

JOSE SANTIAGO ET AL., PLAINTIFFS AND APPELLANTS, VS. MATEO ANTONIO FELIX, DEFENDANT AND APPELLEE.*G.R. No. 7344. February 27, 1913*

Ponente: TORRES, J.

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This is an appeal raised, through a bill of exceptions, from the judgment of May 26, 1911, whereby the Honorable A. S. Crossfield, judge, dismissed the complaint, without finding as to costs.

By a writing of May 5, 1908, counsel for the plaintiffs filed a complaint in the Court of First Instance of this city, alleging that prior to the month of April, 1905, a company known as La Protectora was organized in Tondo by and between Tomas Cabangis, Antonio Valencia, Juan Lazaro, and the plaintiffs Simplicio Santos, Modesto Santos, Francisco Icasiano, Perfecto Santisteban, the defendant Mateo Antonio Felix, and Jose Flor Mata, for the purpose of conducting on a large scale the business of the purchase and sale of fresh fish in the sitio of Bancusay; that the cashier of the company was Antonio Felix until the 22d of April of that year, when the company was dissolved, the stockholders Cabangis, Valencia, and Lazaro withdrawing their capital and there remaining only Simplicio Santos, Modesto Santos, Francisco Icasiano, Perfecto Santisteban, and Mateo Antonio Felix, who continued the business by organizing another new company, the cashier of which, from the 24th of April, was the aforesaid Mateo Antonio Felix, which joint stock company, established in Tondo, a district of this city, for the purpose of buying and selling fresh fish in Bancusay and receiving consignments of fresh fish for sale, was called La Consignataria and was organized on October 8, 1905, with a capital of P4,400 distributed in the following manner: P900 among Simplicio Santos, Modesto Santos, and Mateo A. Felix; Jose Flor Mata, P500; Perfecto Santisteban, P500; Andrea A. Felix, P500; Francisco Icasiano, P500; Trinidad Icasiano, P500; Alipio Icasiano, P500; and Ambrosio Delgado, P500; that, on the very day of the organization of the company La Consignataria, all the members thereof by unanimous vote confirmed Mateo A. Felix in the position of cashier, who, after accepting the same, continued to discharge the duties of his office by paying for the fish purchased and after its sale securing through collectors and on receipt the value of the fish sold, by disbursing on the days designated the weekly shares of the profits among the members of the company, by paying the. expenses of the concern and by advancing money, when required, to the company's customers and members; that, on January 17, 1907, on account of increase of business, the company then in existence was changed into one of joint stock, under the name of Los Obreros, and two more members were admitted, Nicolas Gatdula, who brought in no capital whatever, wherefore he was given no share, and Jose Santiago, who brought in P1,000, which change was no hindrance to the increase day by day of the company's business; that, on August 3, 1907, the members requested that the company's accounts be balanced and the cash on hand be counted, which, on being done, showed that during the period comprised between April 24, 1905, and August 3, 1907, the cashier, Mateo A. Felix, according to the receipts issued by him to his collectors, had received from the latter the net sum of P582,488.28, which together with the value of eleven shares of stock representing the sum of P5,400, made an aggregate amount of P587,888.28 as funds' turned into the company; that, upon balancing the payments made and expenses incurred, with the debts of the members and others, it was found that they amounted to the net sum of P561,621.42, which

