17 S.W. 1043
RIO GRANDE CATTLE CO.
v.
BURNS *et al.*
Supreme Court of Texas.
October 27, 1891.

Commissioners' decision. Section A. Appeal from district court, Mitchell county; W. M. KENEDY, Judge.

Action for conversion by Burns, Walker & Co. against the Rio Grande Cattle Company. From a judgment for plaintiffs defendant appeals. Affirmed.

Chas. A. Jennings, for appellant. *R. H. Looney,* for appellees.

Page 1044

MARR, J.

There is no statement of facts nor bills of exception in the record. The case is brought up upon the conclusions of fact and law of the district judge, and they illustrate the points at issue. The findings are as follows: (1) "That on the 1st day of March, A. D. 1883, I. E. Stevens, T. H. Hord, W. R. Nunn, and L. P. Glasscock entered into articles of incorporation, acting under title 20 of the Revised Statutes, concerning private corporations, for the purposes, as expressed therein, of `buying, selling, raising, and breeding cattle, and the acquiring of all such lands, pastures, and privileges as are necessary for the conduct of its corporate business,' with its chief office at Colorado, Mitchell county, Tex., and the business of the company to be transacted and conducted at such other places as its members shall see fit. Which said articles of incorporation were duly filed in the office of the secretary of state at Austin, on the 5th day of March, A. D. 1883, and a certified copy thereof, under the hand and seal of the secretary of state, was duly forwarded to and received by the incorporators." (2) "That the said Stevens, Hord, Nunn and Glasscock organized under said charter, adopted by-laws, and, acting in accordance with its terms, they each, in the early part of the year 1883, paid into said company the sum of ten thousand dollars in cash, which was invested (all of it) in the purchase of cattle in the Republic of Mexico during the course of that year." (3) "That the business of said company consisted and now consists of the raising buying, selling, etc., of cattle in the Republic of Mexico. None of it has been done in Texas, except the holding of business meetings, and the said company has never had or owned any property in this state at any time except during the transportation of a portion of its cattle to market through this state." (4) "That meetings of said company were regularly held in Colorado, Mitchell county, Texas, according to the requirements of its charter, on the 1st days of January, 1884, 1885, and 1886, at each of which meetings a quorum was present, and business of the company transacted. No written minutes of any meeting were kept or recorded." (5) "That L. P. Glasscock was elected general manager of said company for the year 1883, and acted as such during that year, and at the regular meeting on the 1st day of January, 1884, T. H. Hord was elected general manager, and has continued as such since that date." (6) "That no certificates of stock were issued to any member of the company. A stock-book and seal were purchased, but the stock-book was destroyed by fire some time during the year 1883. The seal procured was not such as prescribed by the by-laws." (7) "There were never any more than the original members of said company, nor was any more money paid in by the members, nor was any at any time drawn out of it." (8) "That on the 1st day of February, 1884, in the belief that their charter had been burned by the same fire which destroyed their stock-book, the incorporators entered into a written agreement, which recited therein: `That whereas, having equally invested forty thousand dollars in cattle in the state of Cohahuila, Mexico, [describing the cattle owned by the company by marks and brands,] and each of us hereby

agree to become equally responsible for all cost and expense of managing and handling said cattle, and also to become equally interested in all profits and increase of said cattle. And it is further agreed by said parties that, in any material change in the management or handling of said above stock of cattle, the wishes and opinions of each of the above interested parties shall be consulted,' which agreement I find, from all of the surrounding facts and circumstances, to be only an agreed statement or memorandum of the amounts contributed by each of the parties, and their rights and interests; and that it was not intended to evidence a partnership already existing or to create a partnership." (9) "That plaintiffs are the legal and equitable owners of L. P. Glasscock's interest in said company; that defendants have converted to their own use said interest, which at the time of the conversion was of the value of $6,000." (10) "That plaintiffs are not barred by the statute of limitation to recover for said interest. I find as a conclusion of law that plaintiffs are entitled to a judgment for $6,000." The defendant caused an exception to be noted in the judgment entry to the conclusions of the court below, and has appealed, claiming that the findings of fact did not authorize the judgment rendered in several particulars. It is agreed by counsel upon both sides that the controlling question on this appeal is the effect to be given to the written agreement of February 1, 1884, and described in the eighth conclusion of the court below. The appellant contends that its legal effect was to create a partnership between the parties, and that the court erred in holding that they were not thereafter partners, but that the corporate relation, and their rights and liabilities as stockholders, still continued. Appellees insist that no change was intended or made, but that such an agreement, if intended to dissolve the corporation, would be *ultra vires* and void. Appellant replies that the change was made by unanimous consent and mutual agreement, to which L.P. Glasscock was a party, and that, therefore, both he and his assignee are estopped from denying the change or contesting the validity of the agreement, even if it should be deemed illegal. It is very evident, however, that, if the court put the correct interpretation upon this agreement of the members of the corporation, construed by its terms and "from all of the surrounding facts and circumstances," and "that it was not intended to evidence an existing partnership nor to create a new one," then it will become unnecessary for us to determine the validity of the agreement or the question of estoppel.

