

H. L. KRIEDT, PLAINTIFF AND APPELLANT, VS. E. C. MCCULLOUGH & CO., DEFENDANT AND APPELLEE.*G.R. No. 11362. January 24, 1918*

Ponente: STREET, J.

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By contract effective from August 1, 1912, the corporate firm of E. C. McCullough & Co., of the first part, employed four individuals, of whom H. L. Kriedt was one, to operate a printing plant owned by the company and conducted by it in connection with a mercantile establishment in the city of Manila. The contract provided that the printing business in question should be conducted under the supervision of E. C. McCullough & Co., and it was contemplated that the contract should continue in force for the term of five years. However, there was a provision in the contract to the effect that it should terminate in case the printing plant should be destroyed by fire. The event thus provided for actually occurred, as the printing plant was soon burned. The corporation then liquidated its accounts with the four individuals, parties of the second part; and their relations with E. C. McCullough & Co. under this contract were thereby terminated. Upon May 2, 1913, the contract in question was renewed between E. C. McCullough & Co. and H. L. Kriedt alone. The terms of this contract were the same as those of the former contract, the only difference being that the operation of the printing plant was by the latter contract confided to a single individual instead of to four as under the first contract.

The contract last above mentioned continued in force for something less than one year, as upon April 1, 1914, the parties agreed to dissolve relations and proceeded to settle their accounts accordingly. A disagreement thereupon developed between them as to the proper interpretation to be given to a certain provision in the contract by which Kriedt was to receive a share in the proceeds of the business, in addition to the salary of P175 per month stipulated in the contract.

The provision in question was to the effect that Kriedt should receive the one-fourth part of all the net proceeds of the printing business, after deducting all overhead and other expenses, including the salary which was to be paid to him; and "furthermore, after deducting ten per cent (10%) of the gross receipts of said printing business, said ten per cent (10%) to belong to the party of the first part." Kriedt contended that the settlement proposed by McCullough & Co. was incorrect, and that he should be allowed the sum of P3,971.58 more than was conceded to be due by McCullough & Co. The result of the disagreement was that this action was instituted by the plaintiff in the Court of First Instance of the city of Manila on September 10, 1914, to recover of the defendant McCullough & Co. the said sum of P3,971.58. From a judgment of the Court of First Instance, in favor of the defendant, the plaintiff has appealed.

The controversy is over the meaning of the term "gross receipts," as used in the contract from which we have already quoted; but the point of contention cannot be understood until an explanation is given of the manner in which the printing department is managed in connection with the wholesale mercantile department of the defendant company. It appears that in the conduct of the wholesale and retail business of the defendant company large supplies of stationery and other forms of printed matter are from time to time required for the trade; and as

the printing plant was primarily established by McCullough & Co. with a view to its own necessities, it was but natural that all the printing work required in every part of the company's business should be done in the printing plant. It results that by far the greater part of the work done by the printing plant is in fact done upon orders from other branches of the company's business. It is true that at the time of the occurrences which gave rise to this action the printing plant was also accustomed to do work upon orders obtained from the public generally, but this work was much less in quantity and value than that done for different departments of the company.

As to the arrangement under which work required by the company was done, it appears that as printing work was needed for the company's business the paper or other necessary material was sent in from the wholesale department to the printing department. There the necessary printing work and other finishing processes were accomplished by the printing department, and the finished product was then sent out by the printing department to the other proper department or branch of the house. When the materials were sent in to the printing department, as above stated, the cost of the material was charged to the printing department, and when the finished product was sent out, the printing department charged back not only the amount representing the value of the work done upon the material but also the amount which had been charged against the printing department at the time when the materials had been brought in. The explanation given of this practice by McCullough, the president of the defendant company, and the largest stockholder therein is as follows:

"The printing department and the wholesale department are, so far as the books and so far as the departments are concerned, two, separate and different. * * * Now, the wholesale department is the owner of this paper; it is bought and paid for by them; therefore, they furnish it to the printing department for the purpose of executing such work as they might require. But there are so many opportunities for theft and irregularities in the passing of the paper between the two departments that, in order to keep track of it between the wholesale and printing departments it is charged to the printing department, just as material, in order that it might be known how much paper went to the printing department and how much came back. * * *"

And again the same witness says:

"The only object of billing it to the printing department at all was just for the purpose of preventing stealing; we might just as well have taken a memorandum receipt as far as all the difference it makes is concerned."

As will be seen the gross receipts of the printing department, as shown upon its books, were swelled by the sums credited as the original value of paper when the finished product was returned to the wholesale department of the other branch of the house. The plaintiff insists that the inclusion of such items in the gross receipts of the printing department is improper; and in fact if they are excluded in the settlement, the amount to be deducted as the ten per cent belonging to the house will be considerably decreased and the plaintiff's share in the profits will be correspondingly increased by the amount claimed in the complaint.

