These lines should be read in the context of what went before and also with reference to the earlier correspondence between the parties. To my mind, all that the defendant company was saying was this, that until the plaintiff is held liable for any of its clients' claims, there is no occasion for the defendant to settle the claim. A dispute or difference about the amount of claim could arise only when the plaintiff had been made liable for it. The defendant was also refusing to refer the matter to arbitrator. It is significant that the last line in that letter is:

We take this opportunity to draw your attention to condition No. 19 of the policies.

18. This pointed reference to condition 19 of the policies, in my opinion, is a conclusive reply to the plaintiff's contention that this letter was a letter giving some amount of hope to the plaintiff. On the other hand, by drawing the plaintiff's attention to condition 19 the defendant company was indicating in an unquestionable manner that the defendant company was not prepared to take any responsibility after the expiry of 12 months from the date when the alleged loss had taken place.

19. Apart from this letter, the other letters exchanged between the parties would show clearly that the defendant company never held out any hope to the plaintiff. There was a protracted correspondence between the parties but that correspondence shows an attempt on the part of the defendant company to elicit certain facts and certain particulars about the plaintiff's claims, which attempt, however, was consistently thwarted by the plaintiff who refused to furnish the necessary information. I fail to understand how the plaintiff can say, in view of the correspondence that has passed between the plaintiff and the defendant company, that the defendant company should be estopped from taking its stand on the provisions of clause 19 of the policy. In my view, therefore, clause 19 of the policy is a complete bar to the enforcement of any claim under the policies

on the basis of any loss that might be alleged to have been caused on 12th June, 1953.

20. The next objection of Mr. Roy was that the plaintiff has failed to prove that it had suffered any loss or damage for which it can ask for indemnity under the policies.

February 15, 1963.

21. In fact the plaintiff could not possibly have suffered any loss or damage. From this, Mr. Roy argues that since a fire insurance is principally a contract of indemnity, there is no question of the plaintiff receiving anything under these policies.

22. From the evidence it appears that up till now the plaintiff has not made any payment towards the claims of persons whose goods were damaged. The goods admittedly did not belong to the plaintiff. Therefore, unless the plaintiff pays damages to the persons who owned the goods, the plaintiff does not suffer any loss or damage. Mr. Roy contended that until the plaintiff has actually paid out money to the third parties concerned, it cannot make any claim against the insurance company. Mr. Roy goes further. He contends that the plaintiff was a bailee in respect of these goods and since the plaintiff was not responsible for the fire and since the plaintiff on its own evidence claims to have taken all the care that it should have taken for its own goods and also took all necessary measures to avoid the damage, the plaintiff has discharged all its obligations as a bailee and even the owners of the goods cannot make the plaintiff responsible for the loss or damage of the goods. Therefore, the plaintiff could not have suffered any loss or damage, and also, in fact, did not suffer any such loss. This being the case, Mr. Roy contends the plaintiff is not entitled to ask for any indemnification from the insurance company.

23. In my opinion, Mr. Roy is correct in this contention. It is well-known that under a policy of fire insurance the assured cannot recover even the sum insured unless he proves a loss to that amount (vide Halsbury's Laws of England, 3rd edition, Vol. 22, paragraph 643 at p. 318). That the assured is not entitled in law to recover more than the amount of the loss actually sustained by him will be borne out very clearly by the fact that under the policy of fire insurance, if the assured after receiving indemnity from the insurance company receives compensation from other sources, he has to refund the money to the insurance company.

24. In *Darrell v. Tibbitts* L.R. 5 (1879-80) Q.B.D. 560, one Forbes who was the owner of a house in Brighton, demised it to a certain person named Bonner by a lease which rendered the lessees bound to repair except in the case of "casualties by fire, demolition by storm or tempest of the building or any part thereof, or destruction by foreign enemies". Forbes insured the house in the Union Society by a policy against fire covering injury by explosion of gas. In 1877, the Corporation of Brighton repaired the streets by a steam roller, which

