

**JOSE ORNUM AND EMERENCIANA ORNUM, PETITIONERS, VS.
MARIANO LASALA ET AL RESPONDENTS.***G.R. No. 47823. July 16, 1943*

Ponente: PARAS, J.

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The following facts are practically admitted in the pleadings and briefs of the parties: The respondents (plaintiffs below) are natives of Taal, Batangas, and resided therein or in Manila. The petitioners (defendants below) are also natives of Taal, but resided in the barrio of Tan-agan, municipality of Tablas, province of Romblon. In 1908 Pedro Lasala, father of the respondents, and Emerenciano Ornum formed a partnership, whereby the former, as capitalist, delivered the sum of P1,000 to the latter who, as industrial partner, was to conduct a business at his place of residence in Romblon. In 1912, when the assets of the partnership consisted of outstanding accounts and old stock of merchandise, Emerenciano Ornum, following the wishes of his wife, asked for the dissolution of the partnership. At the instance of Pedro Lasala, Emerenciano Ornum looked for some one who could take his place and he suggested the names of the petitioners who accordingly became the new partners. Upon joining the business, the petitioners contributed P505.54 as their capital, with the result that in the new partnership Pedro Lasala had a capital of P1,000, appraised value of the assets of the former partnership plus the said P505.54 invested by the petitioners who, as industrial partners, were to run the business in Romblon. After the death of Pedro Lasala, his children (the respondents) succeeded to all his rights and interest in the partnership. The partners never knew each other personally. No formal partnership agreement was ever executed. The petitioners, as managing partners, were to receive one-half of the net gains, and the other half was to be divided between them and the Lasala group in proportion to the capital put in by each group. During the course of the business, profits were declared and divided, but the partners were given the election, as evidenced by the statements of accounts referred to in the decision of the Court of Appeals, to invest their respective shares in such profits as additional capital. The petitioners accordingly let a greater part of their profits as additional investment in the partnership. After twenty years the business had grown to such an "extent that its total Value, including profits, amounted to P44,618.67. Statements of accounts were periodically prepared by the petitioners and sent to the respondents who invariably did not make any objection thereto. Before the last statement of accounts was made, the respondents had received P5,387.29 by way of profits. The last and final statement of accounts, dated May 27, 1932, and prepared by the petitioners after the respondents had announced their desire to dissolve the partnership, reads as follows:

Ganancia total dede el ultimo balance hasta le fecha

P575.45

"Participacion del capital de los her manos Lasala en la ganancia

P55.39

"Participacion del capital de Jose Ornum en la ganacia

125.79

"Participacion de Jose Ornum como socio industrial

143.86

"Participacion del capital de Emerenciana Ornum en la ganacia

106.54

"Participacion de Emerenciana Ornum como socia industrial

143.86

"Siendo este el balance final lo siguiente es la cantidad que debe corresponder a cada socio:

"Capital de los hermanos Lasala segun el ultimo balance

P4,393.08

"Ganancia de este capital

55.39

P4,448.47

"Pero se debe deducir la cantidad tomada por los hermanos Lasala

1,730.00

"Cantidad neta que debe corresponder a los hermanos Lasala

P2,718.47

"Capital de Jose Ornum segun el ultimo balance

P9,975.13

"Ganancia de este capital

125.79

"Participacion de Jose Ornum como socio industrial

143.86

P10,244.65

"Pero se debe deducir la cantidad tomada por Jose Ornum

1,650.00

"Cantidad neta que debe corresponder a Jose Ornum

P8,594.65

"Capital de Emerenciana Ornum segun el ultimo balance

P8,448.00

"Ganacia de este capital

106.54

"Participacion de Emerenciana Ornum como socia industrial

143.86

P8,698.40

"Pero se debe deducir la cantidad tomada por Emerenciana Ornum

1,850.00

'Cantidad neta que debe corresponder a Emerenciana Ornum

P6,848.40"

After the receipt of the foregoing statement of accounts, Father Mariano Lasala, spokesman for the respondents, wrote the following letter to the Petitioners on July 19, 1932:

"Ya te manifestamos francamente aqui, como consocio, y te autorizamos tanrfaien para que lo repitas a tu hermana Mering, viuda, que el motivo porque recogemos el capital y utilida des de nuestra sociedad en todo nuestro negocio que esta al cuidado vosotros dos, es que tenemos un grande compromiso que casi no podemos evitarlo. Por esto volvemos a rogarles que por cualquier medio antes de terminar este mes de julio, 1932, nosotros esperamos vuestra consideracion. Gracias.

"En cuanto hayamos recibido esto, entonces firmaremos el balance que habeis hecho alli, cuya copia has dejado aqui.

"Recuerdos a todos alli y mandar."

