2 Phil. 347

[G.R. No. 959. July 24, 1903]

JUAN ISMAEL, PLAINTIFF AND APPELLEE, VS. MANUEL GUANZON, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

These documents certify that certain persons appeared before the president, at the request of the appellant, and made the statements contained in the documents. These statements were declarations as to what the persons making them knew concerning the matters in controversy in this action.

Section 381 of the Code of Civil Procedure provides as follows: "The testimony of all witnesses, except such as has been taken in writing in the form of depositions as otherwise provided by law, shall be given on oath in open court orally, and each witness may be orally cross-examined by the adverse party."

The testimony contained in these documents was not taken in the manner provided for taking depositions in sections 353-376 of said Code. Neither were said documents official or public writings as that phrase is denned in section 299 of the same Code. Neither by the Municipal Code nor by any other law has a president of a municipality now any authority to receive declarations and make a record of them in the manner followed in this case. The documents were properly rejected by the court.

2. The appellant accepts the established doctrine of this court that the decision of the court below, with the admissions in the pleadings, must contain facts sufficient as a matter af law to support the judgment. (Thunga Chui *vs*. Que Bentec, 1 Off. Gaz., September 10, 1902; [1] Martinez *vs* Martinez, 1 Off. Gaz., 268 ;[2] Balatbat vs. Tanjutco, 1 Off. Gaz., 405.[3])

As his other assignment of error he claims that under this doctrine the decision should have stated facts showing that the two other defendants, in whose favor judgment was rendered, were not liable to the plaintiff, the release of his codefendants being prejudical to the appellant,

> "When a judgment is rendered for the defendant, a simple finding, express or implied, that the complaint is not true, is sufficient. The court finds that the appellant cut and ground the cane. This is a finding that he alone appropriated it to his own use, and necessarily excludes the idea that the other defendants participated in the appropriation. It was a sufficient finding on which to base a judgment in their favor. But it is claimed that the court found, also, that the appellant did these acts under the direction of his codefendants and divided the property with them. This claim is not supported by the record.

The decision states not that this was a fact, but that the appellant alleged it to be a fact.

The judgment is affirmed, with costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa and *McDonough, JJ.,* concur.

---

[1] 1 Phil. Rep., 356.

[2] 1 Phil. Rep., 647.

[3] Page 182, *supra.*

CONCURRING

COPPER, J.:

I concur in the decision affirming the judgment, but the statement contained in the judgment of the lower court, that the defendants "cut and ground the cane," is not, in my opinion, a sufficient finding of fact to support the judgment, and in this I disagree with the

majority opinion. This statement appears to be but an accidental recital of evidence.

The findings of fact must be of all the material facts at issue. The issues presented by the pleadings in this case wore the ownership of the property by the plaintiff, and the wrongful conversion of it by the defendants. These issues would not be included in the statement that "the cane was cut and ground by the defendants." This is but a probative or evidential fact. It would tend to prove the issue but would be insufficient as an ultimate finding of fact in that it does not appear that the taking of the cane was wrongful, which is one of the material issues in the case.

I think the judgment is rather to be supported by the presumption which is indulged in favor of judgments of trial courts. Where no findings are made, the presumption is that all the facts were found in favor of the party for whom the judgment was rendered, otherwise the court would not have rendered such judgments; and where no express findings are made, and the evidence is omitted from the record, such findings will be presumed as are necessary to support the judgment. (2 Enc. of Pleading and Practice, 489, citing Clark *vs*. Willett, 35 Cal., 534.)

It is quite plain from a perusal of the judgment that there was no attempt to make a finding of facts.

The right of a party to have the court make separate conclusions of fact and of law, in accordance with section 133 of the Code of Civil Procedure, is a substantial right, and a judgment should be reversed for a refusal to grant such right; but where the record contains no findings, it will be presumed that they were waived, if nothing appears to the contrary.

An objection based upon a mere omission to make a finding of fact can not be raised for the first time on appeal. If the party who complains desired such finding of fact he should have requested the court to make it, and if such request was refused he should have excepted to the ruling of the court. When a finding is made by the lower court and it does not cover all the material issues, it must be excepted to for that reason, and the exception should particularly specify the defect and point out the issue upon which the finding is desired. (8 Enc. of Pleading and Practice, 276.)

In this case there was no objection made to the judgment in the court below, except such as may be inferred from the simple fact of the notice of appeal and the perfecting of the bill of exceptions.

The general rule is that exceptions which were not taken upon the trial, or in the course of the proceedings below, can not be urged upon appeal. It is but reasonable to require a party desiring to review a case in the appellate court to call the attention of the trial court to the proceedings complained of. The attention of the court below should be directed to the defects or omissions which have thus occurred, in order that the court may have an opportunity to correct such defects or omissions. This rule is necessary to the due administration of justice. To permit a party to remain silent at a time when the defect could be easily remedied, until it is too late to make the correction, is unjust both to the trial court and to the adverse party. In this case, if the objection had been made in the lower court that the finding was insufficient to support the judgment, the correction could easily have been made. It would be unjust to permit the objection to be raised for the first time in this court, and to reverse the judgment for this reason.

Date created: April 15, 2014