1946, sentencia condennando al demandado a desalojar las fincas Nos. 2032, 2032-A y 2034, de la Calle Azcarraga, Manila, ya pagar la renta de ₱170 al mes. El demandado apeló, y el expediente ha sido registrado en el Juzgado de Primera Instancia de Manila como causa civil No. 72180.

En Mayo 29, 1946, el recurrente (demandante en la causa de desahucio) presentó una moción en dicho Juzgado de Primera Instancia pidiendo la ejecución de la sentencia dictada por el Juzgado Municipal de Manila, alegando como razon la falta de pago o depósito por el demandado de los alquileres correspondientes a los meses de Abril y Mayo de 1946. El demandado ha sido notificado de esta moción, y en Mayo 31, esto es, al segundo dia despues de presentada la moción, depositó los citados alquileres en la Escribania del Juzgado.

En Junio 11, despues de considerar los escritos presentados por ambas partes, el Honorable Juez recurrido dicto una orden denegando la moción de ejecución.

En Junio 24 recurrente presentó moción de reconsideración razonada, y al siguiente dia el demandado presentó su escrito oponiendose a la moción de reconsideración, que fue denegada por el Juzgado de Judio 12.

El recurrente, por medio de una solicitud original de mandamus, y alegando que las ordenes del Juzgado de Junio 11 y Julio 12 de esta año han sido dictadas en contravención de la ley que no tiene otro remedio facil y expedito para obtener la ejecución a que tiene derecho, pide que este Tribunal ordene al recurrido, el Honorable Rafael Dinglasan, como Juez del Juzgado de Primera Instancia de Manila, que expida una orden de ejecución en la causa civil No. 72180.

El articulo de la regla 72 dispone: "si se dictare sentencia contra el demandado, se expedirá inmediatamente la ejecución, a menos que se perfeccionare una apelación y el demandado prestare fianza bastante para suspender la ejecución de dicha sentencia, aprobada por el juez de paz o municipal y otorgada en favor del demandante para el registro de la causa en el Juzgado de Primera Instancia y para el pago de los alquileres, daños y costas hasta que se dicte sentencia definitiva, y a menos que, durante la pendencia de la apelación, el demandado pague periodicamente al demandante o al Juzgado de Primera Instancia la cantidad de los alquileres vencidos, segun el contrato, si lo hubiere, tal y como hubiere estimado en su sentencia el juzgado de paz o municipal, * * *. Si el demandado no hiciere periodicamente los pagos antes mencionados durante la pendencia de la apelación, el Juzgado de Primera Instancia, previa moción del demandante, que se notificara al demandado y previa prueba de falta de pago, ordenará la ejecución de la sentencia apelada;" * * *.

El demandado dejo de depositar los alquileres correspondientes a los meses de Abril y Mayo. El demandante tenia derecho a pedir la ejecución de la sentencia, y era deber del Juzgado ordenar la ejecución de la sentencia apelada. El Reglamento en ingles dice: "shall order the execution of the judgment appealed from."

No contiene la Ley No. 689, disposición alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley, cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecución de semejante orden o sentencia, por el periodo que estime conveniente, que no será mayor de tres meses," (articulo 4) con sujeción a las condiciones prescritas en las articulos 5 y 6. Una de las condiciones de la suspensión es "que la persona contra la cual se dictó la sentencia deposite todo el importe de los alquileres por todo el tiempo que dure la suspensión o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del alquiler que pagó por el mes inmediatamente anterior a la terminación del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

Se dicta sentencia ordenando al Honorable Juez recurrido que expida la orden de ejecucion pedida. Sin pronunciamiento sobre costas.

Moran, Pres., Paras, Feria, Perfecto, Hilado, Bengzon, Briones, y *Tuason, MM.,* estan conformes.

Se concede la solicitud.

VII

Patricio H. Gubagaras, plaintiff-appellee, vs. West Coast Life Insurance Company, defendant-appellant, CA-G.R. No. 1628, January, 6, 1949, DE LA ROSA, *J.*

1. INSURANCE; WAR; EFFECT OF NON-PAYMENT OF INSURANCE PREMIUM BY REASON OF WAR. —On August 1, 1940, plaintiff-appellee and his wife were insured by defendant-appellant under a joint endowment policy for twenty years, under which the surviving spouse became the beneficiary. The last premium paid by the insured covered the semester period of August 1, 1941 to February 1, 1942. The Pacific War which started on December 8, 1941, and the occupation of the City of Manila on January 2, 1942, caused the disruption of all means of communication between the capital and other points outside the City of Manila. As a result of this, appellee could not remit to the appellant the premiums due. The wife died on May 30, 1945, in the municipality of Dueñas, province of Iloilo, before the armistice but after the liberation of Iloilo. On June 18 of the same year appellee notified the appellant of her demise and requested for necessary forms to support a claim for the amount of the insurance. Appellant refused to entertain the claim on the ground that appellee having failed to pay the premium due after February 1, 1942, payment of the amount of the insurance was forfeited. *Held*: The defendant-appellant was ordered to pay the amount of the insurance, less the value of the premiums due and unpaid until the death of the wife, with legal interest from the filing of the complaint and costs.

2. ID.; ID.; IMPOSSIBILITY TO PAY PREMIUMS IN THE HOME OFFICE OF INSURER.—Where the policy provides "all premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A. . . .," but by reason of the war the insured could not pay the premium in the home office, the insured was excused for nonpayment thereof.

3. ID.; FAILURE OF INSURER TO ASSIGN AGENT AT THE RESIDENCE OF THE INSURED.—Where the policy provides that the premiums "may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium," the company is obliged to assign an agent to present receipts of premiums due or to be due, signed by its president, vice president or secretary, and countersigned by the agent, to the insured, in their residents, to collect them.

4. ID.; WAR; JAPANESE MILITARY NOTES; CONSIGNATION; DEPOSIT OF JAPANESE MILITARY NOTES TO PAY PREMIUMS DUE. —If the insured deposited with the Clerk of Court the premiums due, in the Japanese Military Notes, the insurer will not accept the money because it has no value.

5. ID.; CONSTRUCTION AND INTERPRETATION; FAILURE TO DEMAND PAYMENT OR TO PAY PREMIUMS DUE; INSURANCE CONTRACT INTERPRETED IN FAVOR OF INSURED. — Where there are no justifiable reasons to lay the blame on either of the contracting parties for failure either to demand payment or to pay premium due on the policy in question, Article 1105 of the Civil Code should be applied, as it tends to supply the deficiencies in the contract, especially when it is al-

ready the admitted rule that confiscations should be avoided through an interpretation favorable to the insured.