result did not satisfy the plaintiffs, because of the lack of vouchers; that, upon deducting the said expenditures of P561,621.42 from the receipts of P587,888.28, there appeared a difference of P26,266.86, which should be the amount of the cash on hand after the balance struck on August 3, 1907; that the plaintiffs, being satisfied with the good results obtained in the business, demanded that the cashier, the defendant Mateo A. Felix, count the cash in his keeping, but that the latter, instead of so doing, turned over to the new cashier, Modesto Santos, the sum of P190.60" as the cash on hand and a receipt for a loan of P400 made to Jose Flor Mata; that when the plaintiffs demanded an explanation from the said Mateo Felix with respect to the disappearance of the sum of P25,676.26, the net balance obtained by a deduction of the aforesaid sums of P190.60 in cash and P400 given as a loan, the defendant requested that he be allowed a certain period of time for the purpose of checking up his balance sheet or in order to make a new one; that, although this delay and others were allowed the defendant, he did not account for the disappearance of the said funds or capital stock of the company, wherefore it became necessary to appeal to the courts; and that it was the defendant's duty, according to the by laws, to keep the company's funds and count the same every Saturday, which he did not do, although the faithful performance of his duties was guaranteed by a bond, to wit, by a lien on his house, situated at Nos. 131 to 135 Calle Ilaya, Tondo. Therefore, plaintiffs' said counsel asked that judgment be rendered in his clients' behalf ordering the defendant to return to the company the amount misappropriated, P25,676.26, for partition among the members, and that, should he fail so to do, the defendant's said house be sold as well as such other property of his as might be necessary in order to cover the said sum and interest thereon at 10 per cent per annum, as the average income on capital employed in the fish business, from August 3, 1907, until final judgment; and furthermore, that he be sentenced to pay the costs.

The defendant's demurrer to the complaint having been overruled, he made in "his answer a general and specific denial of each and all of the facts alleged in the complaint and of each and all the paragraphs thereof, and, as a special defense, alleged that an employee of the plaintiffs, taking advantage of the defendant's ignorance of bookkeeping and of Spanish, induced him on a certain occasion by surprise and deceit to sign some documents, the scope and meaning of which he could not suspect and which subsequently were invoked as the foundation and grounds for such exorbitant claims as those made in this suit, which documents the defendant would impugn in due season; that, as a counterclaim, he set forth that, for the purpose of furthering with greater interest and zeal the business of the purchase and sale of fish, in which he was a partner with the plaintiffs, he had on several occasions contributed various sums from his own personal funds, and that, as a result of such advances of money, the plaintiffs owed him the sum of P1,769.21; and he prayed for any other relief proper under the law.

Counsel for the plaintiffs, in view of the defendant's aforesaid answer and counterclaim, denied, by a writing of September 15, 1908, each and all of the facts specified in the said counterclaim and alleged in his clients' defense that the defendant, during the time he held the office of cashier of the said company, had never reported at any meeting of the members that he had made any advances of money to the company out of his own private funds. Said counsel therefore argued that the defendant was not entitled to the relief sought by him, and asked that he be sentenced as requested in the complaint.

The case was heard on August 12, 1909, evidence was introduced by both parties, and the court, on October 3, 1910, rendered judgment sentencing the defendant to pay to the plaintiffs the sum of P25,676.26, together with legal interest thereon from the date of the filing of the complaint, and to pay the costs of the trial, and absolving the plaintiffs from the counterclaim made by the defendant.

In virtue of the motion for a rehearing, made by the defendant's counsel, and in spite of the plaintiffs' objections, the court by an order of November 12, 1910, granted a new trial.

The case having been reopened and the evidence requested by the defendant party having been introduced, the court, on May 26, 1911, rendered the judgment aforementioned, exception to which was taken by the plaintiffs'

counsel, who asked for reversal of the said judgment and the holding of a new trial. This motion was overruled by an order of June 10, 1911, with exception thereto by counsel for the plaintiffs, and the proper bill of exceptions having been presented, the same was approved and forwarded to the clerk of this court.

From a careful examination of the record of this case, including the bill of exceptions and the briefs filed by both parties, the first question which stands out before any other for determination by this court is whether, on account of the appellant's having made no assignment whatever of any error the trial judge may have incurred in the judgment appealed from, the court should or should not dismiss the pending appeal which, by reason of such defect, is in fact understood legally to be abandoned, inasmuch as this court cannot review the judgment appealed from, since no error expressly specified by the appellant has been attributed thereto.

The first part of rule 19 of the rules of this Supreme Court is as follows: "Prefixed to the brief of the appellant, but stated separately, shall be an assignment of errors intended to be urged. Each specification of error shall be separately, distinctly, and concisely stated without repetition, and they shall be numbered consecutively."

Rule 20 prescribes: "No error not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and relied upon in the brief."

These provisions of the rules of this court, which are supplementary to the procedural law, have not been observed or complied with by the appellants in their brief, for attached to the end thereof is a sheet whereon appears as the only assignment of error the trial judge has incurred the following:

"The Court of First Instance of this city incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence."

