

**A.V. MANS, PLAINTIFF AND APPELLANT, VS. C.F. GARRY ET AL.,
DEFENDANTS. THE PHILIPPINE TRADING CO., INTERVENER AND
APPELLEE.**

G.R. No. 6517. September 01, 1911

Ponente: CARSON, J.

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CARSON, J.:

Appellant in this case duly excepted to the judgment in the court below and moved for a new trial on the ground that the judgment entered therein is contrary to the weight of the evidence. This motion having been overruled, he filed his bill of exceptions, wherein he prayed that the evidence submitted at the trial be taken as a part thereof. This bill of exceptions was approved and duly certified by the trial judge.

It now appears that the record thus certified is defective, in that it contains only the documentary evidence submitted at the trial and does not contain the certified transcript of the stenographer's notes of the oral evidence taken at the trial in the court below.

Appellant has thus far failed to perfect the record, although his attention has been called thereto, and indeed it would appear from his assignment of errors that he has abandoned his contention in the court below based upon his allegation that the evidence of record does not sustain the judgment to which he excepted.

The rule of practice adopted in this court in a case wherein a motion has been filed in the court below on the ground that the evidence taken therein is not sufficient to sustain the judgment, and wherein it appears that all of the material evidence has not been brought here on appeal is: First, to grant a new trial on the motion of the appellant if it appears that the defect in the record is due to circumstances over which the appellant had no control, and that he has exercised due diligence in an effort to cure the defect: second, to decline to grant a new trial where it appears that the appellant (whose duty it is to bring the perfected record here on appeal), has willfully or negligently failed to include in the record all or any part of the evidence submitted at the trial; and to proceed to review the record brought here on appeal, wholly disregarding the evidence taken in the court below, precisely as we would in an appeal in a case wherein no motion for a new trial is submitted in the court below. In such cases this court examines only the assignments of error of law, and limits itself to an examination of the pleadings and the findings of fact by the trial court, seeking to determine whether the judgment rendered by the trial court is or is not in accord with the facts proven at the trial.

In the case at bar, therefore, appellant having failed to bring all the evidence here with his bill of exceptions, and his failure so to do appearing to be intentional, he is not entitled to a new trial, and, under the rules, the appellee is entitled to have the proceedings on appeal go forward to judgment without delay, as indicated above.

Counsel for appellee, however, suggests that while the evidence taken at the trial fully sustains the judgment of the court below, it is possible that the formal findings of fact by the trial judge are so deficient or so imperfectly stated that the judgment can not be sustained on them alone. He fears, therefore, that if the court proceeds to judgment on appeal without having all the evidence before it, the judgment of the lower court may be reversed

and the case sent back for a new trial merely because of defects in the findings of fact by the trial judge, although the judgment was, in fact, fully sustained by the evidence taken at the trial. He insists that no such result would be possible had defendant brought the evidence here in accordance with his announced intention in the court below, and in accordance with the express terms of the bill of exceptions as certified and approved by the trial court. In support of his contention, counsel correctly says, that had appellant perfected his bill of exceptions by including therein all the evidence, then it would be the duty of this court, in the event that it found that the findings of the court below were insufficient or incorrect, to examine the evidence of record, and to decline to reverse the judgment on that ground, if the evidence itself discloses facts sufficient to sustain the judgment.

It seems clear that under the circumstances of this case the appellee should not be forced to risk a reversal and the delays and expense incident to a new trial, upon the mere question of the formal sufficiency of the findings of fact by the trial judge. In the court below appellee was satisfied with the judgment rendered in his favor. The appellant, by undertaking to make the evidence a part of the bill of exceptions, lulled him into a sense of false security as to the possibility of a reversal on the mere ground that the findings of fact by the trial court were defective or insufficient. Appellant having announced his intention to bring the evidence here on appeal, appellee knew that this court, if the evidence were in fact before it, would not reverse on that ground if the evidence itself disclosed facts sufficient to sustain the judgment. It is now too late for appellee to secure any amendments or corrections of errors or omissions in the formal findings of fact by the trial court unless this court will make such corrections, and this court can not make such corrections unless the evidence is brought here for review.