Pursuant to the request contained in this letter, the petitioners remitted and paid to the respondents the total amount corresponding to them under the above-quoted statement of accounts which, however, was not signed by the latter. Thereafter the complaint in this case was filed by the respondents, praying for an accounting and final liquidation of the assets of the partnership. The Court of First Instance of Manila held that the last and final statement of accounts prepared by the petitioners was tacitly approved and accepted by the respondents who, by virtue of the above-quoted letter of Father Mariano Lasala, lost their right to a further accounting from the moment they received and accepted their shares as itemized in said statement. This judgment was reversed by the Court of Appeals principally on the ground that, as the final statement of accounts remains unsigned by the respondents, the same stands disapproved. The decision appealed by the petitioners thus said:

"To support a plea of a stated account so as to conclude the parties in relation to all dealings between them, the accounting must be shown to have been final. (1 Cyc. 366.) All the first nine statements which the defendants sent the plaintiffs were partial settlements, while the last, although intended to be final, has not been signed."

We hold that the last and final statement of accounts hereinabove quoted, had been approved by the respondents. This approval resulted, by virtue of the letter of Father Mariano Lasala of July 19, 1932, quoted in part in the

appealed decision, from the failure of the respondents to object to the statement and from their promise to sign the same as soon as they received their shares as shown in said statement. After such shares had been paid by the petitioners and accepted by the respondents without any reservation, the approval of the statement of accounts was virtually confirmed and its signing thereby became a mere formality to be complied with by the respondents exclusively. Their refusal to sign, after receiving their shares, amounted to a waiver of that formality in favor of the petitioners who had already performed their obligation.

This approval precludes any right on the part of the respondents to a further liquidation, unless the latter can show that there was fraud, deceit, error or mistake in said approval. (*Pastor vs. Nicasio*, 6 Phil., 152; *Aldecoa & Co., vs. Warner, Barnes & Co.*, 16 Phil., 423; *Gonzalez vs. Harty*, 32 Phil., 328.) The Court of Appeals did not make any finding that there was fraud, and on the matter of error or mistake it merely said:

"The question then is, have mistakes been committed in the statements sent appellants? Not only do plaintiffs so allege, and not only does the evidence so tend to prove, but the charge is seconded by the defendants themselves when in their counterclaims they said:

""(a) Que recientemente se ha hecho una acabada revision de las cuentas y libros del negocio, y, se ha deseubierto que los demandados cometieron un error al hacer las entregas de las varias cantidades en efectivo a los demandantes, entregando en total mayor cantidades a la que teman derecho estos por su participacipn y ganancias en dicho negocio;

""(b) Que el exceso entregado a los demandantes, asciende a la suma de quinientos setenta y cinco pesos con doce centimos (P575.12), y que los demandados reclaman ahora de aquellos su devolucion o pago en lapresente contrademanda""

In our opinion, the pronouncement that the evidence tends to prove that there were mistakes in the petitioners' statements of accounts, without specifying the mistakes, merely intimates a suspicion and is not such a positive and unmistakable finding of fact (Cf. *Concepcion vs. People*, G. R. No. 48169, promulgated December 28, 1942) as to justify a revision, especially because the Court of Appeals has relied on the bare allegations of the parties. Even admitting that, as alleged by the petitioners in their counterclaim, they overpaid the respondents in the sum of P575.12, this error is essentially fatal to the latter's theory that they are entitled to more than what the statement of accounts shows, and is therefore not the kind of error that calls for another accounting which will serve the purpose of the respondent's suit. Moreover, as the petitioners did not appeal from the decision of the Court of First Instance of Manila, they have abandoned such allegation in the Court of Appeals.

If the liquidation is ordered in the absence of any particular error, found as a fact, simply because no damage will be suffered by the petitioners in case the latter's final statement of accounts proves to be correct, we shall be assuming a fundamentally inconsistent position. If there is no mistake, the only reason for a new accounting disappears. The petitioners may not be prejudiced in the sense that they will be required to pay anything to the respondents, but they will have to go to the trouble of itemizing accounts covering a period of twenty years mostly from memory, it appearing that no regular books of accounts were kept. Stated more emphatically, they will be told to do what seems to be hardly possible. When it is borne in mind that this case has been pending for nearly nine years and that, if another accounting is ordered, a costly action or proceeding may arise which may not be disposed of within a similar period, it is not improbable that the intended relief may in fact be the respondents' funeral.

We are reversing the appealed decision on the legal ground that the petitioners' final statement of accounts had been approved by the respondents and no justifiable reason (fraud, deceit, error or mistake) has been positively and unmistakably found by the Court of Appeals so as to warrant the liquidation sought by the respondents. In justice to the petitioners, however, we may add that, considering that they ran the business of the partnership for

about twenty years at a place far from the residence of the respondents and without the latter's intervention; that the partners did not even know each other personally; that no formal partnership agreement was entered into which bound the petitioners under specific conditions; that the petitioners could have easily and freely alleged that the business became a partial, or even a total, loss for any plausible reason which they could have concocted, it appearing that the partnership engaged in such uncertain ventures as agriculture, cattle raising, and operation of rice mill, and the petitioners did not keep any regular books of accounts; that the petitioners were still frank enough to disclose that the original capital of P1,505.54 amounted, as of the date of the dissolution of the partnership, to P44,618.67; and that the respondents had received a total of P8,105.76 out of their capital of P1,000, without any effort on their part, we are reluctant even to make the conjecture that the petitioners had ever intended to, or actually did, take undue advantage of the absence and confidence of the respondents. Indeed, we feel justified in stating that the petitioners have here given a remarkable demonstration of the legendary honesty, good faith and industry with which the natives of Taal pursue business arrangements similar to the partnership in question, and we would hate, in the absence of any sufficient reason, to let such a beautiful legend have a distasteful ending.

