

SIMON UNGSON, PLAINTIFF AND APPELLANT, VS. MACARIO BASCO AND TRINIDAD ZANDUETA, DEFENDANTS. TRINIDAD ZANDUETA, APPELLEE.

G.R. No. 8813. February 23, 1915

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8813/>

JOHNSON, J.:

This was an action brought in the Court of First Instance of the Province of La Union to recover the possession of a parcel of land containing approximately 5 hectares, which is more particularly described in the second paragraph of the complaint.

To the petition of the plaintiff the defendants filed a general denial.

After hearing the evidence, the Honorable W. E. MacMahon, judge, rendered a decision in which he stated that a preponderance of the proof did not support the plaintiffs claim. The decision of the lower court fails to state any facts whatever upon which his conclusion was based.

From the decision of the lower court the plaintiff appealed to this court and made several assignments of error. The first assignment of error is that the lower court committed an error in not making a statement of facts upon which he based his conclusions. The appellant cites section 133 of the Code of Procedure in Civil Actions and many decisions of this court heretofore rendered, in support of his first assignment of error.

This court has, in many decisions, held that the judges of the Courts of First Instance, by virtue of the provisions of said section 133, are required to make a finding of facts, upon which they base their conclusions. These decisions have been announced and published, not only in the Official Gazette, but in the published reports of the court. Some of them are as follows: *Brag a vs. Millora* (3 Phil. Rep., 458) ; *Enriquez vs. Enriquez* (3 Phil. Rep., 746); *Early vs. SyGiang* (4 Phil. Rep., 727) ; *City of Manila vs. Insular Government* (9 Phil. Rep., 71); *Gavieres vs. Administrators of Pena* (13 Phil. Rep., 449) ; *Aringo vs. Arena* (14 Phil. Rep., 263) ; *Alindogan vs. Insular Government* (15 Phil. Rep., 168) ; *Montelibano vs. Director of Lands* (21 Phil. Rep., 449); *United States vs. Mariano* (27 Phil Rep., 132).

For the reason that the lower court failed to make a finding of facts upon which he based his conclusions, in accordance with section 133 of Act No. 190, it is hereby ordered and decreed that the record be remanded to the lower court, with direction that the judge thereof make a finding of facts based upon the proof already presented and return such finding to this court, together with the record, within a period of thirty days from the receipt of this order; and without any finding as to costs, it is so ordered.

Arellano, C. J., Moreland and Araullo, JJ., concur.

CONCURRING**TORRES, J.,**

I concur, with the observation that the judge should not draw any conclusions from or make any findings upon the evidence adduced.

CONCURRING**CARSON, J.,**

I concur. There seems to me to be but one well-founded objection to the rule of practice laid down in this decision. It may be admitted that if the judge presiding in the court when the record is returned for a finding of facts is not the identical judge who tried the case, the new finding of facts can be of no practical service to this court in its review of the case on appeal. In that event the remission of the record for a finding of facts will prove to have been a vain thing and might well be dispensed with. Upon the return of the record with a finding of facts by a judge other than the judge who tried the case, this court will find itself in precisely the same situation as it was before remanding the record, so far as the performance of its duties as a court of review is concerned.

As a rule, however, this court has no means of knowing whether the judge who presides at the trial of a given case will or will not continue in office until the record is returned for a finding of facts. The presumption is that there will be no change, and the general rule should be predicated upon that presumption.

No harm can result if there should be a change, other than the necessary delay of the proceedings involved in remitting the record. If there be no change, the defect in the record will be cured in the most effective and expeditious manner which (our experience teaches us) can be devised.

In the case at bar there is nothing in the record disclosing that there has been a change of judges in the court below, and for aught we can tell, even if there has been a change, the judge who tried this case may be presiding in the court below when the record is returned in conformity with the directions of this court.

It will be time enough to discuss the utility of findings made by a judge, other than the judge who presided at the trial, when such findings are returned to this court.

DISSENTING**TRENT, J.,**

I dissent. In the majority opinion the court says:

"For the reason that the lower court failed to make a finding of facts upon which he based his conclusions, in accordance with section 133 of Act No. 190, it is hereby ordered and decreed that the record be remanded to the lower court, with direction that the judge thereof make a finding of facts based upon the proof already presented and return such finding to this court, together with the record, within a period of thirty days from the receipt of this order."