At first view there appears to be much force in the plaintiff's contention. The charging and crediting of the value of the material in transactions between the two departments was a mere device to keep track of the material, and a memorandum receipt, as McCullough admits, would have answered the purpose just as well. It appears highly unreasonable to admit that the gross receipts in such a contract as that now before us can be swelled as an incident of the mere process of trundling bales of paper into the printing department and then out again in a changed form; and if the question had arisen under circumstances different from those disclosed in this case we would doubtless be able to reach a conclusion upon this point favorable to the plaintiff. But for reasons to be stated we think that the plaintiff was bound by the practice which had been adopted by the house and by the interpretation which the house had placed upon the term "gross receipts" in this contract.

It will be observed, in the first place, that by the contract itself the printing business was to be conducted under the

supervision of McCullough & Co. The practice in respect to dealings between the two departments, to which exception is now taken, had been established before these contracts were made; and that practice had been given effect under the first contract, which had been made between McCullough & Co. and the four original contractors of whom Kriedt was one. Kriedt had operated with his fellow-contractors under that agreement and knew how the business of the printing department was conducted. At the time he signed the contract which is the subject of this controversy he must have known that McCullough & Co. interpreted the clause in question with reference to their own business practices and their own system of bookkeeping. If Kriedt had wished to raise a question about the meaning of the term "gross receipts" the proper time to have done so was when the contract was signed. Instead of this he made no complaint and for a considerable period of time acquiesced in the interpretation which was placed on the contract by the other party. In fact it was only when he was getting ready to leave that the question was first brought up.

Under the circumstances we think it entirely clear that the plaintiff was bound by the interpretation which the house placed upon the term "gross receipt" in the contract in question and that he in fact by his acquiescence adopted that interpretation as his own. The clause of the contract now under consideration is ambiguous, since the term "gross receipts" is not therein defined. It results that the construction made by one of the parties and acquiesced in by the other is here entitled to great weight. Acts performed by the parties to a contract subsequently to its creation are always admissible in evidence upon the question of its meaning as being their own contemporaneous interpretation of its terms.

It is but fair to observe that the evidence of record in this case discloses that McCullough & Co. in fact paid to Kriedt by way of additional compensation, or gratuities, considerable sums of money, in addition to his salary; and it is obvious that however much Kriedt may have been disappointed in the operation of the profit-sharing clause of the contract, he has no ground to complain of mistreatment in other respects.

The record discloses an additional reason why the appellant is now in no position effectively to attack the judgment rendered against him in the Court of First Instance, which is this: In the course of the proceedings in that court a referee was appointed with the consent of both parties, as contemplated in section 135 of the Code of Civil Procedure ; and the referee recommended that the plaintiff's claim be rejected on the ground, among others, that the parties had for a considerable period of time adopted the interpretation which the defendant corporation had placed upon the clause in question. The report of the referee was adopted by the Court of First Instance and was made the basis of its judgment.

Under section 140 of the Code of Civil Procedure it is made the duty of the court to render judgment in accordance with the record, as though the facts had been found by the judge himself, unless the court shall for cause shown set aside the report or order it to be recommitted to the referee for further findings. In the case at bar the attorney for the plaintiff filed no written exceptions to the report and only opposed the confirmation of the report orally and in a general way, without specifying any particular defects in the report. The most specific objection made appears to have been based on the assertion that the referee had not received all the evidence pertinent to the case and for that reason had not made an adequate examination of the questions involved.

General objections of this character are insufficient and show no cause why a court should refuse to confirm the report of a referee. Section 140 of the Code of Civil Procedure must be interpreted as placing upon the litigant parties the duty of discovering and exhibiting to the court the reasons, if any there be, why the report should not be confirmed; and it is not ordinarily incumbent upon the court to discover the errors that may lurk therein. The duty which the law imposes upon the court is to render judgment in accordance with the report; and this will ordinarily be done unless the party aggrieved shall, in a manner conformable with proper practice, demonstrate the existence of error in the report. It is an elementary rule of procedure that the exceptions to the referee's report

should specifically point out the error, or errors relied upon by the party excepting. When the report comes up for confirmation, the court cannot be expected to rehear the case upon the entire record, but will review only so much as may be drawn in question by proper exceptions. The rule that exceptions should be specific must, however, be fairly applied; and it is enough if the issue, or point, intended to be raised by the exception is presented with reasonable certainty and precision. An exception is good if it points out the finding or conclusion which the party excepting seeks to reverse.

When a referee is appointed he becomes for the time being an accredited agent and an officer of the court, and the reference is clearly a judicial proceeding. What the referee does while acting within the scope of his official duty is, therefore, in the contemplation of law, done by the court itself. Hence his conclusions must be assumed to be correct until error is properly shown. Each step in the progress of a cause should go some way toward the solution of the problem, or problems, therein presented. It follows that when the referee has examined the evidence and reached his conclusions of fact and law, those conclusions have a presumption in their favor, both of law and of reason. It would be impossible to administer justice on any other theory than that as facts are found and determined in accordance with the proper procedure of the court they must be assumed to be true until the contrary is shown.