This same statement was made in their written petition to the trial judge for setting aside the judgment and a rehearing in the Court of First Instance; but it is unquestionable that they have not thereby complied with the foregoing provisions of the rules, inasmuch as they have not expressly specified what error the judge incurred by holding in his judgment that the plaintiff appellants have not proved any cause of action against the defendant, wherefore the complaint against the latter had to be dismissed.

It is a rule enunciated in various decisions of this court, and which by its repeated and uniform application has now become a well-established principle, that if in an appeal the appellant fails to make an assignment of the errors which the lower court may have incurred, and merely discusses questions of fact in general, it is not possible for this court to consider or review findings adverse to the appellant, on the ground that they are contrary to law and the weight of the evidence; but the error or errors upon which the judgment appealed from, qualified as illegal and unjust, is based, must be pointed out and specified. (*Enriquez vs. Enriquez*, 8 Phil. Rep., 565; *Capellania de Tambobong vs. Antonio*, 8 Phil. Rep., 683; *Paterno vs. City of Manila*, 17 Phil. Rep., 26.) The same legal doctrine is followed in the courts of the United States of North America, as a general statement that the court erred in rendering judgment in behalf of one of the parties is not sufficient as a basis to enable the Supreme Court to review the judgment appealed from, for the reason that the assignment of errors should specifically set forth those complained of by the appellant. Unless the findings of the court below with respect to the facts alleged and proved at the trial are manifestly contrary to the evidence, the appellate court usually accepts the opinion of the trial judge on the questions of fact and does not reverse the judgment appealed from. Such procedure has become established by repeated decisions of this court.

Although the judgment appealed from must of course be affirmed because of the defect of the appellants' not having presented a statement of errors, still this court proceeded with an examination of the result and merits in the record, for the purpose of ascertaining whether the plaintiffs had or had not succeeded in proving the facts alleged in their complaint and the responsibility attributed to the defendant, Mateo Antonio Felix, because of his

alleged misappropriation of capital and profits belonging to the company, to the grave prejudice of the members thereof, and also whether the defendant was able to justify his procedure and the exceptions which he, also, alleged in his defense.

The plaintiffs, in their endeavor to establish, as it was proper that they should, the misappropriation alleged to have been committed by the defendant as cashier of the company successively denominated La Protectora, La Consignataria, and Los Obreros Pescadores exhibited as proof of their averments and allegations the documents designated as Exhibits A, B, C, and D, pp. 5 to 7, and the testimony of the bookkeeper, Rafael V. Abellana, from all of which, as well as from the various books produced during the hearing of the case, it is concluded that the plaintiffs have not succeeded in proving satisfactorily the facts alleged in the complaint, but, on the contrary, the evidence adduced by the very plaintiffs themselves, taken as a whole, shows that there is a balance of more than P1,000 due the cashier charged with misappropriation.

In the complaint payment is demanded of the sum of P25,676.26, for which it is claimed the defendant, Mateo A. Felix, is liable, with interest thereon at the rate of 10 per cent per annum, and yet in the objection made by means of Exhibit C to the accounts contained in Exhibit B-documentary evidence presented on page 7 by the attorney for the plaintiffs and by one of the latter at the time the bookkeeper Rafael V. Abellana, a witness for the said plaintiffs, was testifying-there appears the statement, under note No. 36 of the said Exhibit C, that, although the defendant was found to owe the considerable sum of more than P32,000, the company claimed only P3,623.14, which was the amount of the deficit shown to exist by the account prepared by the said bookkeeper, who drew up the said Exhibit C.

The record discloses no satisfactory explanation as to why, while the sum of P25,676.26 is demanded in the complaint, the account Exhibit C nevertheless shows a debit balance of P32,189.77, and notwithstanding which it is stated in the note at the end of the same account that the company demands from the defendant as a deficit only the small sum of P3,623.14. If the defendant really owes but this minor sum, it is not understood how the plaintiff members of the company, relying as they must have done upon documentary evidence, should nevertheless have demanded in their complaint the considerable amount of P25,676.26. This disagreement between the complaint and the result derived from the evidence adduced in its support virtually proves that conclusive proof of the facts alleged in the complaint is really lacking in the record for the courts to have sentenced the defendant to the payment of the debt claimed; for if the documentary evidence presented at the trial is insufficient, the oral testimony in the case seems even to have an opposite effect, as does the testimony of the principal witness for the plaintiffs, the company's bookkeeper, in view of the contradictions and divergencies apparent therein.

