Washington Law Review

Volume 31 | Number 3

8-1-1956

The Requirement for Making Findings of Fact and Conclusions of Law in Washington

William D. Cameron

COMMENTS

THE REQUIREMENT FOR MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW IN WASHINGTON

WILLIAM D. CAMERON

INTRODUCTION — WHY FINDINGS?

The doctrine that a court should make findings of fact and conclusions of law *as the basis of a judgment* in a case tried by a court without a jury originated with the so-called "Field" Procedure Code presented to the New York legislature in 1848.[1] Paradoxically, most western states quickly incorporated the burdensome procedure into their respective codes, while New York admirably adopted a different system. The New York system required findings only when an appeal was taken, the findings of fact being for the sole purpose of facilitating the review.[2] Unfortunately, however, New York in 1860 fell victim to the procedure here involved,[3] but later recovered by repealing the provision altogether. Western states, like Washington where the system of findings as a basis of the judgment in a jury-waived case has been statutory since 1854, have by and large retained the procedure.[4] In 1938 the requirement of findings of fact and conclusions of law as the basis of a judgment in a jury-waived case gained a measure of dignity when the United States Supreme Court promulgated the new Federal Rules of Civil Procedure.[5]

---

[1] See Hanson, *Findings of Fact and Conclusions of Law, An Outmoded Relic of the Stage Coach Days*, 32 A.B.A.J. 52-55 (1946).

[2] New York Code § 268 as amended in 1852.

[3] New York Code § 267 as amended 1860. "The alluring resemblance between special findings and the common law special verdict seems to have irresistibly forced the findings into the record of the trial court." Sunderland, *Findings of Fact and Conclusions of Law Where Juries Are Waived*, 4 U. CHI. L. REV. 218 (1937), at 231.

[4] RCW 4.44.050: "*Findings and Conclusions.* Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly." Check Rule 17, General Rules of Superior Court, 34A Wn.2d 118, provides: "The trial court shall make findings of fact in all equity cases, and in all law cases tried before the court without a jury." Also see note 1, *supra*.

[5] Rule 52, Federal Rules of Civil Procedure. In federal practice, the system of findings dates back to 1865 when findings were legalized and the Supreme Court was given power to review them and their sufficiency (13 STAT. 500 1865), later codified in the Judicial Code, 28 U.S.C.A. §§ 773, 875 (1925). Note Mutual Insurance Co. v. Tweed, 7 Wall. 44 (U.S. 1869), containing an early statement to the effect that the opinion of the judge cannot take the place of findings. Also note old Equity Rule 70½ which made findings mandatory and under which the rule was evolved that the opinion of the court might take the place of formal findings, if the facts and conclusions are

Judges have been none too clear in their minds as to what useful service the system of findings performs, whether they be required as a basis of a judgment or merely required when an appeal is to be taken. The Supreme Court of Washington has stated that the purpose of findings is to enable the supreme court to review the questions upon appeal.[6]

Granted that findings clarify the issues and thus facilitate the work of the reviewing court in an ordinary appeal, why inject them, as a complicating factor, into the proceedings for obtaining a judgment in the trial court?

A quick answer may be that findings, when a judgment is entered upon them, serve as a basis for a plea of res judicata. This argument is not appealing. As a practical matter there is seldom any occasion to plead res judicata as a defense. Where it becomes necessary to do so, the fact that there are no findings on all the contested issues presents no major difficulty. Certainly when a case is tried to a jury, the particular facts found are not disclosed by the general verdict, and yet no practical difficulty arises when it later becomes necessary to determine those facts or matters which were established in the former adjudication. Indeed, in situations where a judgment on the merits has been rendered in a former suit between the same parties or their privies, on the same cause of action, the rule of res judicata operates as a bar, "not only to questions presented, but to all matters which rightfully belong to the litigation which the parties could, by exercising reasonable diligence, have presented at the trial".[7] If in this type of situation a judgment is conclusive on all matters which *might* have been litigated and decided in the former suit, then it is clear that findings are neither the basis nor are they necessary for a plea of res judicata.

