5 Phil. 549

[G.R. No. 2345. January 19, 1906]

ROBERT M. LOPER, PLAINTIFF AND APPELLEE, VS. THE STANDARD OIL COMPANY, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The plaintiff brought this action to recover the sum of $1,888.25, money of the United States, for professional services rendered by him as architect and supervisor in the construction of certain buildings belonging to the defendant. The complaint alleged an express promise on the part of the defendant to pay this sum. It contained no allegation as to the reasonable value of his services. At the trial, however, evidence was received on the part of the plaintiff to show what the reasonable value of his services was. The defendant made no objection to the introduction of this evidence on the ground that the complaint contained no allegation as to the reasonable value of his services, or on any other ground. The court beloAV entered judgment for the plaintiff, as prayed for in the complaint, basing it upon the evidence relating to the reasonable value of the services.

The appellant in this court, the defendant in the court below, makes as his only point for reversal the fact that the decision is based upon an allegation not found in the complaint This contention can not be sustained. The evidence received in the court below justifies the decision. That evidence was admitted without objection on the part of the defendant. It is too late for him after judgment to say that it should not have been received because it was inadmissible under the pleadings. In the case of the Wasatch Mining Company vs. Crescent Mining Company (148 U. S., 293) the court said, at page 300:

> "The supreme court of the Territory rightfully held that the defendant should have raised the question in the trial court, where ample powTer exists to correct and amend the pleadings; and, not having done so, but having gone to trial on the

merits, the defendant was precluded from assigning error for matters so waived.

> "The doctrine on this subject is well expressed in the case of Tyng vs. Commercial Warehouse Company (58 N. Y., 308, 313) : 'No question appears to have been made during the trial in respect to the production of evidence founded on any notion of variance or insufficiency of allegation on the part of plaintiff. Had any such objection been made it might have been obviated by amendment in some form or upon some terms under the ample powers of amendment conferred by the Code of Procedure. It would therefore be highly unjust, as well as unsupported by authority, to shut out from consideration the case as proved, by reason of defects in the statements of the complainant. Indeed, it is difficult to conceive of a case in which, after a trial and decision of the controversy, as appearing on the proofs, when no question has been made during the trial in respect to their relevancy under the pleadings, it would be the duty of the court, or within its rightful authority, to deprive the party of his recovery on the ground of incompleteness or imperfection of the pleadings."

It is suggested by the appellant that the evidence in regard to the reasonable value of the services was given in answer to questions directed by the court to the witness, and that because the court asked the questions and not the counsel for plaintiff, the defendant was not required to object thereto. We know of no authorities which support this rule. The defendant had a right to object to evidence which he considered not admissible under the complaint, even if the questions Avere asked by the judge and it was his duty to do so.

The judgment of the court below is affirmed, with the costs of this instance against the appellant and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.

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