The appealed decision is hereby reversed and the petitioners (defendants below) absolved from the complaint of the respondents (plaintiffs below), with costs against the latter.

Yulo, C. J., and Hontiveros, J., concur.

CONCURRING

OZAETA, J.,

Let us record here the mental processes by which I arrived at my vote for the reversal of the judgment of the Court of Appeals.

After the respondents had announced their desire to withdraw from the "partnership," the petitioners rendered a final statement of account dated May 27, 1932, which is set forth in the opinion written by Mr. Justice Paras and which was accepted as correct by the respondents, who then asked for the payment to them in cash of their participation in the capital and profits of the business as shown by said statement. It must be borne in mind that the assets reflected in said statement of account did not consist of cash but of merchandise, credits, land, large cattle, and a rice mill. To gratify the respondents' wish the petitioners raised money and paid respondents' total participation. After their interest and participation in the business had thus been liquidated, the respondents, apparently believing that they might be entitled to more money than they had accepted and received, sought to have the books and records examined by a representative of theirs. The petitioners regarded such conduct of the respondents not only as a violation of their tacit agreement to consider the "partnership" dissolved upon the payment of respondents' participation therein but as an unwarranted reflection upon their honesty and good faith. Hence they refused to allow the examination or proposed reliquidation.

On November 20, 1933, the complaint in this case was filed by the respondents, praying for an accounting and final liquidation of the assets of the "partnership." The trial lasted off and on from September 26, 1934, to March 23, 1937, involving a transcript of 815 pages of oral testimony. The Court of First Instance of Manila rendered its decision on December 29, 1937, in which it found that there was no proof whatever to the effect that the defendants acted in bad faith in the preparation of the periodical statements of account by not including merchandise or money to defraud the plaintiffs. Judge Rovira analyzed the main aspect of the case as follows:

"Pasando ahora a considerar la cuestion de las cuentas los demandantes sostienen que los demandados deben

rendir nueva cuenta porque, segun ellos, como socios industrias y capitalistas, no podian incluir su participacion como capital, pues por este procedimiento los demandantes fueron absorbidos y los demandados obtuvieron mayor participacion en las ganancias.

"Resulta de las pruebas que los demandados, al hacer, cada balance separaban la ganancia del capital, asi como la ganancia que correspondia a los socios industriales, y despues la participacion proporcional que corresponde al capital y la que les correspondia como socios industriales, aumentando asi su capital en la sociedad. Esto mismo hacian en relacion con las ganancias del capital de Pedro Lasala.

"El primer balance sometido por los demandados a los demandantes, despues de la muerte de Pedro Lasala esta fechado el 28 de diciembre de 1913, los demandantes no protestaron contra este balance; al contrario, recibieron su participacion de P103, y no existe prueba alguna que desvirtue la anotacion que aparece a pagina 4 del Exhibit S, de que Jose Ornum entrego esta cantidad a los demandantes.

"En los años subsiguientes, o sea en los años de 1914, 1915, 1917, 1919, 1920, 1922, 1924 y 1929 y ultimamente el año de 1932, cuando los demandados han estado sometiendo los balances del negocio.

"Contra ninguno de los balances presentados por los demandados se ha presentado protesta alguna; al contrario, en 1929, cuando los demandantes deseaban separarse del negocio, Dionisia Lasala escribio la carta Exhibit 1, en donde, entre otras, se hizo constar que el capital 'esta en buenas manos produce ganancias y ademas estoy contenta de los balances que me habeis estado enviando.'

"Por otra parte, el mismo Mariano Lasala, en cart de fecha 19 de julio de 1932, Exhibit 2, dijo que 'en cuanto hayamos recibido todo (refiriendose indudablemente al capital y ganancia) entonees firmaremos el balance que habeis hecho alli, cuya copia has dejado aqui.'

"Si los demandantes no estaban conformes con el procedimiento adoptado por los demandados, ¿por que no protestaron desde el principio? Cuando los demandados les enviaban los balance, era la oportunidad para ellos de expresar sus quejas o sus agravios, pero se callaron; expresaron su conformidad, y ahora vienen a pedir otra nueva liquidacion.