Citing "Braga vs. Millora (3 Phil. Rep., 458); Enriquezi vs. Enriquez (3 Phil. Rep., 746); Early vs. Sy-Giang (4 Phil. Rep., 727); City of Manila vs. Insular Government (9 Phil. Rep., 71); Gavieres vs. Administrators of Pena (13 Phil. Rep., 449); Aringo vs. Arena (14 Phil. Rep., 263); Alindogan vs. Insular Government (15 Phil. Rep.,

168); *Montelibano vs. Director of Lands* (21 Phil. Rep., 449) ; *United States vs. Mariano* (27 Phil. Rep., 132)."

The only thing that the judge can do under this order is to make a finding of facts from the record which is being sent to him from this court. He cannot enter a new or different judgment. He must read the record and then say what facts in his opinion are established by the testimony, and then return the record to this court with his findings. Nothing more. Nothing less.

I will now examine the above cited cases for the purpose of ascertaining the rule laid down by this court and the reasons for the same. *Braga vs. Millora* (3 Phil. Rep., 458), was the initial case. No motion for a new trial based upon the ground that the judgment was contrary to the weight of the evidence was made in the lower court. In disposing of the questions raised in this case, the court said:

"The judge in his decision below makes no finding of facts upon any one of the issues presented by the pleadings in this case, * * *.

"* * * The statements of witnesses when reduced to writing, unless the witnesses have been subjected to a severe cross-examination, stand upon equal footing, and apparently are entitled to the same consideration before the appellate court. The trial court sees the witnesses, has an opportunity to hear them and observe their demeanor, and is thereby better able to determine which are truthful and which are not. If the trial court makes no finding of facts, the appellate court will at times be unable to determine what witnesses should be believed and what witnesses should not be believed in case of contradictory testimony.

"* * * Therefore, inasmuch as the trial court has failed to make a finding of the ultimate facts upon which he drew his conclusions in this case, and inasmuch as the facts admitted by the pleadings are contrary to the said conclusions, this cause is hereby remanded to the Court of First Instance of the Province of Zambales, and a new trial is hereby ordered."

In *Enriquez vs. Enriquez* (3 Phil. Rep., 746), where there was likewise no motion for a new trial, the court said:

"* * * Upon the hypothesis that this court might not agree with the trial court as to the sufficiency of the causes upon which he declared that sale to be void, the plaintiffs would be prejudiced without fault attributable to them, because we could not decide the question raised as to the nullity of the power of attorney, the court having failed to make a finding as to the facts proven upon this point.

"* * * The judgment below is therefore set aside, * * * without prejudice to the admission of such additional evidence as the parties may desire to present."

In *Early vs. Sy-Giang* (4 Phil. Rep., 727), the court held that the facts set forth in the trial court's decision were sufficient to justify the conclusions, and affirmed the judgment.

Up to this time the rule had not been sustained in a case where a motion for a new trial was made on the ground that the judgment was against the evidence. In *City of Manila vs. Insular Government* (9 Phil. Rep., 71), from the Land Court, such a motion had been made and it was argued that this court was bound to review the evidence and make its own finding of facts. The court held the rule applicable to such cases notwithstanding, saying:

"Unless the trial court makes some finding of facts upon the testimony taken at the trial, this court can give little practical effect to the provisions of law which require due weight to be given to the fact that the trial judge heard the witnesses testify, and was thus especially qualified to pass upon their credibility and the weight which should be given to their testimony.

"It is true that in cases where the findings of fact appeared to be imperfect or erroneous, and an order denying a motion for a new trial had been duly excepted to, this court has frequently reviewed the testimony of record, made proper findings of fact for itself, and rendered final judgment upon these findings. We think, however,

that a distinction as to procedure should be drawn between such cases and cases wherein no findings whatever have been made, or attempted to be made, by the trial court.

"Without discussing the question whether a motion for a new trial, based on the ground that the findings of fact are plainly and manifestly against the weight of the evidence, can be said to have any meaning or effect where no findings of fact have been made by the trial court, we think that the authority granted to this court, to review the evidence and make such new findings of fact 'as justice and equity may require,' was predicated on a condition of the record wherein the reviewing court has before it not only the testimony of the witnesses but also the findings of fact by the trial judge who heard these witnesses testify.