A second argument is often made—and it is a good one—that findings and conclusions disclose the basis of the decision below and, therefore, are of importance on appeal. Supposedly, findings not only save the

---

stated in it with sufficient explicitness. This latter rule is now codified in Rule of Civil Procedure 52 (a), as amended in 1946: "...If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein." See 8 F.R.D. 271-95 and Chapter 52, 5 MOORE, FEDERAL PRACTICE, ch. 52 (2d ed. 1948).

[6] Kinnear v. Graham, 133 Wash. 132, 233 Pac. 304 (1925). *Cf.* Bard v. Kleeb, 1 Wash. 370, 376, 25 Pac. 467, 469 (1890), findings are designed to protect the trial judge by enabling him to place upon the record his view of the facts and the law in clear and unmistakable form. Western Dry Goods Co. v. Hamilton, 86 Wash. 478, 481, 150 Pac. 1171, 1172 (1915), findings are intended to facilitate review by offering to the parties a means of bringing up the case without the trouble and expense of a bill of exceptions.

[7] Metropolitan Life Ins. Co. v. Davies, 2 Wn.2d 155, 161, 97 P.2d, 686, 688 (1940).

appellate court time in understanding the basis of the decision below, but also afford a means of determining whether the trial court has applied the law to the evidence. This argument fails to support the system of findings as a basis of a judgment, but it is meritorious when the requirement of findings is supported merely as an aid to appellate review procedure. However, the first part of the argument may be questioned. When findings are made strictly for appellate procedure, is the time saving feature real or illusory? In answer to this, it would seem that when findings are challenged upon appeal, the court must read the evidence on the point to adjudicate upon it, and if the findings are not challenged, then they become unnecessary inasmuch as the court could have assumed that all the essential facts to support the judgment were found by the trial judge.

Probably the best argument for the requirement for findings is to force the trial court to settle each principal fact issue which the parties have contested.[8] In this manner the trial court may not avoid a decision by entering a general judgment which, in the absence of findings, might be erroneously presumed by the appellate court to have been based on a fact decision fitting the result. If this were to occur, a litigant might lose without either court actually considering a disputed controlling fact issue. Moreover, without assurance to the losing party that his matter has been dealt with carefully, there can be no justice.[9] The principal argument against the findings system centers around the excessive cost of findings and the useless labor involved, when considered in light of the small number of jury-waived cases that are appealed.[10]

The practical solution to the problem involved here is not far removed from the New York system of 1852 to 1860. Future revisers of the Washington system may do well to look at section 114 (b) of the Missouri Civil Code, which provides that the trial court shall, if *specifically requested* by counsel, make findings on any of the *principal controverted* fact issues.[11] The goal should be a system which places

[8] See *A Modern Substitute for Findings of Fact and Conclusions of Law*, 32 A.B.A.J. 131 (1946).

[9] See Editorial, *Findings of Fact and Conclusions of Law in Equity and Non-Jury Cases*, 69 N.J.L.J. 116 (1946).

[10] See note 1, *supra*. (In Los Angeles County, California, in the year ending June 30, 1941, only 13% of the contested cases tried by the court without a jury reached a California appellate court for decision.)

[11] Missouri Civil Code § 114(b): "... If any party shall so request before final submission of the case, the court shall dictate to the court reporter, or prepare and file a brief opinion containing a statement of the grounds for its decision and the method of determining any damages awarded; and may, or if specifically requested by counsel, shall, include its findings on any of the principal controverted fact issues. All fact issues upon which no specific facts are made shall be deemed found in accordance with

the use of findings in the field of appellate practice and thus eliminates in the trial court all the expense and useless labor resulting from the substitution of special findings for the common law special verdict.[12]

THE RULE IN WASHINGTON

In Washington the statute[13] requiring the making of findings of fact and conclusions of law in cases tried by the court without a jury is mandatory, and failure to make findings is reversible error even though the appellant failed to request that findings be made and entered.[14] A custom has grown almost into settled practice for the attorneys to present findings, conclusions, and judgment for the signature of the judge, and the latter has come largely to depend on such assistance. However, it is the statutory duty of the judge himself to perform these functions, and mandamus will lie to compel the superior court to proceed to final judgment in a cause.[15] The rule does not require the trial court to make findings in regard to every item of evidence introduced in a case, but only "ultimate findings of fact concerning all the material issues."[16] Where the findings of fact are incomplete or defective in some particular so that a doubt exists as to the theory on which the case was decided, the supreme court will attempt to overcome the difficulty by referring to the oral or memorandum decision of the trial court or the conclusions of law, if helpful.[17] Findings of fact that are conclusions of law will be treated as such and will stand if there are