"Es mas; segun las pruebas despues del balance del año de 1932, los demandantes han enviado cartas y telegramas pidiendo su participacion de acuerdo con dicho balance. Cayetano Montengro, por ordenes del demandado Jose Ornum, entrego a los demandantes las respectivas cantidades que les correspondian, sin ninguna protesta. Segun el Exhibit 3, de fecha 20 de octubre de 1932, Dionisia Lasala recibio de Jose Ornum P1,600, de los cuales P1,000 habian sido recibidos por dicha Dionisia Lasala en 2 de junio del mismo año. Tambien Rafaela Lasala, por el Exhibit 6, recibio de Jose Ornum, por conducto de Cipriano Montenegro, la cantidad de P368.47, y, segun la nota que aparece al pie de dicho Exhibit 6, el resto de la deuda de P400 fue recibido por Mariano Lasala segun los Exhibits 12, 13 y 14. Todo lo cual demuestra que los demandantes estaban conformes con los balances presentados, incluyendo el ultimo balance del año de 1932.

"El Juzgado es de opinion de que no precede ordenar a los demandados que presenten una nueva liquidacion. Ademas, segun las pruebas los demandados no llevaban otros libros fuera de los Exhibits S y T. Es verdad que la ley requiere que los demandados lleven algunos libros, y el contador de los demandantes declaro que, por la falta de dichos libros, no ha podido verificar un balance mas corecto, pues solo tuvo por base de la liquidation presentada los libros presentados como exhibits S y T. Las deficiencias notadas y las conclusiones de dicho contador no pueden, en manera alguna, cambiar el aspecto de la cuestion.

"No existe prueba alguna de que los demandados llevaban otros libros. Lo unico que se proba es que segun la ley los demandados debian haber llevado otros libros, pero no se ha probado que estos libros, pero no se ha probado que estos en alguna ocasion hayan existido y que dichos demandados, para defraudar a los demandantes, no han querido presentar dichos libros. Tampoco existe prueba alguna de que, en la preparation de los balances que obran en los Exhibits S y T, los demandados procedieron de mala fe, no incluyendo

mercaderias o dinero para defraudar a los demandantes. Bajo estas circunstancias, no podemos dar al Exhibit U de los demandantes, que se relaciona con los Exhibits S y T, el valor que pretenden los demandantes por cuanto resultan incompletos los datos sobre los cuales descansa dicho report.

"Es principio generalmente reconocido que la ley no puede amparar al que duerne, y siendo esto asi, no acertamos a comprender por que desde el año de 1913 en que se presento el primer balance, despues de la muerte de Pedro Lasala y los sucesivos balances hasta 1929 y, ultimamente, el correspondiente al año de 1932, solamente el 20 de noviembre de 1933 se inicia la presente accion para exigir una rendicion de cuentas a los demandados en esta causa. Con una contabilidad tan denciente, de una parte, de otra, con balances anteriores ya aceptados, y , finalment, con el recibo de cantidades resultantes del ultimo balance de 1932 de parte de los demandados, no vemos camino legal y expedito para sostener la accion de los demandantes en el presente asunto, y somos, por tanto, de opinion de que los demandados, despues de presentada su liquidation de 1932 y entregados a los demandantes sus saldos, segun queda dicho, no pueden ahora ser obligados a una rendition de cuentas.

"Por todas las consideraciones expuestas, declaramos que no precede ordenar que los demandados rindan nuevas cuentas y, en su consecuencia, se absuelve a los demandados de la demanda, sin especial pronunciamiento en cuanto a las costas."

The Court of Appeals reversed that judgment and ordered the defendants "to render an accounting of all the assets of the partnership and of all its profits and losses from the time of its organization to the date of plaintiffs withdrawal.

This is an unfortunate and unnecessary lawsuit, engendered by suspicion and mis understanding on the part of the respondents and abetted by pride and amor propio on the part of their opponents. It is unfortunate from two viewpoints—sentimental and material: (1) Friendship that for twenty years united the parties for the sake of Business and of their common birthplace has become but a poignant memory to them, it having been dethroned from their hearts and replaced by ill will and lacerated sentiments. (2) The fruit of more than twenty years of toil that should entitle the petitioners to enjoy competence and comfort in their declining years is being squandered by them in their defense of this protracted litigation. This lawsuit is unnecessary because once the smoke of passion and misunderstanding has vanished, the parties would or should see that there is no real cause for quarrel between them.

The judgment of the trial court which would, once and for all, put an end to this unnecessary lawsuit, achieves practical justice; that of the Court of Appeals which would prolong it, pursues theoretical justice. Our own verdict is not difficult to make Let us pour oil on troubled water.

First. The suspicion entertained by the respondents against the good faith of their erstwhile friends, the petitioners, finds expression in the allegation of paragraph 8 of their complaint:

"8. That the said defendants, in order to defraud and deprive the plaintiffs of their just share in the business, have caused properties, which rightfully belong to the business of which they were and are the managers, to be individual names, by virtue of the which said defendants now appear to be the sole and exclusive owners of said properties and their fruits."