owing to its weight damaged a pipe and caused an escape of gas into the house demised to Bonner where it exploded and did considerable damage. Forbes sold the house and the policy to the defendant and after some negotiations the insurance company paid to the defendant a sum of ₹750. The lessees received compensation from the Corporation of Brighton for the damage done to the house by explosion and with the sum received reinstated the house. At the time when the insurance company paid to the defendant the sum of ₹750, they were unaware that by the terms of the lease the lessees were bound to make good the injuries done by explosion of gas. The insurance company upon hearing that the house had been reinstated by Bonner claimed from the defendant the sum of ₹750 and upon his refusal brought an action in the name of the plaintiff. Brett L.J. started by saying that as to the question whether fire policies were contracts of indemnity like marine policies or whether they were contracts to pay a certain sum of money in a particular event like life policies, the question had been decided by a decision of the court of appeal. The learned Judge was apparently referring to the decision reported in L.R. 5 Ch. D. 569. The learned Judge held that in the case before him, if the tenants had not repaired the damage and had declined to do so, the insurance company would have been bound to pay the landlord who had insured it, but would have had a right to bring in his name an action against the tenants and to recover from the tenants what they had paid to the landlord; in other words, a policy of fire insurance is a contract of indemnity similar to that which is contained in the policy of marine insurance. Brett, L.J. held that though the insurance company had paid the money to the landlord at a time when they were obliged to pay by virtue of their contract, they could recover it back, because the tenants had done what they could not avoid doing. If the company could not recover the money back, it would have meant that the landlord would have had the whole extent of his loss as to the building made good by the tenants and at the same time would have had the whole amount of that loss paid by the insurance company. In that event the whole doctrine of indemnity would have been done away with. The landlord would be not merely indemnified, he would be paid twice over. On these considerations, Brett, L.J. gave a judgment in favour of the plaintiff.

25. This case, in my opinion, is a clear authority in support of the proposition advanced by Mr. Roy. Since a fire insurance policy is a contract of indemnity and since the plaintiff in this case has not succeeded in proving that it has sustained any loss I do not see how it can recover any damage from the defendant.

26. Before concluding this aspect of the case I should deal with some of the documents which passed between the parties and which shows the plaintiff's conduct in this connection. Messrs. Landale & Clarke who had been appointed assessors to survey the damage caused to the goods in the plaintiff's godowns submitted a report to the Insurance company.

27. The report is dated 29th July 1953. Under that report the loss to the stock of the company and the building payable under the Cover Note No. 40430 of the

application of the average clause amounted to Rs. 19,398/9/-. The second report is dated 20th July, 1953 under which the loss payable under the second cover note after application of the average clause amounted to Rs. 3,089/12/-. Immediately after the submission of the reports the plaintiff started making claims on the basis of the reports. Two claim forms of the plaintiff are to be found at pages 16 to 21 of Ext. A. It is curious that in the claim forms the plaintiff makes out a case that he was the sole owner of the property insured under the policies and no other person had any interest in the same. This, however, was not admittedly the case of the plaintiff either in the pleading or at the time of trial. Be that as it may, the plaintiff followed up this claim with further reminders when the Insurance company sent no reply. In its letter of 13th November, 1953, the defendant company asked for certain information regarding the stock of goods. This letter of the defendant is to be found at p. 26 of Ext. A. This is what the defendant company wrote:

1. Is there any contract between you and the parties that you are responsible to them for damage to their goods:

If so, please let us have a pro-forma of such a Risk Note used by US;

2. If no such contract exists, please let us know in what way you can prove your insurable interest in the goods destroyed.

3. A list of the parties whose goods were destroyed together with nature of goods belonging to each party, the value of the goods and the amount of the loss.

28. It appears from the letter dated 18th November, 1953 at p. 27 of Ext. A that the defendant company also asked the assessors to supply the names of the individual parties whose goods were damaged. In spite of reminders the plaintiff never supplied this information to the defendant company. The assessors themselves wrote to the plaintiff and asked for the information (vide plaintiff's document No. 12 dated 3rd March 1954). The only reply to this that has come out in evidence is contained in a letter dated 16th August, 1955 which is at p. 31 of Ext. A. In that letter the plaintiff says that the plaintiff's solicitor had informed the insurance company that the plaintiff had supplied all the required information to the assessors, Messrs. Landale & Clarke Ltd. who in turn had already submitted a report to the defendant. The Solicitor insisted on a settlement of the plaintiff's claim on the basis of that report. In his evidence in this court the managing director of the plaintiff said that the invoices, receipts etc. of the individual parties whose goods were stored in the go-downs had all been handed over by the plaintiff to the surveyors and the surveyors had never returned those documents to the plaintiff. This statement is entirely against the trend of the documents that had been produced and in fact it is contrary to the trend of correspondence between the parties. Since the defendant company had asked for this information again and again from the plaintiff before they were prepared to consider the claims of the plaintiff company the plaintiff's conduct is not intelligible except on the assumption that the plaintiff's present story of having

handed over the invoices and other papers to the surveyors is a false story. Mr. Roy cross-examined the plaintiff's managing director on this point and gave him an opportunity to explain with reference to the various letters that passed between the parties on this point. I must say that the managing director failed to give any plausible explanation. In fact the plaintiff has not produced even a scrap of evidence to suggest that these documents had been handed over to the surveyors.