6. ID.; ID.; RIGHTS OF PARTIES IN CASE OF WAR NOT STIPULATED IN INSURANCE CONTRACT.—In life insurance contracts the silence with respect to the rights of the parties thereof in case of war is an omission which should not benefit insurance companies which are the ones who drafted the contract, and they should not be permitted to invoke in their favor their own omissions.

TORRES, *J.*, concurring:

7. ID.; WAR; IMPOSSIBILITY TO PAY PREMIUMS DUE IS AN EXCUSE.—The failure of insured to make payment of premiums due on policy was caused by the stoppage of all means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the failure of the insured to pay the premiums due from February 1, 1942, "the policy lapsed without value." *Impossibilium nulla obligatio est* (there is no obligation to do impossible things). (Impossibility is an excuse in the law). These are maxims which are in all fours with the case at bar.

8. ID.; STATUTES; LAW GOVERNING INSURANCE SUPERIOR TO TERMS OF POLICY.—An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in his jurisdiction governing life insurance business. The court, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

9. ID.; OBLIGATIONS AND CONTRACTS; VALIDITY AND FULFILLMENT OF CONTRACT OF INSURANCE CANNOT BE LEFT TO THE WILL OF ONE OF THE CONTRACTING PARTIES.—In the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise establishes the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not.

10. ID.; WAR; LIFE INSURANCE POLICY NOT LAPSE FOR NON-PAYMENT OF PREMIUMS DUE TO WAR.—The life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war.

11. ID.; PROMPT PAYMENT OF PREMIUM ESSENCE OF CONTRACT OF INSURANCE, EXCEPTION.—Prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree).

12. ID.; JUDGMENT; DOCTRINE LAID DOWN IN NEW YORK LIFE INSURANCE COMPANY v. STATHAM, 93 U.S. 24, 23 L. ED. 789 NOT CONTROLLING.—Considering that the ruling laid down in the Statham case (New York Life Insurance Company v. Statham, 93 U.S. 24, 23 L. Ed. 789) has been made by the United States Supreme Court about 75 years ago, during the horse and buggy period of the life of the American nation, it cannot be regarded as an overall principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companies and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; they look after and provide for the needs and welfare of the community.

Attys. Padilla, Carlos & Fernando, for defendant-appellant.

Atty. R. A. Espino, for plaintiff-appellee.

DECISION

DE LA ROSA, *M.*:

Patricio H. Gubagaras reclama el pago de la suma de ₱2,000.00, importe de una póliza expedida por la West Coast Life Insurance Company, de la que él es asegurado y beneficiario, mas la cantidad adicional de ₱600.00, en concepto de daños.

Con efectividad el 1.o de agosto de 1940, Patricio H. Gubagaras y su esposa Maria Labaco, hoy finada, obtuvieron de la West Coast Life Insurance Company la póliza dotal conjunta Exh. A, de veinte años o hasta la muerte de cualquiera de ellos dos, que eran mutuos beneficiarios, por la cantidad de ₱2,000.00, con participación en las ganancias. La última prima pagada por los asegurados comprendia el periodo semestral del 1.o de agosto de 1941 al 1.o de febrero de 1942. La guerra del Pacífico estalló el 8 de diciembre de 1941, y Manila, en donde la compañia tenía su agencia, fué ocupada por las fuerzas invasoras japonesas el 2 de enero de 1942. Con motivo de la paralización de todas las comunicaciones, terrestres, marítimas y aéreas, la prima que vencía el 1.o de febrero de 1942 y las siguientes, durante la guerra, no se pagaron. Labaco falleció el 30 de mayo de 1945, en el municipio de Dueñas, de la provincia de Iloilo, antes del armisticio, pero despues de la liberación de Iloilo por las fuerzas americanas, oficialmente declarada en 22 de marzo de 1945. El 18 de junio de 1945, Gubagaras dirigió a la compañia la carta, copia fotostática de la cual es el Exh. 1, avisándola de la muerte de su esposa y pidiendo al mismo tiempo formularios para probar su muerte y presentar la reclamación correspondiente. La compañia le contestó que, por no haberse pagado la prima debida el 1.o de febrero de 1942, la póliza Exh. A caducó, sin ningun valor (Exh. 2). Despues que se cruzaran otras correspondencias entre las partes, Gubagaras presentó su demanda de autos el 24 de junio de 1946.

La compañia admite sustancialmente los hechos que se acaban de relatar, y contestando a la demanda, alega que la póliza en cuestión provee que

"All premiums are due and payable in advance at the Home Office of the Company in the City of San Francisco, California, U. S. A., but may be paid to an authorized agent of the Company producing the Company's Official premium receipt signed by the President, a Vice President or Secretary of the Company and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official receipt. * * *"

Y' entre otras defensas especiales, interpone:

"1. States that the policy in question provides that:

"PAYMENT OF PREMIUM'

* * * * * This policy shall lapse if any premium is not paid as herein provided and no right here-

under shall exist except as herein expressly provided.

2. States that by reason of the non-payment of the premium due on 1 February 1942, and/or thereafter, the policy in question has lapsed, and that accordingly plaintiff's complaint states no cause of action.

By way of

SECOND SPECIAL DEFENSE

1. States that insured are guilty of laches in that they failed to apply for reinstatement of the policy under the clause thereof which reads:—

REINSTATEMENT'

'At any time within five years after default, upon written application by the insured and upon presentation of evidence of insurability satisfactory to the Company, this policy, if not surrendered to the Company, may be reinstated together with any indebtedness in accordance with the loan provisions of the policy, upon payment of the loan interest, and of arrears of premium with interest at the rate of six per cent per annum thereon from their due dates. * * * *" (Expediente de Apelación, pp. 10 y 11)

Aportadas por ambas partes sus pruebas, el Juzgado *a quo*, aplicando al caso el Art. 1106 del Código Civil, que reza:

"Fuera de los casos expresamente mencionados en la ley, y de los en que así lo declare la obligación, nadie responderá de aquellos sucesos que no hubieran podido preverse, o que, previstos, fueran inevitables."

dictó esta sentencia:

"POR TANTO, el Juzgado dicta decisión en este asunto, condenando a la demandada a pagar al demandante la cantidad de DOS MIL PESOS (₱2,000.00), menos el valor de las primas, no pagadas, devengadas hasta la muerte de la esposa del demandante, que ocurrió el 30 de mayo de 1945, con intereses legales desde la presentación de la demanda, y al pago, ademas, de las costas del juicio."

Atribuyendole cuatro errores a este fallo, la Compañia recurre en alzada a este Tribunal de Apelaciones.

PRIMER ERROR

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE POLICY HAD LAPSED FOR NON-PAYMENT OF PREMIUMS DUE."