Such suspicion is unjustified. There is nothing irregular or improper in the act of the petitioners of putting the properties and the business in their own names. The association of the parties was not a general copartnership under articles 125-144 of the Code of Commerce but one of joint accounts governed by articles 239-243 of the same Code. The respondents acquired an interest in the transactions of the petitioners by contributing thereto merchandise and accounts receivable valued at P1,000. (Article 239.) No formality was observed in the formation of the association. (Article 240.) No commercial name common to all the participants was adopted, and the

petitioners transacted and managed the business in their own individual names and under their individual liability. (Article 241.) The respondents had no reason to expect the petitioners to put the business and properties in the name of the "partnership" because they knew that from the beginning no firm name had been adopted for it. The respondents were silent partners.

Second. An apparent misunderstanding on the part of the respondents is reflected in the allegation of paragraph 10 of their complaint:

"10. That the defendants have fraudulently withdrawn from the funds of the said partnership large amounts of money, which they applied for their personal use and benefit to which withdrawals they were not legally entitled, thereby impairing seriously the capital of the partnership and hampering its orderly and efficient administration."

Such unkind words uttered against long-trusted business associates can only be attributed to a serious misunderstanding in view of the fact that neither the trial court nor the Court of Appeals found any indicia of bad faith on the part of the petitioners. The aspersion was wholly unwarranted.

Third. The respondents have apparently been misled by the public accountant ther employed, who advanced a different method of computing the participations of the parties in the profits. As noted by the trial court in its decision and as urged by the respondents in their brief, they claim that the petitioners, "as industrial and capitalist partners, could not include their participation in the profits as capital because by such procedure the plaintiffs [respondents] were absorbed and the defendants [petitioners] obtained greater participation in the profits. Following the hint of their "expert" accountant, the respondents contend in their brief that the original profit-sharing agreement of 50 per cent to the industrial partner and the balance to be distributed among the partners in proportion to their capital, namely 66.67 per cent to the respondents for their capital of P1,000 and 33.33 per cent to the petitioners for their capital of P500, should be maintained notwithstanding the increase of the capital of the petitioners through the accumulation of unwithdrawn profits. This contention does not impress us as being either fair or sound. Throughout the twenty years of their joint-account association, the parties have by common consent followed the same method of distributing the profits in accordance with the capital of each. Each party was permitted to put in as much capital as he wanted and to share in the profits accordingly. Up to the time the respondents received the last centavo of their participation in the capital and profits of the business, they had tacitly and repeatedly approved the same procedure of dividing the profits. They must have found it to be fair, as indeed it was, for why should not one's capital? It is true that the original of respondents and petitioners were P1,000 and P505.54, respectively, or, roughly, a proportion of two to one. But why should that proportion of two to one be maintained after the capital of the petitioners has increased through the accumulation of unwithdrawn profits? In any event, as the trial court held, the respondents are now estopped from insisting on a fixed and invariable two-to-one division of the profits regardless of the amount of the capital of each of the parties in a given year.

Fourth. If, as we have seen, there is no reason for a new division of the profits as contended by the respondents, it seems to us that no useful purpose would be attained by remanding the case to the trial court with an order to the petitioners to render a new account. As we have noted, respondents' allegation of fraud and bad faith on the part of the petitioners in the preparation of the statements of account submitted by them to the respondents and tacitly approved by the latter, was not found proven by the Court of Appeals. All that the Court of Appeals intimated was that the plaintiffs alleged that mistakes had been committed and that the evidence so tended to prove. But the mistakes pointed out by the respondents consisted principally in the mode or procedure of dividing the profits and in petitioners' having caused the properties "to be inscribed in their own joint names or in their individual names"; and as we have seen, such alleged mistakes are unfounded.

During the trial of this case, which off and on lasted nearly three years, the petitioners and their witnesses, who had to come from the Province of Romblon to Manila, presented the only books they kept of the business (Exhibits S and T), which respondents' expert accountant audited and found to be incorrect as to the mode of dividing the profits. Of course, the auditor of the respondents also demanded vouchers, ledgers, and other books. But the business having been run for twenty years without employing a bookkeeper, it seems too late now to do so after the "partnership" has been dissolved.

In the absence of any finding of fraud or prejudicial error committed by the petitioners in the rendition of their accounts, which were tacitly, approved by the respondents, who asked for and received their participation in accordance with the liquidation, we think it would serve no useful purpose but would only occasion unnecessary trouble and expense to both parties to require further accounting and remand the case to the trial court for further proceedings. Nine years of litigation in three instances should be enough to afford the parties in this case their day in court. It would be scandalous to prolong it under the circumstances. After all, it's only a tempest in a teapot.

DISSENTING

MORAN, J.,

The decision of the majority, ultimately analyzed, suggests the query: May this Court, in an appeal by certiorari from a judgment of the Court of Appeals, make its own findings of fact in disregard of the findings of the latter Court and reverse the appealed judgment accordingly? The rule is settled that this Court cannot, and that, on the contrary, in every such appeal "everything necessary to uphold the jurisdiction" of the Court of Appeals "and the correctness of its proceeding and decision will be presumed, in the absence of a clear showing to the contrary". (4 C. J., 1082.)