---

the result reached." An improvement on this provision would be a system not requiring a party to request findings *before* judgment. A request for findings before judgment would indicate that the party making the request was apprehensive of an adverse decision, else he would not be preparing in advance to except. The presumption, however, is that each party expects a favorable decision. See Albin Co. v. Ellinger, 103 Ky. 240, 44 S.W. 655 (1898). Also, see note 12, *infra.*

[12] Sunderland, *Findings of Fact and Conclusions of Law Where Juries are Waived,* 4 U. CHI. L. REV. 218 (1937).

[13] *Supra,* note 4.

[14] Cole v. Osborne, 21 Wn.2d 577, 152 P.2d 152 (1944); Colvin v. Clark, 83 Wash. 376, 145 Pac. 419 (1915).

[15] State *ex rel.* Eilers Music House v. French, 100 Wash. 552, 171 Pac. 527 (1918).

[16] Bowman v. Webster, 42 Wn.2d 129, 134, 253 P.2d 934, 937 (1953).

[17] Bowman v. Webster, *supra,* note 16; the memorandum opinion may not be used to impeach the findings, and on conflicting evidence, they "will not be disturbed unless the evidence clearly preponderates against the findings." Clifford v. State, 20 Wn.2d 527, 148 P.2d 302 (1944). *Cf.* United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948), wherein the Supreme Court said: "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Note that by these criteria a review of the entire record by the appellate court is necessary to determine whether or not a finding is erroneous; hence, one of the ostensible purposes of findings, the time saving feature, is practically eliminated. Shorrock v. Shorrock, 185 Wash. 623, 626, 56 P.2d 674, 676 (1936), "...where the findings are merely defective, it will be presumed that the evidence supports the judgment." The presumption is rebuttable.

other findings of fact sufficient to support them.[18] The reverse is also true.[19]

While it is proper practice to make separate conclusions of law, the findings of fact are considered as controlling the conclusions of law. The judgment, of course, must accord with the findings. If the judgment does so accord, it is immaterial that the judgment is inconsistent with the conclusions of law. The reason is that findings of fact must be given the force of a special verdict and the conclusions of law that of a general verdict. A special verdict controls the general one.[20]

A collateral rule to the requirement of making findings is the rule that if no error is assigned to the findings of fact, they are conclusively presumed to be correct,[21] and the supreme court will not review the evidence upon which they are based.[22] An offshoot of this rule is that where a case has been tried to the court, the supreme court will not review errors claimed in the *admission* of evidence, unless error has been assigned to the trial court's findings of fact.[23]

FINDINGS, WHEN NECESSARY

Before the adoption of Superior Court Rule 17,[24] findings of fact were not required in equity cases, although if they were made, and if the statement of facts should be included in the record before the supreme court, the findings were considered and given great weight.[25] Now, since the supreme court no longer considers equity cases *de novo*, and in light of Superior Court Rule 17, there is apparently no distinction between appeals in judge tried law cases and equity cases.[26]

[18] Miller Lumber Co. v. Holden, 45 Wn.2d 237, 273 P.2d 786 (1954). Gnash v. Saari, 44 Wn.2d 312, 319, 267 P.2d 674, 678 (1954), when findings of fact are so incomplete that the supreme court is unable to determine on what theory the trial court decided the case, and neither the memorandum opinion nor the conclusions of law throw any light on the matter, the judgment will be set aside and the cause remanded with instructions to the trial court to enter findings of fact on the material issues.

[19] Coolidge v. Pierce County, 28 Wash. 95, 68 Pac. 391 (1902).