Manifestly, the appellant should not be permitted to profit by a surprise sprung on the appellee in this fashion. If his failure to bring the evidence here in accordance with his announced intention is the result of negligence, he should not be permitted to profit unfairly thereby, and much less should he profit unfairly by a deliberate and willful change of his announced intention to bring the evidence here on appeal. Of course, if the appellant desires so to do, he should be permitted to waive his contention in the court below that the evidence of record does not sustain the judgment, and in that event, so far as he is concerned, it would be a wholly useless procedure to go to the expense of bringing the evidence to this court. But appellant's change of ground of his appeal for his own convenience and to save himself the expense and trouble involved in making the evidence a part of the record, should not be permitted to have the effect of forcing the appellee to go to judgment on appeal without having the evidence taken at the trial brought before this court, in a case where the evidence would sustain the judgment of the court below although the findings of fact by the trial judge are so defective or erroneous that it could not be sustained on them alone. This, because in such a case, appellee may fairly claim, that but for the appellant's misleading conduct in undertaking originally to bring the evidence here as a part of the record to be submitted on appeal, he, the appellee, would himself have moved the court below to so amend its findings of fact as to make them conform with the evidence, and to render them sufficient in form and substance to sustain the judgment.

It may, perhaps, be suggested, that appellee can always protect himself from danger of reversals on the ground that the findings of fact by the trial judge do not sustain the judgment, by always insisting on a full and correct statement of such findings, and in the event that the judge fails or declines to make such corrections as may be necessary, forthwith entering an appeal on that ground. But in the vast majority of judgments entered in the court below, such a practice would place a useless and vexatious burden on successful litigants in the courts below. It is, in general, a matter of no importance to a successful litigant whether the reasons on which a judgment is based are sound or not, provided the judgment itself is in his favor and satisfactorily disposes of the issues involved. If no appeal is taken, or if an appeal is taken and the appellant makes the evidence a part of the record, there can rarely be any purpose in a vexatious proceeding by a successful litigant to compel the trial judge who has rendered judgment in his favor to modify or change the reasons on which he based his decision. Practically, the only cases where it can become a matter of importance to the successful litigant in the court below to secure the amendment

or correction of an imperfect finding of facts by the trial judge, are those wherein the unsuccessful litigant appeals from the judgment, and without bringing the evidence to this court, seeks a reversal on the ground that the facts thus found do not sustain the judgment. If the appellant, while the case is still in the court below, rests his appeal on this ground, the appellee can there and then, if he so desires, move the trial court to amend its defective and insufficient findings; and if he fails so to do he must take the consequences. But if while the case is still pending in the court below, the appellant announces his intention to bring the evidence here on appeal, and after wards willfully or negligently declines to do so, thus misleading the appellee and inducing him to refrain from any effort to have defective and insufficient findings amended until it is too late to do so in the court below, we think that the appellee should be given an opportunity to have such amendments made in this court.

We are of opinion, however, that in such cases, the appellant having expressly or impliedly waived his right to have the evidence reviewed by this court, it then becomes the duty of the appellee to bring the evidence here, if he desires to have it reviewed for his benefit; that is to say, to prevent a reversal on the ground that the findings of fact by the trial judge are defective or insufficient, when a review of the evidence itself would develop facts sufficient to sustain the judgment.

It will be seen that the practice thus indicated in no wise affects the general rule of procedure where appellant fails or declines to bring to this court all of the evidence taken in the court below, except only to this extent, that in such cases, if the appellee brings the evidence here, we will not reverse the judgment entered in the court below on the sole ground of the deficiency of the findings of fact by the trial judge, if the evidence itself discloses facts sufficient to sustain the judgment.

Pursuant to the rule of practice herein indicated, the following order will be entered herein:

Appellant having failed to include all the evidence taken in the court below in the record brought here on appeal, and not having offered any excuse for his failure so to do, the proceedings on his appeal will go forward to judgment as though no motion for a new trial, on the ground that the weight of the evidence does not support the judgment, had been filed in the court below; unless within twenty days the appellee perfects the record by including therein the missing testimony, in which event, the judgment of the trial court will not be reversed on the mere ground of the insufficiency or incorrectness of the findings of fact by the trial judge, if the evidence thus perfected discloses facts sufficient to sustain it. It is so ordered.

Torres, Mapa, Johnson, and Moreland, JJ., concur.

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