Como precedente, se aduce en apoyo de este primer señalamiento de error la decisión dictada el 23 de octubre de 1876 por el Tribunal Supremo de los Estados Unidos en New York Life Insurance Company vs. William C. Statham et al (23 Law Ed. 798), en la que se enunció esta doctrina:

"We are of opinion therefore, first, that as the company elected to insist upon the condition in these cases, the policies in question must be regarded as extinguished by non-payment of the premium, though caused by the existence of the war, and that an action will not lie for the amount insured thereon.

Secondly, that such failure being caused by a public war without default of the assured, they are entitled *ex aequo et bono* to recover the equitable value of the policies with interest from the close of the war."

El Tribunal Supremo, en su primer pronunciamiento, se atuvo a la letra del contrato de seguro, siguiendo esta proposición:

"(1) The right of the parties depend upon the contract, which they themselves made. The court will not interpolate new conditions but will hold the parties to their own agreement."

Basandose en las condiciones del contrato, literalmente interpretadas, el Tribunal lo declaró extinguido, por falta de pago de las primas convenidas, sosteniendo, no obstante, que el asegurado tenía derecho a recobrar el valor equitativo de su póliza, con intereses desde la terminación de la guerra. Si la póliza caducó, por no haberse pagado sus primas, el derecho equitativo reconocido en el asegurado se derivó de un contrato extinguido.

Esta doctrina, que interpreta a la letra las clausulas del contrato y de algun modo la informa el aforismo *dura lex sed lex*, es una barrera que dificulta e impide una clara y explicita redacción de los contratos de seguro de vida.

Guerra ha habido siempre desde los albores de la humanidad, y ha ido desenvolviendose de la lucha entre tribus a la guerra mundial. Su frecuencia es una realidad, y las perturbaciones que produce se dejan sentir profundamente. A raiz de la guerra civil americana, en los Tribunales de los Estados Unidos se ha debatido un número considerable de asuntos de pólizas de seguro de vida, cuyas primas no pudieron pagarse con motivo de la guerra. Con todo, ninguna modificación, que difina los derechos y obligaciones de las partes interesadas, en casos de guerra, se ha conseguido incorporar en los contratos de seguro de vida, porque la decisión en el asunto de Statham, al interpretar literalmente sus clausulas, ha hecho de la guerra un suceso confiscatorio de las primas pagadas por los asegurados, con la anulación de sus derechos, a favor de las compañias aseguradoras.

La póliza de seguro Exh. A, origen de este asunto, contiene esta clausula:

"..... This policy shall lapse if any premium is not paid as herein provided, and no right hereunder shall exist except as herein expressly provided."

Esta clausula es tan lata y vaga que por ella la compañia trata de acaparar para si todos los derechos, y no conceder nada a sus asegurados. Fundandose en ella, se sostiene en el alegato de la apelante:

"THE STATHEM RULE

The leading and controlling case on the legal point under consideration is New York Life Insurance Co. vs. Statham (93 U. S., 24; 23 L. ed. 789). The question involved in the Statham case is identical with the question involved in the present case. In both cases the policy contained the following stipulations: (a) that the premiums must be paid in advance; and (b) that non-payment of any of such premiums will cause the policy to lapse. In both cases the insured did not pay the stipulated premiums and claimed as excuse for such non-payment the impossibility of payment as a result of the war." (pp. 14 y 15)

Segun esto, la póliza expedida en 1851, que motivó la causa de Statham, contenía exactamente las mismas clausulas de la póliza Exh. A de autos, librada 89 años mas tarde, o el 1.o de agosto de 1940. Este estancamiento, de casi un siglo ahora, en un ambiente de contratación que día a día tiende a la mayor mutualidad de los beneficios, es el resultado de la doctrina en el asunto de Statham, que prueba la sabiduria y precisión que extraña la maxima legal de interpretación: la letra mata, el espiritu vivifica.

SEGUNDO ERROR

"THE LOWER COURT ERRED IN HOLDING THAT THE BENEFICIARY CAN RECOVER ON A VALUELESS AND LAPSED POLICY."

En el parrafo 13 de la contestación se acota la clausula de pago de las primas convenida en la póliza Exh. A, que establece dos maneras:

"(a) All premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A....."

Como en el caso presente es absurdo suponer que los asegurados, Gubagaras y Labaco, se comprometieran a pagar las primas en la oficina de la compañia en San Francisco, California, aparte de que no era posible cruzar el Pacifico durante la guerra por la paralización completa de las comunicaciones, había que descartar esta primera manera por imposible. Y,

"(b) but may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium."

Por esta segunda manera, la compañia se obligó a nombrar un agente que presente los recibos de las primas vencidas o por vencer, firmados por su presidente, vice presidente o secretario, y contraseñado por el agente, a los asegurados, en la residencia de estos, para su cobro.

Que pasos se han dado por las partes, de acuerdo con esta segunda manera, para efectuar el cobro y pago de la prima que vencía en 1.o de febrero de 1942?

Patricio H. Gubagaras declaró:

Q. Before February 1, 1942, did you make any effort to make payment to the defendant Company?
R. Si, señor.
Q. What did you do?
R. Me vine al post office con el proposito de pagar, pero la oficina de correo ya estaba cerrada.
Q. Where was the post office here in the City of Iloilo then situated at the time?
R. En el edificio de la Aduana.
Q. When did you go to the Custom House Building?
R. Alla a mediados del mes de enero.
Q. In what year?
R. 1942.

* * * * *

Q. Where did you go when you had to return?
R. Volvi a Dueñas.
Q. Did you make any further effort after returning to your house?

R. Si, señor.
Q. What did you do?
R. Me fuí a la oficina de correos del municipio de Dueñas para cerciorar si podia remitir correspondencias para Manila.
Q. Were you able to send any correspondence to Manila?
R. No, Señor, porque según el tesorero no se podía ya recibir, porque la ciudad de Manila estaba ocupada por los japoneses.
(t.n.t. pp. 8-10)

Federico A. Pigason, estafetero de la oficina de correos de la ciudad de Iloilo, antes y despues de la guerra, aseveró:

"Q. When was the Post Office in the Province of Iloilo began to open to the public?
R. On July 4, 1945.
Q. Will you please tell us when were the mail facilities for the Municipalities opened after the liberation of the province of Iloilo?
R. After the liberation in the province of Iloilo, the PCAU or the Philippine Civil Affairs Unit tried to facilitate mails in the provinces by means of mail carrier; then when the office was officially opened by the post office on July 4, 1945, we hired the Philippine Railroad and all the buses to bring mails to the Municipalities; and now we have also steamers and airplanes.

Q. What happened to the post office after the bombing of Iloilo on December 18, 1941?
A. You mean this post office of Iloilo in the City of Iloilo? After that, we transferred in La Paz.