"If in the opinion of this court the trial judge errs in any of his findings or in his appreciation of the value of the testimony submitted on any point, this court is authorized to make a correct finding and draw the proper conclusion therefrom, but this is a very different proceeding from that involved in a review of all the testimony submitted at the trial, for the purpose of making an entirely new and original finding of facts, without the aid of the previous exercise of the discretion of the trial court as to the various findings, and without any guide as to the views of the trial judge touching the credibility of the various witnesses who appeared before him.

"The final decree entered in this case by the Court of Land Registration is reversed and a new trial ordered, without costs to either party in this instance.

In *Gavieres vs. Administrators of Peña* (13 Phil. Rep., 449), the court said:

"The parties have a right to know upon what facts the court bases its conclusions. Not only have the parties litigant a right to know what were the facts upon which the judge based his conclusions, but they also have a right to have the questions submitted decided. * * *

"For all of the foregoing reasons, the judgment of the lower court is hereby reversed and the cause is hereby remanded to the lower court with directions that a new trial be ordered * * *."

In *Aringo vs. Arena* (14 Phil. Rep., 263), this court held that the trial court had complied with the law with reference to the making of findings of fact.

In *Alindogan vs. Insular Government* (15 Phil. Rep., 168), the court said:

"This court has frequently decided that a failure to make a finding of facts by the lower court, upon which he based his conclusions, was reversible error.

"The argument for the conclusion of this court has been fully set out in the foregoing cases. We deem it unnecessary to repeat it here. It is sufficient to say that we adhere to the doctrine established in said decisions. * * * The cause is hereby remanded to the lower court, with direction that a finding of facts be made from the evidence adduced during the trial, without the necessity of the presentation of other or additional proof, and that when the same is done that the title be registered in accordance with the conclusions in the decision of the lower court in the present case."

Carson J., concurring, said: "Understanding, as I do, that the concluding sentence of the above decision should not and is not intended to have the effect of depriving the parties of their right to appeal from the new judgment to be entered by the court below, before the title to the property in question is registered, I concur."

In *Montelibano vs. Director of Lands* (21 Phil. Rep., 449), the court said:

"Without the concrete relation or statement in the judgment of the facts alleged and proved at the trial, it is not possible to pass upon and determine the issues raised in the litigation, inasmuch as when the facts held to be proved are not set forth in a judicial controversy, it is impossible to administer justice, to apply the law to the points argued, or to uphold the rights of the litigant who has the law on his side. * * *

"For the reasons aforesaid, the judgment appealed from is set aside and the record shall be returned to the Court of Land Registration, with a certified copy of this decision, in order that the court may render judgment in the manner herein indicated and in accordance with the law."

In *United States vs. Mariano* (27 Phil. Rep., 132), the court said:

"In cases where the Supreme Court must review the facts, as it must in all criminal cases, the trial court should make a statement of the facts upon which it relies for the conviction.

"These cases are hereby returned to the Court of First Instance whence they came, with instructions to formulate a statement of facts and to impose the penalty in accordance with this decision. An appeal from such decision and from the judgment of conviction and sentence thereunder may be had in the same manner and for the same purposes as if that were the first decision and sentence in the case."

This court decides appealed civil cases in two ways. By the first method it is prohibited from examining the evidence and must rely upon the pleadings and findings of fact made by the trial court as the foundation for its conclusions of law. Of course, under this method a finding of facts by the lower court is indispensable, and this court would undoubtedly have evolved the doctrine enunciated in the cases above referred to, even though sections 133 and 134 of the Code of Civil Procedure did not exist.

By the second method it reviews the evidence of record and makes its own findings of fact, giving due weight to the findings of fact made by the lower court because of its opportunity to see the witnesses testify and draw therefrom conclusions as to their veracity and the truthfulness of their declarations, an opportunity which is not afforded from an inspection of the record alone. Under this method the plausible argument suggests itself that inasmuch as the Supreme Court must make its own findings of fact, findings of fact by the trial court are not indispensable and do not come within the rule. This court has considered that argument at length in the case of *City of Manila vs. Insular Government*, supra, and held that the rule is applicable whether there was a motion for a new trial or not. Hence, this point seems to be closed to discussion. Failure to observe the rule, as is evidenced by all the above cases, constitutes a reversible error, resulting in an order remanding the case with directions to the trial judge to make a finding of facts as required by section 133. This section provides that:

"Upon the trial of a question of fact, the decision of the court must be given in writing, * * *."