The essential facts of the case, as found by the Court of Appeals, are as follows: Petitioners and respondents were members of a commercial partnership, the former being the managers of the business and the latter having "no hand whatsoever in the conduct of it." From December 23, 1913 to May 27, 1932, petitioners had made ten balance statements and sent copies thereof to respondents together with the latter's shares in the profits. No question arose between the parties as to the correctness of these balance statements until the tenth statement was rendered. Before the tenth statement was made, respondents had made known to petitioners their desire to withdraw from the partnership and had requested for the remittance of their capital and profits. On July 9, 1932, after the tenth statement was received by them, respondents reiterated their desire for withdrawal, adding that "en cuanto hayamos recibido todo, entonces firmaremos el balance que habeis hecho alli, cuya copia has dejado aqui." The amount which purported to be their entire capital and profits was received by respondents but they refused to sign the statement of final liquidation because they had an agreement with petitioners to the effect that before they sign it, "they, would send some one to Tablas to examine the partnership books, but that afterwards the defendants (petitioners here) declined to allow plaintiffs (respondents here) representative to see said books And of Appeals concluded, that there were mistakes in petitioners' statements of account sent to respondents, as corroborated by petitioners themselves in their counter-claims.

Upon these facts, the majority reversed the decision of the Court of Appeals and sustained the petitioners' plea of concluded accounting upon the following grounds:

- That as respondents have promised to sign the final statement of account upon their receipt of their entire capital and profits, their acceptance without reservation of said capital and profits, constitutes virtual approval of the final liquidation and their signing the same becomes a mere formality to be subsequently complied with

and which was waived by their refusal to do so;

- That while 're-examination of accounts is authorized upon proof of fraud or gross error, in the instant case, the Court's finding as to mistake is not positive and its pronouncement a definite conclusion sufficient to justify a further accounting";
- That as this case has been pending for nearly nine years, "if another accounting is ordered, a costly action or proceeding may arise which may not be disposed of within a similar period," and that accordingly "it is not improbable that the intended relief may prove to be the respondents' funeral"; and
- That, in a nutshell, the circumstances of the case attest remarkably to the honesty of petitioners in their dealings with respondents.

I propose to take up these grounds *se riatis*.

"An account stated" has been defined as "an agreement that the balance and all items of an account representing the previous monetary transaction of the parties thereto are correct, together with the promise to pay such balance." (1 C. J. S., p. 693.) In the present case, was there such an agreement? Respondents, it is true, had promised to sign the balance statement upon receiving their capital and share in the profits, but they actually had never signed such statement and a promise to sign is not equivalent to signing. The fact that respondents have never signed the statement only indicates that they could not agree with petitioners thereon. And if there is no agreement there is no account stated. Indeed, it has been held that "in stating an account, as in making any other agreement, the minds of the parties must meet." (1 C. J., pp. 684-685.) Here, there has been no meeting of minds as to the true balance.

Besides, respondents' promise to sign the statement of final liquidation upon receipt of their entire capital and profits was not absolute. It was subject to the agreement with petitioners that before respondents "sign the final settlement they would send some one to Tablas to examine the partnership books. This is a fact supported by proof expressly mentioned by the Court of Appeal which the majority has utterly ignored and if considered would have been decidedly fatal to the conclusion it has reached. "As respondents "to whom the accounts were rendered had no knowledge of all the circumstances relating to the business and had to rely upon the good faith of their partners" (words of the Court of Appeals), the examination of the partnership books becomes to them a matter of capital importance which, for purposes of final liquidation, cannot lightly be dismissed. When petitioners declined to allow respondents' representative to see said books in violation of the agreement, respondents must be deemed legally exempted from their promise and are, therefore, entirely justified in refusing to sign the final settlement.

Even if it be conceded that the final settlement had been acquiesced in by the respondents, a reopening of accounts, as the majority itself admits, is authorized upon a showing of fraud or mistake. The rule is that "an account stated being only prima facie evidence of its correctness, does not work an estoppel and is subject to impeachment for fraud or mistake; and if fraud or mistake exists it is immaterial that the parties agreed that the account shall not be opened for error after a fixed period that it was signed by the party charged, or that evidence of indebtedness, receipt in full, or releases were given." (1 C. J. S., pp. 728-729.) In the instant case, does there exist evidence of such mistake? The Court of Appeals, putting up the same question, categorically stated:

"The question then is, have mistakes been committed in the statements sent appellants? Not only do plaintiffs so allege, and not only does the evidence so tend to prove, but the charge is seconded by the defendants themselves when in their counterclaims they said:

""(a) Que recientemente se ha hecho una acabada revision de las cuentas y libros del negocio, y, se ha descubierto que los demandados dos cometieron un error al hacer las entregas de las varias cantidades en efectivo a los demandados a la que tenian derecho estos por su participacion y ganancias en dicho negocio.""