* * * * *

"Q. Don't you know if by request through the Army post office mail could be sent from Iloilo to the United States?
A. To the United States we did not have any arrangement, but all mail in Iloilo were delivered to APO 715.
(t.n.t. pp. 2 y 3)

Leonardo Cocjin, Tesorero Municipal y Postmaster del municipio de Dueñas, testificó:

"Q. In the year 1942 or to be exact before the Japanese invasion of the Island of Panay, were you holding the same office in the government?
A. Yes, sir.
Q. And the same place?
A. The same place.
Q. Do you know a person by the name of Maria Labaco in her lifetime?
A. Yes, sir.
Q. Do you know also the plaintiff in this case Patricio H. Gubagaras?
A. Yes, he is the husband of the late Maria Labaco.
Q. Will you please tell the Court if you have seen this person sometime in the month of January, 1942 in Dueñas?
A. So far as I can remember, this couple Patricio Gubagaras and the late Maria Labaco had come to me in my office in Dueñas on or about the last days of January, 1942 with the purpose of inquiring as to whether it was possible during that time to send money by mail.
Q. Do you know to whom did they intend to send money by mail at that time?
A. They tried to send money to the West Coast Life Insurance Company.

* * * * *

Q. Upon inquiring of the couple Patricio Gubagaras, the herein plaintiff and his late wife whether it was possible to send money by mail to West Coast Life Insurance Co., what was your answer?
A. I told them that during that time there was no more facility of transportation between Manila and Iloilo, and besides, the Japanese Forces were occupying the City of Manila; I told them. "It seems to me, to send money to Manila is futile."
(t.n.t. pp. 18-20)

El interes de Gubagaras de hallar un medio de enviar a la agencia de la compañia, en Manila, el importe de la prima que vencia el 1.o de Febrero de 1942, revela su deseo de cumplir con las condiciones de la póliza Exh. A.

De su parte, que medidas ha tomado la compañia para presentar a Gubagaras el recibo, debidamente expedido y contraseñado, hacia esa fecha, 1.o de febrero de 1942?

Gregorio San Jose, superintendente del departamento de reclamaciones de la Compañia, declaró:

"Q. Your Honor please. Will you please tell us what happened to your company on 2 June 1942 (should be January) when Manila was officially occupied by the Japanese Imperial Forces?
A. We were forced upon order of the enemy force to close our business, being an American Company.
Q. Can you tell us if there is any insured from the province of Iloilo who was able to continue paying the premium due from 2 June (should be January) 1942 up to the time of liberation in 1945?
A. There was not a single policy holder who was able to send their premium.
Q. Will you please tell us when was your Manila branch office opened to the public?
A. December 1, 1945.
(t.n.t. pp. 29-30)

En contraste con las gestiones que, hacia fines de enero de 1942, Gubagaras hiciera para encontrar un medio de enviar el importe de la prima que vencía el 1.o del mes siguiente, la compañia nada hizo para cumplir con la obligación que tenía de presentar a los asegurados el recibo de dicha prima, debidamente firmado por su presidente, vice presidente, o secretario, y contraseñado por la persona autorizada para recibir su importe.

Se dirá que, estando la compañia en San Francisco California, allende el Pacifico, a miles de millas de distancia de las costas de Filipinas, con la agencia en Manila cerrada por orden del enemigo, nada humanamente podía hacer. Esta sería, indudablemente una explicación plausible. Mas, si la paralización de las comunicaciones, la orden de cierre de su agencia en Filipinas, dada por el enemigo, la guerra, en una palabra, constituye para la compañia una excusa buena y valida, porque no ha de ser legal y eficaz para el asegurado? Porque las consecuencias de la guerra, que impidieron a ambos contratantes cumplir sus respectivas obligaciones, ha de favorecer a la compañia, que se limitó a cruzarse de brazos, amparandose en la doctrina de la causa de Statham, y ha de imponer el asegurado, sin culpa de su parte, el castigo de la pérdida de todos sus derechos despues de la diligencia que empleara para hallar un medio de cumplir con su obligación de pagar la prima que estaba por vencer?

Despues de la guerra civil americana, con menos motivos, porque los Estados Americanos foreman un territorio compacto y unido, sin mares que los aparten como el gran oceano que separa California y Filipinas, en Hamilton vs. Mutual Life Insurance Co. (11 Federal cases, 351, 358, 359, 360), decidiendo la contención en favor del beneficiario, el Tribunal sostuvo:

"* * * * *

"The defense is also set up, that the policy, by its terms, ceased to exist by reason of the non-payment of the annual premium that was due and payable on the 2nd of March, 1862, and that thereby, also, all previous payments made by Goodman became forfeited to the defendants. It is replied, on the part of the plaintiff, to this defense, that the agencies from the state of Alabama in March, 1861, prevented the payment of Goodman of his annual premiums, and thereby waived such payments, all of which became due after the 16th of August, 1861, the act of the defendants having prevented the payments in Alabama, and the effect of the war being to make such payments at New York, by Goodman, unlawful.

"If it was a part of the contract entered into by the defendants, or of their obligations to Goodman under it, that Goodman should have the right to pay his annual premiums to an agent of the defendants in Alabama, and if the defendants were bound to provide in Alabama, during the continuance of the risk on the policy, an agent to receive such premiums then Goodman was not bound to seek any other recipient of such payments than such agent, and was not bound, for want of any such agent, to pay the premiums, directly to the defendants at New York. In the application made in February, 1849, for the policy issued to Mrs. Goodman in March, 1849 Goodman is described as residing in Mobile, Alabama, and as being a wharfinger there. In his application of March, 1858, for the policy of 1858, and in that policy, he is described as of Mobile, in the state of Alabama. All the premiums that he paid, were with the knowledge of the defendants, paid at Mobile, to McCoy, their agent there, and were received by the defendants through and from McCoy. Goodman resided in Mobile from 1835 up to his death, and died at Mobile. In the absence of any notice to the contrary, the defendants must be held to have continued to understand that he continued to reside in Mobile. His application for the policy of 1858 was made through McCoy, at Mobile, the policy was delivered to him through the hands of McCoy, at Mobile, and bears McCoy's signature, as agent at Mobile, the three payments of premiums in 1859,1860 and 1861, were made thru McCoy, at Mobile, and the receipts therefor bear the signature of McCoy as the defendants' agent. The policy contains on its face the words: 'Agents of the company are authorized to receive premiums when due, but not to make, alter, or discharge contracts, or waive forfeitures.' It is contended by the defendants that there was no obligation on them to keep an agent at Mobile or in Alabama. Considering the character of the contract, the circumstances under which it was entered into, the fact that Goodman was, with the knowledge of the defendants, a resident citizen of Alabama at all times, the fact that the contract must be regarded as having been entered into, and continued in operation by the defendants, at least as long as they themselves recognized its continuance, that is, until March 2nd, 1862, with reference to, and in subordination, on their part, to such statute law of the state of Alabama as should be enacted on the subject of their keeping agents in that state,

and the fact that the agency of McCoy, having been continued during the life of the policy up to March, 1861, was then withdrawn, *it must I think, be held, that the defendants were bound to keep in Alabama an agent to whom Goodman could pay his annual premiums, or could, at least, offer or tender payment, such agent to be appointed in conformity with such statute law, and that, if the absence of such agent was all that prevented the payment of such premiums by Goodman, the defendants are estopped from setting up the non-payment of such premiums at the times stipulated therefor as a defense to this suit.*

