

NAZARIO A. SANTOS, PLAINTIFF AND APPELLEE, VS. PABLO DE GUZMAN AND JOSE H. MARTINEZ, DEFENDANTS AND APPELLANTS.*G.R. No. 21113. January 23, 1924*

Ponente: MALCOLM, J.

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This action has for its objects to obtain the liquidation and dissolution of the partnership alleged to have been formed by the plaintiff Nazario A. Santos and the defendants Pablo de Guzman and Jose H. Martinez. The principal question is whether or not a partnership contract was entered into by the plaintiff and the defendants. But a resolution of the appeal, as will soon appear, depends mainly on the force and effect which we give to the report of the referee.

Turning to the bill of exceptions, the following incidents in the proceedings are noted: The original complaint was filed by plaintiff Santos in the Court of First Instance of Manila on September 11, 1919. It asked for judgment as indicated in the beginning of this decision. Defendant De Guzman answered in time and also set up a cross-complaint and counterclaim against the plaintiff for the sum of P4,000. With the conformity of the parties, Judge of First Instance Simplicio del Rosario ordered the action transferred to Mr. Ricardo Summers, clerk of the Court of First Instance of Manila, as referee. After defendant Jose H. Martinez was made a party, trial was had before the referee.

A reading of the report of Referee Summers discloses that all the facts presented were given careful attention and that they were stated in a most comprehensive manner in the report made by the referee. Said report was dated January 19, 1923, but whether the parties were notified of its presentation cannot be ascertained from the record. At any rate, the report was submitted to the trial judge who, on February 17, 1923, rendered judgment accepting in its entirety the relations of fact and conclusions of law formulated by the referee, concluding as follows:

"Wherefore, it is declared that a partnership was formed between the plaintiff Nazario A. Santos and the defendants Pablo de Guzman and Jose H. Martinez in the manner and for the purposes alleged in the complaint; that said partnership was in operation from February 1, 1917, to the middle of September, 1919; that the profits of said partnership should be divided equally between Pablo de Guzman, Jose H. Martinez and Nazario A. Santos; that a general liquidation of the business of said partnership should be made; that said liquidation must include the period from February 1, 1917, to the time when said business ceased in 1919; and that said liquidation must include all the profits pertaining to said partnership whether cash or other kind of property.

"As to the counterclaim set up in the answer by the defendant Pablo de Guzman concerning the sum of P4,000 to which, it is alleged, a certain fund called by the partners 'reserve fund' amounted, which fund is alleged by the plaintiff to have been invested in transactions of the partnership (p. 39, T. S. N., session of June 18th) and by the defendant to have been taken by plaintiff; as said amount or fund is necessarily to be included in the liquidation of the partnership to be made, it is not necessary to make any finding inasmuch as said liquidation will evidently and manifestly show how said fund is to be dealt with.

"As to the indemnity for damages claimed by the plaintiff, it is also denied, his alleged ground therefor not having been established."

The five errors assigned by defendants-appellants assail the findings of fact as made by the referee and confirmed by the trial judge. We may say generally with regard to these assignments that we have read all of the evidence of record and find abundant proof to support the facts as they were found in the lower court. But without stressing overly much the merits of the case, another road must be followed which leads to the same goal.

The local law on the subject of references is found in sections 135 to 140, inclusive, of the Code of Civil Procedure. The proper procedure to be followed in dealing with a referee's report was pointed out in the decision of this court in the case of *Kriedt vs. E. C. McCullough & Co.* ([1918], 37 Phil., 474). It was there said: "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." And in explanation thereof, observations were included in the decision relative to the practice to be followed in dealing with errors in a referee's report. Possibly because the procedure thus outlined was cast in general and suggestive language by the use of the word "should," or for other reasons, a number of instances have come to our notice where parties have failed to follow the procedure outlined in the decision in *Kriedt vs. E. C. McCullough & Co.*, supra. (See also *Tan Diangseng Tan Siu Pic vs. Echaz Tan Siuco* [1906], 5 Phil., 516.)

By way of emphasis, we now desire to add that if a party desires to challenge the findings of a referee, he must do so by timely and specific exceptions to the referee's report. If he fails to make such exceptions and the report is confirmed by the trial judge, he is bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom. Questions relating to the report of a referee can be reviewed only where the record discloses the exceptions taken thereto.

Since, in the case at bar, appellants' failed to except to any part of the report of the referee, and since the report has been adopted by the lower court, we treat the findings of fact, which under other conditions would not be absolutely conclusive, under existing conditions, as unassailable.

For two reasons therefore, on the merits and on the procedural law, we cannot do otherwise than conform to the judgment of the trial court.

Judgment affirmed with costs against. the appellants. So ordered.

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

Judgment affirmed.

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