As a result of a careful study and examination of the accounts, in themselves deficient, jumbled, and confused, which were kept from April 24, 1905, until August 3, 1907, when the defendant ceased to hold his position of cashier of the company, the following: balance sheet has been made:

Proceeds from the sale of fish, from April to May, 1905, according to Nos. 1 and 2 of the account, Exhibit C...

P7,294.64

Proceeds from the sale of fish, from October, 1906, to August 3, 1907, according to No. 3 of the account, Exhibit C.....

606,793.11

Total.....

614,087.95

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Value of the furniture, warehouse, bancas, and amount of taxes, etc., according to Nos. 13 to 25 of Exhibit C.
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1,891.20

Debts of members, admitted in No. 26 of Exhibit G, as recorded in the company's journal and ledger.....

7,784.89

Accounts pending in the hands of the collectors, as shown by the journal and the ledger.....

8,456.48

Payments on consignments, according to item 33 of Exhibit C

10,079.77

Payments made on consignments, according to No. 34 of Exhibit C and the testimony of the bookkeeper, a witness for the plaintiffs, found on pages 18 to 19, 91, 92 of the record oi oral testimony.....

572,598.70

Total amount of the due bills, admitted in Exhibit C, according to Nos. 27 to 81 thereof.....

1,847.21

Cash on hand.....

190.60

Dividends to members of the company, as recorded in the ledger.....

12,441.01

Total

616,289.86

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Debit.....

614,087.95

Credit.....

615,289.86

Balance in favor of the defendant.....

1,201.91

In this balance sheet the capital stock is not included, for whatever the sum brought by each of the members into the common fund, it is certain that, from the time the company began operations, the sums on hand were, without any reservation whatever, invested in the purchase of fish, aside from the amounts employed in furniture, warehouse, boats, and other effects for the use of the company; therefore, in the sum of the proceeds from the sale of fish, the sole business of the company, there is comprised the amount of the capital stock separate from the value of the warehouse, boats, furniture, etc., and consequently in the sum of the proceeds from the business the capital stock is really included, for, were this not so, the latter would be counted twice as a charge against the defendant, unless the amount of the said stock were excluded from the total sum of the proceeds from the sale of fish.

For a like reason, neither would it be just to charge the defendant with the sum of P33,170.95 paid by Perfecto Santisteban in the course of the company's transactions, without crediting the defendant with the same amount, since Santisteban, during the time that he substituted the latter in the position of cashier, must have made such disbursements out of the company funds which the defendant had on hand, for neither Santisteban nor the plaintiffs have proved that the latter made those payments out of his own private funds, while it is to be believed that, considering the nature of the business of the purchase and sale of fish, its operations were conducted by the company's buying the fish for cash from various fishermen and afterwards selling it to others for cash or on credit, in such manner that the proceeds from such sales, collected at the time or later by the collectors from those who took the fish on credit, were immediately employed in the acquisition or purchase of other fish for subsequent resale, and so on each day, so that the amounts gathered and collected from the sales were successively invested in the acquisition and purchase of fish, in order to continue the company's business in the manner stated.

The nature and character of the company concerned in the pending litigation does not appear to have been discussed at the trial; and therefore this decision shall not determine whether it is mercantile or civil.

With respect to the balance of P1,201.91 in favor of the defendant, as disclosed in the balance of accounts hereinbefore given, although it is to be believed that the same was paid by the defendant out of his own private funds, yet, in view of the fact that he kept no cashbook and has not proved that he paid out such amount, the petition in his counterclaim must, also, be denied.

For the foregoing reasons, and the judgment appealed from having been found to be in accord with the law and the evidence, it should be, as it is hereby, affirmed, with the costs in this instance against the plaintiffs.

Arellano, C. J., and Mapa, J., concur.

Moreland and Trent, JJ., concur, on the ground that the appellants failed to make assignment of errors.

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