* * * * *

The evidence shows pecuniary ability and willingness on the part of Goodman to pay the premiums at Mobile, and that the reason why he did not pay them there was the absence of any agent thereof of the defendants. I see no legal objection to the evidence on this subject, either as competent, or as sufficient to prove the facts. If the defendants were entitled to the punctual payment of the premiums, as a condition precedent to their continuing liability from year to year, *their prevention of such payment, by the withdrawal of McCoy's agency, and of all other agencies in Alabama, excused Goodman from making the payments punctually, and debars the defendants from setting UP SUCH WANT OF PUNCTUALITY as a defense in this suit.* Williams v. Bank of U. S. 2 Pet. (27 U. S.) 94, 102; Van Buren v. Digges, 11 How. (52 U. S.) 461, 479.

There is no force in the objection, that the defendants could not, during the war, have received from their agent in Alabama any moneys paid to him there as premiums, or that such moneys would have been confiscated in the hands of such agent, if paid to him. If the agent had been provided, Goodman could have tendered the premium, and the agent could have refused to receive it, because he could not remit it, and because it would be confiscated. The rights of Goodman would thus have been preserved, according to the tenor of the contract. The less, if any, which would have ensured to the defendants, was a loss incident to the war, and with which Goodman had no concern, and the apprehension or certainty of which could affect his rights. The unlawfulness of any receipt by the defendants at New York, from Goodman, or any other person in Alabama, during the war, of any money's paid as premiums, cannot affect any rights of Goodman in respect of having the opportunity of paying such premiums in Alabama, or be set up by the defendants as a ground of forfeiture of the policy in respect of such rights.

Under these views, the contract was only suspended during the war. After the end of the war, the right of Goodman to pay the premiums which he had been prevented from paying by the action of the defendants, continued in all respects."

* * * * *

The withdrawal of the agency of McCoy, and of the other agencies in Alabama, made it unnecessary for Goodman to seek out McCoy or some other person who had been an agent of the defendants in Alabama, and tender the premiums, as due, to him, even though, as would appear from the evidence, McCoy reamined in Alabama, accessible, during a part, at least, of the war. Especially is this so, in view of the fact that Goodman had notice of the revocation of McCoy's agency.

On all these considerations, I am of opinion that *the defendants must be regarded as having prevented Goodman from paying his premiums, as due, in Alabama, where he had a right by the contract to pay them, and, therefore, as having waived such punctual payment; that the policy was not and is not forfeited by reason of the non-payment of premiums; that it is a valid and subsisting policy against the defendants*: and that the plaintiff was, when he brought this suit, in a position to ask the relief prayed for by the bill.

These views recognize fully all the terms of the policy, and do not interpolate in the contract of the parties any provision, by way of excuse for the non-payment, on the stipulated day, of any premium, which is not within the terms of the contract. It is of the essence of every contract, that, if one party to it prevents its performance by the other party, the former cannot be allowed to reap any benefit from the fact of such non-performance. In this case, the prevention by the defendants of performance by Goodman was equivalent to actual performance by Goodman, or to a waiver by the defendants of such performance." (Italics supplied).

Hay, ademas, estos otros precedentes:

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured." (The Manhattan Life Insurance Co. v. Warwick, 20 Gratt (Va.) 614, 3 Am. Rep. 218, 22 O, the Supreme Court of Appeals of Virginia).

"It is urged that the last premium was not paid, and hence the policy became void. If it were not paid, I do not think the consequences claimed would follow. The war suspended this contract, and no forfeiture for non-payment would arise while the war lasted, provided the premiums, with proper interest, were promptly paid on the return of peace." (Sands v. The New York Life Insurance Co. 50 N. Y. 626, 10 Am. Rep. 535, 543) (Italics supplied)

"Then, as according to principle and consistent authority, the contract was not dissolved by the war, how can this court, consistently with the spirit of the literal condition and the facts of the case, adjudge the policy avoided by the inevitable non-payment of premium? Such a decision would seem to be as unreasonble as unjust." (New York Life Insurance Co. v. Clipton, Etc., 7 Bush (Ky.) 179; 3 Am. Rep. 290, 295)

"* * * * And, according to a Canadian decision, if a foreign company ceases to do business at the place where the premium is stipulated to be paid, and maintains no known agency there, non-payment is excused. * * * * 3 Couch, Cyclopedia of Insurance Law 2229.

TERCER ERROR

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PLAINTIFF WAS GUILTY OF LACHES DESPITE PLAINTIFF'S DEFAULT IN THE PAYMENT OF PREMIUMS AND FAILURE TO APPLY FOR REINSTATEMENT UNDER THE 'REINSTATEMENT' CLAUSE OF THE POLICY.

Contiendese que durante la guerra Gubagaras y Labaco no han ofrecido ni consignado ante los Tribunales el importe de las primas de su póliza. De haber la compañia operado en Filipinas durante la guerra, hubiera expedido pólizas, completamente saldadas, porque la abundancia de dinero militar japones buscaba inversión. Teniendo esto en cuenta, lo mas probable es que Gubagaras no hubiera dejado de pagar una prima semestral exigua de ₱68.96.

Pero, suponiendo que Gubagaras hubiera consignado, oportunamente, en dinero japones, el importe de las primas que hubieran vencido de la póliza Exh. A, lo aceptaría la Compañia? Ciertamente que no, porque no le daría ningun valor, y aunque valiese algo, sería inaceptable segun la doctrina en el caso de Statham.

Sostienese que, despues de la liberación de la provincia de Iloilo por las fuerzas americanas y antes de la muerte de Labaco, los asegurados no han solicitado la rehabilitación de su póliza Exh. A, ni han hecho nada para pagar a la compañia las primas vencidas de tres años. La provincia de Iloilo fué liberada en 22 de marzo de 1945. Labaco fallecié el 30 de mayo del mismo año. En ese tiempo, la compañia no habia habierto aun su agencia en Filipinas. Las oficinas de correos, de la provincia de Iloilo, se reabrieron el 4 de julio de 1945. Todo esto significa que antes de la muerte de Labaco no había facilidades de remitir dinero, porque su envio por giro postal no se habia aun restablecido.