What has been said is sufficient to dispose of the issues of this case; but we consider it advisable to add to this opinion a few observations relative to the practice to be followed in dealing with errors in a referee's report. Our Code of Civil Procedure contains no rules for the guidance of the courts in this matter, and the manner in which the case before us was presented in the Court of First Instance would seem to indicate that the proper practice in cases of this kind is not generally understood.

Prejudicial errors or defects in the proceedings incident to a reference, or contained in the report itself as it is finally filed in the clerk's office, may be of various kinds. There may be some irregularity in the taking of proof, or in the hearing, the effect of which is to deprive a litigant of the privilege of duly presenting the facts; or the referee may make a mistake in his findings of fact, or may proceed upon some erroneous principle in reaching his conclusions.

When a mistake or error can be pointed out in the report itself or in any document properly before the referee, the party aggrieved should resort to the use of exceptions. If, on the other hand, the irregularity or error is not thus apparent from the record, the aggrieved party should file a petition or make a motion that the cause be recommitted to the referee with directions, or that the court itself should correct the error. Exceptions are intended to answer a purpose analogous to the function served by assignments of error in appellate procedure; while the motion to recommit seeks to procure a rehearing before the referee upon matters not considered by him.

The proper time for filing exceptions is after the report has been brought in by the referee and filed in the clerk's office; and of course it is too late to file exceptions when the report has been adopted by the court and made the foundation of its judgment, unless for good reason the court should, in conformity with the principles governing its practice, vacate the judgment and permit the exceptions to be filed. In the equity practice of the Federal Courts of the United States the parties are allowed one month from the filing of a report by a master in chancery to make exceptions thereto. In a jurisdiction like this where no special rule has been promulgated it must be understood that the parties shall have a reasonable time within which to file their exceptions after receiving notice that the report has been brought in and it is the duty of the Courts of First Instance so to adjust their proceedings in these matters that a reasonable opportunity may be given the litigant parties to file such exceptions to the report as they deem proper. It is evident that in the absence of a special rule of court fixing the period within which the exceptions may be filed, a party may file his exceptions at any time before the report has been acted upon by the court.

After exceptions have been filed, or a reasonable period of time has elapsed without exceptions being taken, the cause is ready to be considered by the court, in order that judgment may be rendered thereon as contemplated in section 140 of the Code of Civil Procedure. At this hearing the court will dispose of the exceptions and enter judgment in the cause or make such other order as the situation requires.

The weight which should be conceded to the referee's findings of fact will necessarily depend largely on the peculiar conditions of each case; and it would seem advisable to leave the courts free to deal with each case in the light of certain general principles of jurisprudence familiar to all. The circumstance that the referee may have been present at the examination of the witnesses and may thus have, had the opportunity of observing their demeanor upon the stand naturally adds strength to his conclusions upon a controverted question of fact. However, his conclusions, even upon such a matter, should be set aside if, upon a careful review, it appears to be at variance with the substantial preponderance of the evidence. An examination of the decisions of American courts touching the weight to be attributed to the findings of a referee (or the master in a court of equity) reveals the existence of an extensive literature upon this subject, and it would seem that the courts have been somewhat prone to enunciate special rules in connection therewith. But after all is said, this appears to be true, namely, that the courts of whatever degree are always inclined to sustain findings when they appear to be right, and to set them aside when they appear to be wrong. Language imputing great weight to the findings of the referee is often used by a court to silence a noisy litigant who does not appear to have substantial justice on his side; while, on the other hand, if the findings are shown to be wrong, such great weight is not attributed to them. No decision has come under our observation in which a court has refused to correct a serious error in the findings of a referee, when it has found one, provided an exception has been properly taken, and the record is otherwise in a condition to permit of it.

As already stated, exceptions are not designed to reach any other errors than such as inhere in the report or are apparent upon the face of the report or from an examination of the accompanying proofs. It follows that for any latent irregularity, defect, or mistake, such as only becomes obvious from an examination of facts outside of the record, the party aggrieved should resort to a motion to correct or recommit the report. If, for instance, a referee takes an account without notice to one of the parties, or refuses to examine a material and competent witness, or rejects proper evidence and excludes it from the record, or commits any other error in the course of the reference that cannot be remedied by exception, the party prejudiced by such action may bring the matter before the court upon motion, supported by a sufficient affidavit, and the error will either be corrected by the court itself or the report recommitted, as the exigency of the situation may require. If a party desires to introduce new evidence, he should file a special affidavit showing the exact tenor of such evidence and its materiality, and explaining why he failed to introduce it before the referee. A reference will not be recommitted to enable a party to introduce evidence that he might have introduced, in the exercise of ordinary diligence, upon the original reference; but of course in acting upon these matters the court should exercise a proper discretion.

There being no error in the judgment of the court below prejudicial to the plaintiff, the same is accordingly affirmed with costs. So ordered.

Arellano, C. J., Torres, Johnson, Araullo, Malcolm, and Avanceña, JJ., concur.

Carson, J., dissents.

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