And this court has held that the decision must contain a finding of facts. That is, the trial judge must make the finding of facts. The above cases all show that this court always had in mind the trial judge in discussing the question relating to the necessity of making a finding of facts. No other person than the trial judge was ever thought of, and the legislature could have had no other person in mind when it enacted section 133. The whole question up to this point is closed to discussion by the cases cited in the majority opinion and examined by me as indicated above.

But in the case at bar this court has departed from the established rule that "a failure to make a finding of facts constitutes a reversible error," and has now announced that such a failure will no longer constitute a reversible error, but will only be sufficient reason to demand the return of the record to the lower court "with direction that the judge thereof make a finding of facts based upon the proof already presented, and return such finding to this court, together with the record, within a period of thirty days from the receipt of this order." Here the judgment is not reversed. It remains in full force and effect. The judge of the lower court cannot disturb the judgment heretofore rendered. He can only "make a finding of facts, based upon the proof already presented." What has called for a different rule in the case under consideration from that announced in the cases cited in the majority opinion? The facts are these:

The cause was tried by Judge McMahon in the Province of La Union on March 7 and 8, 1913. Judgment was

rendered in favor of the defendants on March 8, 1913. The motion for a new trial based upon the ground that the judgment is against the weight of the evidence being overruled, and after duly excepting thereto the plaintiff presented his bill of exceptions for approval. Judge McMahon was appointed under Act No. 136 and its amendments, and was assigned to the Mountain Judicial District, which was composed of the Provinces of Lepanto-Bontoc, Benguet, Nueva Vizcaya and La Union. (Act No. 867, sec. 5, as amended by Act No. 1708, sec. 1, and Act No. 1876, sec. 10.) The Reorganization Act, passed during the last session of the Legislature (Act No. 2347), divides the country into twenty-six judicial districts, which do not correspond to the former districts. This case has been ordered returned to the Fourth Judicial District, which comprises the Province of La Union and the Mountain Province (sec. 1, Act No. 2347). Act No. 2347 provided that upon its taking effect, all judicial appointments to the Courts of First Instance should ipso facto be annulled. The Act took effect on July 1, 1914. Judge McMahon was appointed and is now judge of the Twenty-first Judicial District, composed of the Provinces of Oriental Negros and Bohol, and the subprovince of Siquijor. The Fourth Judicial District, to which the case at bar has been ordered returned, is now occupied by Judge Camus. The order of this court directs Judge Camus to make "a finding of facts, based upon the proof already presented, and return such finding to this court, together with the record, within the period of thirty days from the receipt of this order." This is all that Judge Camus can do. If he should reach the conclusion, after an examination of the record, that the plaintiff should recover, he cannot enter a judgment in accordance with his conclusions. He may find all the facts in favor of the plaintiff, but he cannot change the judgment. He may make a finding of facts which supports the judgment. If he does, what will this court do with this finding of facts when the record is returned? Will it give such finding of facts the same weight as it would if Judge Camus had tried the case? The judge is totally unacquainted with the case and all his knowledge concerning it must be acquired solely by an inspection of the record. The additional weight which this court gives to the finding of facts in those cases where a motion is made for a new trial upon the ground that the judge's findings are against the weight of the evidence, is solely by virtue of the superior opportunity of the judge to determine the veracity of the witnesses and the truth of their testimony by observing them while they are on the stand. It will be extremely illogical for this court to give the same weight to Judge Camus' finding of facts, which he is ordered to make from the record, as it would if a new trial had been ordered and then the judge had made a finding of facts after hearing the witnesses testify. If this court considers the assistance which it undoubtedly derives from the finding of facts made by the trial judge of sufficient importance to remand this case for that purpose, the only possible way in which that assistance can be rendered is by giving Judge Camus an opportunity to try the case himself. It should be held that the failure to make a finding of facts is a reversible error and order a new trial. Just what will be said by this court about Judge Camus' finding of facts when the record is returned here, will be of interest, as this court has been fully advised of the fact that Judge McMahon is no longer judge in the Province of La Union.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.