Por otra parte, como dice en su alegato la represntación del apelado, solicitar la rehabilitación de la póliza Exh. A, valdria tanto como admitir que la misma habia caducado.

CUARTO ERROR

THE LOWER COURT ERRED IN APPLYING THE PROVISIONS OF ARTICLE 1105 OF THE CIVIL CODE TO THE PRESENT CASE AND CONSTRUING IT TO THE SOLE BENEFIT OF PLAINTIFF.

La representación de la apelante sostiene que, en cuanto a los contratos de seguro, las disposiciones generales del Código Civil carecen de aplicación.

En Musgâi vs. West Coast Life Insurance Co. (61 Phil. 864), el Tribunal Supremo sostuvo lo contrario:

"2. Id.; NULLITY; APPLICABILITY OF CIVIL LAW.—When not otherwise specially provided for by the Insurance Law, the contract of life insurance is governed by the general rules of the civil law regarding contracts. . . ." (Syllabus)

En este asunto, en que no hay motivos justificados para culpar a ninguno de los contratantes por la falta de cobro o pago de las primas de la póliza en cuestión, viene al caso el precepto del Art. 1105 del Código Civil, tendente a suplir deficiencias del contrato, tanto mas cuanto que es ya regla admitida la de evitar confiscaciones, mediante una interpretación favorable a los asegurados.

"The rule applicable to contracts generally, that a written agreement should in case of doubt as to the meaning thereof, be interpreted against the party who has drawn it, is very frequently applied to policies of insurance and constitutes an important rule of construction in such respect, in view of the fact that ordinarily, and in practically all cases, it is the insurer who furnished or prepares the policies used to embody the insurance contracts. The general rule is that terms in an insurance policy, which *are ambiguous, equivocal, or uncertain to the extent that the intention of the parties is not clear* and cannot be ascertained clearly by the application of the ordinary rules of construction *are to be construed strictly in and most strongly against the insurer, and liberally in favor of*

the insured, so as to effect the dominant purpose of indeminity or payment to the insured, *especially where a forfeiture is involved since the forfeiture of insurance policies is not* favored by the courts." [29 Am. Jur. 180, 181] (*Underscoring* supplied)

"The severe hardships to which the insured was formerly subjected under the older concepts of contract law and because of the advantageous economic position of the insurers to impose unfair stipulations and conditions is well known. Comprehensive legislation regulating the activities of insurers, having as its objective the protection of the public and those insured, has become very common in the United States. In keeping with the judicial policy of construing insurance policies in favor of the insured, legislation enacted for the purpose of his protection have usually been liberally construed in favor of the public and the insured. *The law looks with disfavor upon the forfeiture of the rights of the insured, and so statutes protecting and extending those rights are treated with liberality.*" 3 Sutherland Statutory Construction, 3rd ed. sec. 7105, p. 393, 394. See also 45 C. J. S. 387. (Italics supplied.)

"It is a matter of common knowledge that large amounts of money are collected from ignorant persons by companies and associations which adopt high sounding titles and print the amount of benefits they agree to pay in large blackfaced type, following such undertakings by fine print which destroy the substance of the promise. *All provisions, conditions or exceptions which in any way tend to work a forfeiture of the policy would be construed most strongly against those for whose benefit they are inserted, and most favorably toward those against whom they are meant to operate.*" (Standard L and A. Ins. Co. v. Martin, 132 Ind. 376, 33 N. E. 105; McElfresh v. Odd Fellows Acc. Co., 21 Ind. App 557, 52 N. E. 819; 1 Cyc. 243, and cases therein cited.) (United States Benev. Society v. Watson, 1908, 84 N. E. 29, 31)" (Trinidad vs. Orient Protective Assurance Association, 37 Off. Gaz. 2674) (Italics supplied.)

Se puede añadir, que la aplicación del Art. 1105 del Código Civil al caso presente es de estricta justicia, porque en los contratos de seguro sobre la vida el silencio con respecto a los derechos de las, partes, en casos de guerra, es una omision—que no debe beneficiar a las compañias aseguradoras, que son las que redactan dichos contratos, y no pueden invocar a su favor sus propias faltas.

La doctrina en el asunto de Statham, que en su segunda parte adjudica al beneficiario el valor equitativo de la póliza, fundandose en el principio *ex aequo et bono*, es en esencia una modalidad del alcance del Art. 1105 del Código Civil, cuyas disposiciones supletorias tienen su aplicación cuando el incumplimiento de los terminos del contrato no pueda en equidad y conciencia atribuirse a culpa o negligencia de cualquiera de los contratantes.

En sus comentarios al Art. 1105 del Codigo Civil, el Sr. Manresa, dice:

"En concreto, se ha declarado por el Tribunal Supremo que constituyen casos de fuerza mayor: . . . . . .; el hecho de la conflagración europea y de la guerra, que trastornó las economias mundiales y privó a las compañias ferroviarias de los medios necesarios (como locomotoras, vagones y carbon ingles), para cumplir exactamente los contratos de trasporte estipulados con los particulares (Sentencia de 2 de febrero de 1926; . . . .") (8 Manresa 90)

Se confirma en todas sus partes la sentencia de que se apela, con las costas a la apelante.

Asi se ordena.

Torres, J., concurs in a separate opinion. *Labrador* and *David, JJ.*, concur.

JUGO, *J.*, dissenting:

Believing that the doctrine laid down by the decision of the Supreme Court of the United States in the case of New York Life Ins. Co. vs. Statham (93 U.S. 24, 23 L. ed. 789) is based on strong and sound reasons and on high authority, I dissent.

(On Oct. 4, 1946 Justice Jugo, then Judge of the Court of First Instance decided the case of Paz Lopez de Constantino vs. Asia Life Ins. Co. (No. 71875) in favor of the Insurance Co. The case is now pending decision by our Supreme Court.)

TORRES, *Pres. J.* concurring:

The essential facts in this controversy, as clearly related in the decision penned by Mr. Justice De la Rosa, are as follows: On August 1, 1940, Patricio H. Gubagaras and his wife, Maria Labaco, were insured by the West Coast Life Insurance Company for the sum of ₱2,000.00. The joint twenty-year endowment policy is sued by the company being a mutual benefit made the surviving spouse the beneficiary of the other and both of them participates in its profits. The premium was payable every six months and the last premium paid covered the semester period ending February 1, 1942. In the meantime, on December 8, 1941, war was declared in the Pacific, and on January 2, 1942, the Japanese invading forces occupied the City of Manila. This caused the disruption and paralyzation of all means of communication between the capital of the Philippines and other points outside of the City of Manila.