But the majority averred that this does not constitute a positive finding of mistake and that "the pronouncement of the Court of Appeals that the evidence tends to prove that there was a mistake in the statement of accounts is not a definite conclusion in a sense sufficient to justify a further accounting." As a general rule, when the grant or refusal of a legal relief sought in this Court depends upon the existence of a finding of fact by the Court of Appeals, the test for the grant or refusal of such relief is not whether its finding is positive or not, but whether such finding actually exists and is sufficient for the purpose. The reason is, in the language of the majority itself, "we are not here authorized to review the evidence and determine the existence" of any matter of fact. In the closely analogous case of *Zubiri vs. Quijano*, G. R. No. 48696, November 28, 1942, this Court held:

"Under the second assignment, the petitioner alleges that the Court of Appeals erred in not finding that she had paid to the respondent usurious interest amounting (as found by the Court of First Instance of Mindoro) to P950. The pronouncements of the Court of Appeal to wit 'pero rechazamos la pretension de la demandada, aceptada por el Tribunal a quo, de que el demandante percibio intereses usurarios' and 'con respecto a la alegacion sobre usura, la misma nor parece insostentible', being conclusions of fact, must be accepted for the purposes of the present appeal, since we cannot make contrary findings without reexamining the evidence, and we are not authorized to do this."

In the instant case, the Court of Appeals made a general conclusion of fact as to the existence of mistake and, on the authority of the case cited, this general conclusion must be deemed sufficient. When the Court of Appeals went further and fortified its general conclusion of fact by a specific instance of such mistake, are we to reject the finding as less sufficient because more specific?

But it is said that the Court of Appeals merely stated that 'the evidence so tend use, however, of the verb tend in no way imports ex necessitate rei indefiniteness or ambiguity of the evidence upon which the Court of Appeals rested its conclusion of mistake. Doubtless, the verb was used advisely because, the action being merely to compel accounting, the Court cannot and is not actually passing finally upon the correctness of the accounts. Its pronouncement as to mistake cannot accordingly be couched with finality, much as the majority wished it to be, but should merely be worded as to indicate that a ground exists for the accounting prayed for.

And as to the specific mistake found by the Court of Appeals to have been admitted in petitioners' counterclaim, the majority argues that such mistake consists in overpayment to respondents of what is due to them, and, therefore, the error was not to their prejudice. This argument entirely misses the point. Whether the mistake be favorable or unfavorable to respondents, the fact remains that a mistake exists and this is sufficient to authorize a reopening even of a concluded account. Indeed, if the mistake be one prejudicial to the interest of the party who made the statement, it is all the worse. When a person makes a mistake against himself when he is presumed to have taken special care for the protection of his interest, he may in all probability be presumed to have made more mistakes against others whose interests he is less concerned with, if at all.

But assuming that the Court's finding as to mistake is insufficient, is the majority justified in closing the case upon that ground? To foreclose, accounting, under the circumstances, is to make, in effect, a contrary finding that there is no mistake and to presume that petitioners' accounting is correct. This is both unauthorized and faulty. Unauthorized, because when the finding of the Court of Appeals is here deemed insufficient, the remedy is not for this Court to make contrary findings to supply the deficiency by remanding the case to the Court of Appeals for further findings, as we did in *Ofiana vs. People* (40 Off. Gaz., 2293), and *Bautista vs. Victoriano*, G. R. No. 46879, April 3, 1940. Faulty, because when the majority presumes that petitioners' accounting is correct, it takes for granted precisely the basic issue of the case. And the presumption becomes the more faulty when we consider that it militates against positive findings of mistake by the Court of Appeals. The existence of such findings, whether or not they are insufficient, constitutes a solemn warning against reliance upon a mere presumption,

specially if there exists a contrary presumption to the effect that everything necessary to uphold the correctness of the decision appealed from shall be deemed present in the record, in the absence of a clear showing to the contrary. And here, there is absolutely no showing that the supposedly insufficient findings are erroneous.

The majority expresses the fear that, as this case has been pending for nearly nine years, if another accounting is ordered a costly action or proceeding may arise which may not be disposed of within a similar period. I cannot understand how this Court would haphazardly close a case only upon bare fear or delay. What the law abhors is unnecessary delay in the administration of justice. Delays necessary for the ascertainment of truth are welcomed. Hurried justice is certainly not to be less deplored than delayed justice. Dispatch in the disposal of cases is, indeed, in every system of law, a beautiful ideal to be devoutly wished for; but, like every other ideal, its beauty or utility ends with its abuse. We owe it to the paramount interests of justice that in every litigation we are called upon to decide, we should strive thoroughly and judiciously to ascertain the truth and not to hurriedly pull down the curtain on a case until we are reasonably certain that all efforts to that end have been exhausted.