29. There is yet another point which I should deal with in this connection. The managing director of the plaintiff has, of course, admitted in his evidence that up till now the plaintiff has not had to pay anything to the real owners of the stock of medicines which were damaged by fire, that is to say, till now the plaintiff has not suffered any loss or damage. But even apart from this question there is nothing to show what was the quantum of loss suffered by the third parties. The report of the assessors is, of course, there and it has gone in as an exhibit by consent but that only means that formal proof of the document has been dispensed with. Mr. Mitra appearing for the plaintiff wanted to say that he was relying on that document for proof of the actual loss caused by the fire. But I do not see how I can take the contents of that document to be true when the defendant company is challenging its accuracy. The plaintiff could have easily called the assessors to prove the contents of that document. The plaintiff has chosen not to do so, nor has the plaintiff company produced any document or books of account in its own possession to show what was the extent of damage or loss caused. In fact, the evidence as it stands does not warrant any finding at all as to what exactly was the quantum of loss. In this view of the matter I must say that even apart from the question as to whether the loss that was caused by the fire was a loss which fell on the plaintiff, there is no evidence available to me which enables me to say what actually was the amount of loss. In other words, it is not only that there is no evidence that the plaintiff has not suffered any loss but also there is no evidence to show what was the loss caused to the third parties whose goods were in the custody of the plaintiff.

30. The third contention of Mr. Roy was that the plaintiff had no insurable interest in the goods. From the policies which have been exhibited it appears that the property insured was a building and certain stationery goods and patent medicines stored therein. There is a statement in each of the policies that all these properties either belonged to the insured or held by them in trust or on commission or in joint account with others for which they were responsible in case of loss or damage by fire. Mr. Roy, however, contended that the insurable interest of the plaintiff was only to the extent of its responsibility in case of loss or damage by fire and since the plaintiff was a bailee, its insurable interest was only up to the extent of the responsibility that can be foisted on a bailee. In this particular case, as bailee, the plaintiff had on its own admission, not committed any act of negligence and had taken all possible care that any reasonable man would take with regard to his own goods. Therefore the plaintiff is not at all liable for the loss and damage that might be caused to the goods. Therefore the

plaintiff has no insurable interest in the goods destroyed.

31. I accept this contention of Mr. Roy.

32. It is well-known that in the case of insurances of goods by bailees, factors and wharfingers and the like, their interest is, any special contract or custom apart, ordinarily limited in extent to the amount of their liability for loss of the goods to the owners by their own negligence. See *North British v. London, Liverpool and Globe* (1877) 5 Ch. D. 569. A bailee in such cases can claim an insurable interest if it can be founded upon his lien, or upon the commission or other advantages which he might expect to derive from the bailment. No such case has been made out by the plaintiff in this case.

33. I can now proceed to answer the issues:

Issue No. 1: Yes. Nobody denies that the goods were destroyed or damaged by fire.

Issue No. 2: The goods were held by the plaintiff as bailee. It cannot be said however that the plaintiff was responsible in case of damage or loss to such goods unless it can be shown that the plaintiff did not take the care that any reasonable man would take in respect of his own goods. This has not only not been shown but, in fact, the contrary has been proved by the plaintiff.

Issue No. 3: On this point my answer is that since the plaintiff was a bailee and had taken all reasonable care with regard to the goods damaged, the plaintiff had no insurable interest in the goods that were damaged.

Issue No. 4(a) (b) and (c): These points were not pressed by the defendant company and I do not feel called upon to give any answer to the issues.

Issue No. 5(a): Yes. Issue No. 5(b): No. Issue No. 6: No.

Issue No. 7: In view of my findings above, the plaintiff is not entitled to any reliefs and the suit must be dismissed.

In view of the peculiar circumstances of the case I make no order as to costs. Certified for two counsel against the defendant.