1. Under the facts found by the court, the Rio Grande Cattle Company was clearly an incorporated body, according to law, and certainly continued to be until the time of the agreement of February,

Page 1045

1884. About this there can be no dispute. Rev. St. arts. 569-571 et seq. We will inquire now whether any change in the character of the body was designed by this agreement, or rather, whether we would be justified, as the question is presented, in holding that the court below erred in finding that none was intended nor made. Appellant's counsel insists that the district court erred in considering "the surrounding circumstances," and that the effect of such course was to permit parol evidence to vary the written agreement, and that such circumstances ought not now to be considered in construing the writing. No objection was made to the admission of the circumstances, if it would have been tenable, nor do we understand that the conclusions of the court contain all of the circumstances which it looked to in interpreting the agreement. In the absence of a statement of fact and bills of exception, we can only examine the main question in the light of the conclusions of fact as found by the court, not the details of evidence from which they were drawn. Prof. Parsons, in discussing, "Who are partners as to each other?" says. "It should be added that whether two or more

persons are partners as to each other must generally, and perhaps always, be determined by the intention of the parties, as the same is expressed in the words of their contract, or may be gathered from the acts and from all the circumstances which are available for the interpretation or construction of the contract." This we believe to be the correct announcement of the rule. Applying it to the question in hand, we fail to find in the record sufficient reasons to overrule the court below upon this particular issue. We freely confess that the agreement under consideration, in many of its features, assimilates nearer to a partnership in defining the rights and liabilities of its members than to a corporation ordinarily under our law; and, if standing alone, dissociated from other circumstances, in a business or commercial enterprise, we would be apt to regard it as intended to constitute, at least, a part of the articles of a partnership. But, upon the other hand, in many essential respects, partnerships and corporations are similar. Tayl. Corp. §§ 60, 64, et seq. It is to be observed in the present instance that we have not the benefit of the entire agreement, since only a portion of it is described in the conclusions of the court. That portion does not expressly make each of the members personally liable for the debts or expenses of the company, though the language used is strong, and might have, under other circumstances, warranted that inference. There were but four incorporators and stockholders in the concern, and each had contributed and paid in to the capital stock $10,000, and thus owned all of the stock or shares in equal proportions, and as a consequence were equally concerned and interested in the expenses and profits as well as in the property or assets of the enterprise, as was declared in the written agreement. Mor. Priv. Corp. §§ 346, 374, 379, 404, and 405; Rev. St. arts. 606, 610. In this case, while the burning of the copy of the charter, as suggested, was a "trivial circumstance," that could easily have been remedied by procuring another copy, still the loss of "the stock-book" by fire might have been a more serious matter, or, at least, so regarded by the parties; and hence, in order to recognize and manifest the equal rights and liabilities of the members and their interest in the property of the company as they existed theretofore and originally in the corporation, the agreement was made as a suitable declaration thereof under the circumstances, as was held, in effect, by the court below. Subsequently, and for several years, the court finds that there were meetings of the company at the proper times and place and "according to the requirements of its charter." Under such circumstances, we conclude that the legal effect of the terms of the agreement does not necessarily denote a partnership as a matter of law, and therefore that we would not be authorized to hold that the court below erred in construing the agreement in the light of "all the surrounding circumstances" to be merely "an agreed statement or memorandum of the amounts contributed by each of the parties, and of their rights and interest in the corporation, and not the creation of a copartnership. This was a distinct conclusion of fact, as well as of law, made by the court, and, in the absence of a statement of facts, there are not in the record sufficient facts pointing to an opposite conclusion to warrant us in saying that the court was wrong in its finding.

2. It is also objected that the court did not find that Glasscock had any stock in the corporation, because in the sixth conclusion the court finds that "no certificate of stock was ever issued to any member." The court, however, found that Glasscock paid into the company $10,000. To secure his interest therein no formal issuance of a certificate was therefore necessary. Mor. Priv. Corp. § 258; Tayl. Corp. § 511. He was entitled, under the facts found by the court, to have a certificate issued. Id. His interest in the corporation was fixed, and he had the right to transfer his stock. Although our statute provides that the stock "shall be transferable only on the books of the corporation," still in this case the

corporation, upon demand, refused to enter the transfer, or to issue a certificate to the assignee. Rev. St. art. 590. The interest of Glasscock was clearly assignable, and his assignment thereof to the appellee, under the circumstances, vested at least the equitable title to the stock or interest of Glasscock in the appellee, and entitled it to demand recognition at the hands of the corporation. Mor. Priv. Corp. §§ 320, 321, 326, 337; Baker v. Wasson, 53 Tex. 150. We think, therefore, that Glasscock originally, and the appellee by reason of the transfer, respectively, had "stock of the corporation."