The majority adds that if the accounting prayed for be permitted, it is not improbable that the intended relief may prove to be the respondents' funeral. I take this statement to mean that the majority hazards the conjecture that if a new accounting is ordered, respondents will probably come out to be less entitled than what they have received. I do not think this Court should, 'in propriety, hazard any guess on the probable outcome of any suit specially where the guess is made on the basis of factual evidence about which it cannot speak with authority. And, neither is the guess good, for if we remand the case to the Court of Appeals for more specific findings, the likelihood is that more specific mistakes will be shown as to render it inevitable for this Court to order a new accounting. This probability is founded not on mere conjecture but on the presumption of law above mentioned that the conclusions of fact of the Court of Appeals are in accordance with the evidence. Furthermore, respondents in asking for an accounting are of course ready and willing to abide by any result, whether it be favorable or unfavorable to them. There being just grounds therefor, it should not be denied by this Court because such accounting may be disastrous to respondents.

The majority concluded its decision thus:

"Considering that they (petitioners) ran the business of the partnership for about twenty years at a place far from the residence of the respondents and without the latter's intervention; that the partners did not even know each other personally; that no formal partnership petitioners under specific conditions; that the petitioners could have easily and freely alleged that the business became a partial, or even a total, loss for any plausible reason which they could have concocted, it appearing that the partnership engaged in such uncertain ventures as agriculture, cattle raising, and operation of rice mill, and the petitioners did not keep any regular books of accounts; that the petitioners were still frank enough to disclose that the original capital of P1,505.54 amounted, as of the date of the dissolution of the partnership, to P44,618.67; and that the respondents had received a total of P8,105.76 out of their capital of P1,000, without any effort on their part, we are reluctant even to make the conjecture that the petitioners had ever intended to, or actually did, take undue advantage of the absence and confidence of the respondents. Indeed, we feel justified in stating that the petitioners have here given a remarkable demonstration of the legendary honesty, good faith and industry arrangements similar to the partnership in question, and we would hate in the absence of any sufficient reason to let such a beautiful legend have a distasteful ending."

Too much, I fear, has here been assumed by the majority. They assumed that the figures cited are correct when they are in question; they assumed that petitioners have not taken advantage of the confidence of the respondents when this yet remains to be seen; they assumed that petitioners' accounting is correct when this is precisely the question between the parties; and, finally, they held that because petitioners did not keep any regular books of account, they should not be compelled to an accounting because they may not be able to do so, which is in effect

offering a premium for negligence. This mode of ratiocination is, to my regret, without authority and without parallel. True, petitioners ran the business of the partnership without intervention whatever on the part of respondents who relied entirely on the good faith of the former. This indicates that the between the parties is manifestly fiduciary and it has been held that "when a fiduciary relationship exists between the parties stating an account it will be more readily reopened than when the parties had been dealing with each other at arm's length. (1 L. J. S., p. 729.)

I wish it could share with the majority in the abundance of their admiration for what they call the "legendary honesty, good faith and industry with which the natives of Taal pursue business arrangements similar to the partnership in question and likewise share with their desire not to let such a beautiful legend have a distasteful ending." But I feel loath to pose a set of men as paragons of virtue and otherwise reflect, without cause or reason, upon the integrity of the rest of their kind. I feel even more loath to rest the judgment of this Court upon a mere legend, no matter how beautiful that legend may be, and would prefer to adjudicate upon what the evidence and the law alone may direct. Facts, not fancy, are still the chosen tools with which the courts perform their solemn function of dispensing justice to litigants.

After this dissent had been written, Brother Justice Ozaeta gave out his concurring opinion predicated fundamentally upon facts not appearing in the findings of the Court of Appeals. We have held time and again that in appeals by certiorari from the Court of Appeals and in cases like the present one, only questions of law may be considered, questions of fact requiring examination of evidence being without our jurisdiction. (Rule 46, sec. 2; *Guico vs. Mayuga*, 63 Phil., 328; *Mateo vs. Collector of Customs*, 63 Phil., 470; *Mamuyac vs. Abena*, 38 Off. Gaz., 84; *Meneses vs. Com. of the Philippines*, 40 Off. Gaz., 7th Sup. 41; *Diaz vs. People*, 40 Off. Gaz., 3d Sup. 22.) I abstain, therefore, from dealing on matters that are forbidden to us by our own Rules. Doubtless, the concurring opinion is impelled by the commendable desire to do "practical," not "theoretical," justice. Regrettably, however, we cannot fulfill this end at the risk of transcending the limits of this Court's jurisdiction. Beyond that jurisdiction all our pronouncements have no judicial value for they may be regarded as made out of court and do not constitute due process of law. And, what is worse is that the concurring opinion takes the decision of the Court of First Instance wholly or in part as a basis for reversing the decision of the Court of Appeals. This mode of procedure is unprecedented and amazing. The law considers the Court of Appeals as superior to a Court of First Instance specially on matters of fact, and yet the reverse is implied in the concurring opinion.

I vote, therefore, to affirm the judgment of the Court of Appeals.

BOCOBO and IMPERIAL, JJ., also dissenting:

We concur in the foregoing dissenting opinion of Justice Moran.

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