Maria Labaco, one of the insured, died in the municipality of Dueñas, province of Iloilo, on May 30, 1945, and on June 18 of the same year, Patricio H. Gubagaras, the surviving spouse and co-insured, notified the company of the death of his wife (Exhibit "1"), and requested that he be furnished with the necessary forms to support a claim for the payment of ₱2,000.-00, the amount of the insurance. The company replied that in view of the failure of the insured to pay the premiums due after February 1, 1942, the policy, Exhibit "A," had lapsed and, therefore, payment was forfeited. After an exchange of correspondence, on June 24, 1946, Gubagaras finally brought in the Court of First Instance of Iloilo the corresponding motion against the West Coast Life Insurance Company.

After proper proceedings, the lower court, in a judgment rendered on January 30, 1947, found for the plaintiff and against the defendant and ordered the latter to pay the former the sum of ₱2,000.-00, from which shall be deducted the total amount of premiums due and remaining unpaid until May 30, 1945, the date of the death of Maria Labaco, with legal interest from the date of the filing of the complaint, and the costs of these proceedings.

In this appeal, the defendant-appellant West Coast Life Insurance Company, assigned several errors allegedly committed by the trial Judge.

The main point raised by counsel is based on the proposition that, contrary to the holding of the lower court, the policy issued by the company to the plaintiff and his deceased wife "had lapsed for non-payment of premiums due."

As previously stated, all means of communication between Manila and the province had been interrupted by the war and the occupation of the City of Manila and other places in the Archipelago by the Japanese forces. The policy, Exhibit "A", was issued by the home office of the West Coast Life Insurance Company located in San Francisco, State of California, U. S. A., through its agency located in the City of Manila. Following the practice of companies authorized to do business in this country, the defendant "sold" the insurance policy, Exhibit "A", to the plaintiff and his deceased wife through its agency established in the City of Manila prior to the advent of the last global war. We may thus take judicial notice of the fact that a foreign insurance company, which has been authorized under the Philippine laws to do business in these Islands, establishes its local office or agency through which it reaches the public in the Philippine Islands to "sell" its policies. It can not be conceived that these persons who, like the plaintiff and his deceased wife, have been locally insured by the defendant, an American company with home office in the City of San Francisco, State of California, U. S. A., would have contacted directly the main office of said company in order to be insured by the latter. In the ordinary course of business in the field of insurance, the applicant is investigated by a local representative of the company and, what is most important, is examined by the company medical officer before his application is submitted to the main or home office for its approval.

In view of what is stated in the preceding paragraph, it is quite safe for me to conclude that the payment of the premiums on the policy in question was not made directly "at the home office of the company in the City of San Francisco, State of California, U. S. A.," as is printed in the policy, but "to an authorized agent of the company," as is likewise stated therein. And I do not say this in vain, because the record supports my point of view in this respect. When the communications between the province of Iloilo and the City of Manila were disrupted and

stopped by the war, the evidence shows that the plaintiff—who jointly with his wife had been paying the premiums up to the 1st of February, 1942 when the Japanese Imperial Forces were already occupying the City of Manila and other parts of the Archipelago—made every possible effort to contact the local agency of the defendant company because he wanted to remit to the Manila office of the defendant the semester premiums due from February 1, 1942. The post-office in the municipality of Dueñas was closed, and he was informed by the municipal treasurer that there was no business transaction with Manila which was then already occupied by the Japanese forces. He went to the City of Iloilo and his inquiries brought the same result; in fact, the postal service in the province of Iloilo was re-established only in July, 1945, after the death of the wife of plaintiff.

In view of all those facts and circumstances, it having been clearly proven that the failure of this plaintiff to make further payment of premiums due on policy Exhibit "A" was caused by the stoppage of all the means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the plaintiff's failure to pay the premiums due from February 1, 1942, "the policy lapsed without value" (Exhibit "C" of plaintiff). *Impossibilium nulla obligatio est* (there is no obligation to do impossible things—Wharton L. Lex). *Impotentia excusat lagem* (impossibility is an excuse in the law—Bouvier's Law Dictionary). These are maxims which are in all fours with the case at bar.

It cannot be successfully alleged, and much less proven, that the plaintiff did not do his best to contact the Manila office of the defendant company for the payment of the premiums due beginning from February 1, 1942. The efforts made by him are the best evidence of his earnest and honest intention to comply with his part of the obligation contracted and commitments made by him when he accepted the policy Exhibit "A" issued by the company upon acceptance of his application by the home office. It is not my purpose to state here that the defendant company was at fault when its local office was closed by the Japanese Military Administration. Even if the Japanese Military Administration had permitted the local agency of defendant to transact business during the period of military occupaion, the lack of communication between Manila and the provinces particularly the province of Iloilo, would have just the same resulted in the failure on the part of the plaintiff to remit and the agency of the Company to receive the premium due from February 1, 1942.

In this connection, the evidence of the defendant has strongly endorsed our view in the premises, when by its Exhibit "G", a circular letter dated June 15, 1945, addressed to its "policyholders in the Philippine Islands," the President of the company, among other things, says:

* * * * *

You will appreciate how impossible it has been for us to communicate with or serve in any way either policyholders or representatives in the Islands. Our Resident Manager and Resident Secretary have but recently arrived in the United States following their liberation from Los Baños and Santo Tomas, and given us a report regarding our former Branch Office in Manila.

We desire to re-open a service office there just as soon as this is permitted and becomes possible. Now and up-to-date policy records are being prepared for this purpose from the original records here in the Home Office, under the supervision of our Resident Manager and Resident Secretary for the Philippines.

Meanwhile, may we have your correct present mailing address, in order that we may furnish you with information as to the present standing of your policy. Please complete the enclosed forms giving such additional information as you desire and return to us in the self-addressed envelope enclosed for this purpose.

This letter is being mailed to all policyholders in the Philippine Islands to their last known mailing address according to our records. No doubt many of our policyholders have been compelled to move during this past three years and there may have been many changes of address. Consequently, some may not receive their copy of this letter and we would appreciate your help by passing its contents on to any such policyholders with whom you may be acquainted."