3. Appellant also insists that the court erred in allowing plaintiff to recover, and in recognizing its interest in the corporation, or that of Glasscock, because the investment was made entirely in property

Page 1046

beyond the limits of this state, in Mexico, whereas "the charter was for the transaction of business in the state of Texas, and not elsewhere." We are not certain that we fully appreciate the force of this objection, as applicable to the present controversy. The court did not find that the terms of the charter restricted the transaction of all the business to the limits of Texas. "The better opinion is that the mere transaction of such business as is usually done by the directors or other agents of the body, may be done as well without the state as within it," while the inhibition "refers to acts of a strictly corporate character, such as must be discharged by the corporators themselves." Land Co. v. Laigle, 59 Tex. 343. The meetings and chief corporate business seem to have been performed or regulated within the state, and the principal office of the company was here as required by law. Without stopping, however, to determine definitely the legality of the investments, etc., in Mexico, we are clear in the opinion that the question, under the circumstances, does not affect the rights of the appellee in this case, and that the appellant, having caused, participated, and directed the investment, and all other acts that may have been performed beyond the state, is justly estopped from raising the issue in this controversy, certainly when no void act was found by the court below. Tayl. Corp. §§ 219, 268, et seq.; Railway v. Gentry, 69 Tex. 625, 8 S. W. Rep. 98; 4 Amer. & Eng. Enc. Law, p. 201.

4. It is further assigned that the court erred in finding that there had been a conversion by the company of the Glasscock interest in the corporation, because the facts found did not authorize such conclusion. The suit was brought by the appellee on the 12th day of March, 1888, for damages on account of the alleged conversion of the share or interest above specified, which plaintiff had duly acquired under the assignment thereof made by Glasscock in the year 1887. The conversion is alleged to have occurred on the 4th day of February, 1888, and the facts relied upon in the petition, as constituting a conversion, are substantially as follows: That plaintiff, after having acquired the title to the Glasscock interest, applied to the company for a transfer of the stock on the company's books, and for a certificate for the amount of stock; that the corporation refused to grant either of these requests, or to recognize any right of plaintiff in the corporation, or to the stock. That these acts amount to a conversion under the law is well settled by the authorities, and that thereupon it was at the election of the plaintiff to have either sued for specific performance, or in *assumpsit* upon the case for damages, the measure of which would ordinarily be the market value of the stock converted. The plaintiff pursued practically, though not technically, (being unnecessary under our system,) the latter course, and recovered the value of the stock. Mor. Priv. Corp. §§ 337, 338, and notes; Tayl. Corp. § 599; Case v. Bank, 100 U. S. 455; Kortright v. Bank, 20 Wend. 91; Baker v. Wasson, 53 Tex. 150; Land Co. v. Bousselet, 70 Tex. 422, 7 S. W. Rep. 761. It was not alleged nor proved that the stock was liable

for any debts, or, for that matter, that the company was in debt at all.

5. It is urged that the court erred in not sustaining the plea of the statute of limitations of two years, interposed by the defendant. It does not appear from the findings of the court that the conversion occurred more than two years before the institution of the suit, but quite the contrary appears from the allegations of the petition. It is not made to appear to us that the statute was at all applicable. But counsel for appellant insists that the court committed a material error in not distinctly finding the date of the conversion. The presumption in the absence of a statement of facts would naturally be that the allegations of the petition were found by the court to be true. It is now well settled that the statement of some conclusion of law in the finding of fact is not a reversible error, and that, when the conclusions of the court are not deemed full enough, the party complaining should call the court's attention to the omission, and request additional findings, and, if refused, except to the refusal, or cause a statement of facts to be approved and filed. The facts found are sufficient to support the judgment in this case. Ryon v. Rust, 65 Tex. 529; Andrews v. Key, 77 Tex. 39, 13 S. W. Rep. 640; Railway v. Fossett, 66 Tex. 339, 1 S. W. Rep. 259. These remarks will also dispose of all of the objections in the assignments of error to the form of the conclusions of fact and law. We have now noticed every assignment, though not *seriatim,* and have found no reversible error. We have not considered what would have been the rights of the appellee had a partnership been shown, because counsel have not adverted to that aspect of the case, and because the suit was brought against the appellant as a corporation. We conclude that the judgment ought to be affirmed.

STAYTON, C. J.

Affirmed, as per opinion of commission of appeals.