But, notwithstanding the cordial terms of the above-quoted letter, clearly intended for the resumption of business relations between the company and its prewar patrons, the attitude of the defendant in this controversy is such that it clearly denies the insured all the rights and benefits to which they are entitled under the policy. An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in this jurisdiction governing life insurance business. We, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

In Musngi v. West Coast (61 Phil. 864), the Supreme Court held that in the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy Exhibit "A" had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise established the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not (Manresa, Commentaries on the Spanish Civil Code, 4th ed., Vol. 8, page 556)

Greatly relied by the defendant to support its contention in this case in the so-called Statham doctrine. In the Statham case (New York Life Insurance Company vs. Statham, 93 U.S. 24 23 L. Ed. 789), the Supreme Court of the United States held that "an action cannot be maintained for the amount assured on a policy of life insurance forfeited by nonpayment of the premium, even though the payment was prevented by the existence of the war." The defendant also cites other decisions rendered in New York Life Insurance Company v. Davies (95 U.S. 425, 24 L. Ed. 453; Worthington v. The Charter Oak Life Insurance Company, 41 Conn. 372, 19 Am. Rep. 495; and Dillard v. The Manhattan Life Insurance Company, 44 Ga. 119, 9 Am. Rep. 167); which cases also followed the doctrine in the Statham case. Defendant-appellant contends that since the promulgation of the decision of the United States Supreme Court in the Statham case, there has been no departure from the rule laid down therein, because it has been followed in other cases. However, in the broad field of American Jurisprudence, contrary authority is found which shows that not all the courts of the United States agree with such ruling. In Manhattan Life Insurance Company vs. Warwick (3 Am. Rep., 218, 220), the Supreme Court of Appeals of Virginia, in holding that the life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war, said the following:

" * * * If the assured was at the place on the day, where and when payment was to be made, and where he had a right to make payment, ready and prepared to make payment, but was prevented by either of the causes mentioned, it would be unreasonable to say that he had incurred for forfeiture. And I think it is equally clear, upon reason and authority, that the company was not thereby released from its obligation to pay the sum assured. It would be a monstrous perversion of law, and repugnant to our very sense of justice, to say that this company, after having received more than half the sum assured, could by this act determine the policy, hold on to the money they had received, and to say to their confiding victim, 'you may whistle to the winds for your merited reward, notwithstanding you relied upon our covenant and good faith to pay it.'

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured."

In this case, the premiums covering the period from the date of the policy up to January 31, 1942, have been paid, and according to the law and the terms of the policy, when the first premium was paid, a full contract of insurance was completed, so that had Maria Labaco died soon after the payment of that first premium and before the next premium became due, the rights of the plaintiff to the sum insured would have become vested, and a full contract of insurance completed. But the events were shaped in a different way. Maria Labaco died after the liberation and during the intervening period, the premiums from February 1, 1942 until her death, were not paid, due, because they could not be paid by reason of the extraordinary circumstances obtaining at that time. But the defendant, clinging stubbornly to the situation thus created thereby, refuses payment of the value of the policy. The Supreme Court of Appeals of Virginia thus said:

" * * * The payment of the first premium covers the whole life-time, and makes a complete vested right to the sum insured, if death takes place before another premium is payable, but if not, it is subject to the payment of further premiums * * *".

* * *

" * * * When the first premium is paid a full contract of insurance is completed, subject to conditions peculiar to that class of contracts. The use of the words condition precedent, Baron Martin, in a certain case (Bradford v. Williams, L.R. 7 Exh. 261), said he thought unfortunate; that 'the real question, apart from all technical expression, is, what in each case in the substance of the contract.' So far as the precedent payment of the premium in arrear is concerned it would, of course, have to be made before recovery. Time, also, is of the essence of the contract, and no fault or neglect of the party could excuse a non-payment; but why should not this, like any other contract, be subject to such qualifications and conditions as the law may impose?" (The Mutual Benefit Life Insurance Co. v. Willyard, 18 A. R. 741, 749-750).

It cannot be denied that, as contended by appellant, prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree, Wharton L. Lex.)

In the light of what has been said in the preceding paragraphs and considering that the ruling laid down in the Statham case has been made by the United States Supreme Court about 75 years ago, during the *horse and buggy* period of the life of the American nation, it cannot be regarded as an over-all principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companion and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; look after and provide for the needs and welfare of the community.

"Since law is defined as the rule of reason applied to existing conditions, as stated supra note 10, and can remain static only as long as the conditions to which it applies remain static, it is a proper province of the law to interpret human relationship, and to modify, enlarge, and develop with changing conditions of human affairs." (52 C.J.S., 1024)

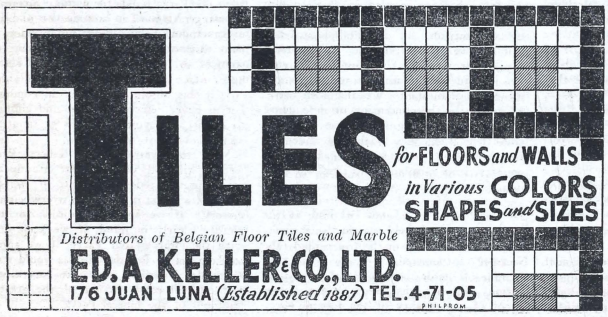
In the present case, the Statham doctrine, while it gives full protection to the rights of the insurer, it disregards and repudiates the rights of the insured. Such law, and the jurisprudence which interprets and applies it to a given case, cannot be good law, because it does not give the interested party, the plaintiff in his case, the equal protection guaranteed him by the Constitution.

Summing up, therefore, all that has just been said, we do not hesitate to hold that after a thorough consideration of all the angles of this controversy, the events that took place in these Islands as a result of the last war, undeniably constitute *force majeure*, which resulted in mutual disability on the part of the insured to pay the premiums due after February 1, 1942, and on the part of the insurance company to receive such premiums. In defining fortuitous event, Article 1105 of the Civil Code says—"Outside of the cases mentioned in the law and of those in which obligation so declares, no one shall be responsible for events which could not be foreseen, or which having been foreseen were unavoidable."

This situation has brought forth the theory of suspension of the contract of insurance as against that of cancellation of the policy, advocated by the insurance company on the strength of the rules laid down in the Statham case. The theory of suspension was for the first time discussed when the peace terms were being debated in Versailles, to end the First World War. The idea has since gained many supporters; even some life insurance companies adhered to the idea and showed their readiness to abandon the theory of cancellation of the policy. In this connection, Mr. Sidney A. Diamond, special assistant to the Attorney-General of the United States, in an article entitled "The Effect of war on pre-existing contracts involving enemy nationals," published in 53 Yale Law Journal 700, made this significant comment:

"*Contracts suspended.* Contracts held suspended, rather than terminated, by the outbreak of war also fall into groups. The most familiar type is the contract of life insurance. Although there are indications to the contrary, *the overwhelming weight* of authority refuses to treat a life insurance contract as dissolved by war. The rationale is that the contracts are not commercial in nature and require communication between the parties only for payment of premiums, an obligation which can be suspended *until after the war* without serious consequences to either side." (Rejoinder to Appellee's Reply Memorandum, by Ramires & Ortigas, Amici Curiae, p. 59)

Premised on the foregoing, which renders it unnecessary to discuss herein the other points of secondary importance raised by appellant, I hereby fully concur in the main decision rendered in this case.



"It is not he who never fails in his life that is a success; but it is he who rises every time he fails."