[20] State v. Twenty Barrels of Whiskey, 104 Wash. 382, 176 Pac. 673 (1918). Gilmartin v. Stevens Inv. Co., 43 Wn.2d 289, 261 P.2d 73 (1953), findings of fact and general verdict inconsistent. See RCW 4.44.060, "...The findings of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason, in so far as applicable, and a new trial granted.

[21] Hansen v. Walker, 46 Wn.2d 499, 282 P.2d 829 (1955). But see note 32, *infra.*

[22] Simpson v. Hutchings, 41 Wn.2d 287, 248 P.2d 572 (1952), Rule on Appeal 43, 34A Wn.2d 47.

[23] *Ibid.*

[24] Rule 17, General Rules of Superior Court, 34A Wn.2d 118. See note 4. *supra.*

[25] Fisher v. Hagstrom, 35 Wn.2d 632, 214 P.2d 654 (1950).

[26] Johnson v. Harvey, 44 Wn.2d 455, 457, 268 P.2d 662, 663 (1954). See Simpson v. Hutchings, 41 Wn.2d 287, 289, 248 P.2d 572, 574 (1952), "Under this rule (Rule on Appeal 43, 34A Wn.2d 47), there is no distinction between appeals in law cases and equity cases, since Superior Court Rule 17, 34A Wn.2d 118, requires that findings of fact be made in all cases tried by the court without a jury."

The purpose of Superior Court Rule 17 was to extend to equity cases the statutory requirement of making findings in law cases tried to the court without a jury.[27] However, it is not the purpose of the rule to require findings of fact and conclusions of law where they were not formerly required in actions at law.[28]

(A) *Trials — Civil*

The statute[29] requires findings "upon the *trial* of an *issue of fact.*" Accordingly, no findings are required when no issue of fact is presented to the trial court.[30] In the same vein no findings are required upon an agreed case, or as to facts stipulated or admitted.[31] Clearly, no findings of fact nor conclusions of law are required in the case of a default judgment or judgment on the pleadings,[32] and to make them would be improper.[33] It follows that no findings are required in a case where the defendant elects to stand upon his demurrer, since no issue of fact is presented for decision,[34] and the same is true where plaintiff elects to stand upon his complaint.[35]

At least several Washington cases categorically state that when an action is dismissed at the conclusion of plaintiff's case, no findings of fact are required.[36] Much confusion results from such statements; however, the supreme court has in *Richards v. Kuppinger*[37] advanced the following rules as a test to be applied when the trial court grants a motion to dismiss at the close of plaintiff's case:

(1) If the trial court's oral or written opinion shows that it treated plaintiff's evidence as true and held *as a matter of law* that

[27] See Bowman v. Webster, 42 Wn.2d 129, 253 P.2d 934 (1953).

[28] State *ex rel.* Wash. Water Power Co. v. Superior Court, 41 Wn.2d 484, 250 P.2d 536 (1952).

[29] *Supra,* note 4.

[30] State *ex rel.* Wash. Water Power Co. v. Superior Court, 41 Wn.2d 484, 487, 250 P.2d 536, 538 (1952), "The issue presented... was purely one of law. Hence, no findings of fact were required."

[31] See Hopgood v. Miller, 107 Wash. 449, 181 Pac. 919 (1919), where the court indicated that no finding is required where the fact is admitted by appellant or even where the fact can be reasonably inferred from appellant's answer.

[32] Waller v. Heinrichs, 133 Wash. 7, 233 Pac. 23 (1925), Finley v. Finley, 43 Wn.2d 755, 758, 264 P.2d 246 (1953), "In such case [the supreme court] will ascertain the admitted facts by making its own examination of the pleadings." (It was not necessary for appellant to challenge the findings of fact, such not being controlling).

[33] Kinney v. Sando, 28 Wn.2d 252, 257, 182 P.2d 45, 48 (1947), it is "improper" to make fiindings where "there was no evidence nor... any admissions upon which the findings as a whole could be based."

[34] State *ex rel.* Tollefson v. Novak, 7 Wn.2d 544, 110 P.2d 636 (1941).

[35] See Kinney v. Sando, note 33, *supra,* where, oddly enough, plaintiff declined to proceed after an oral demurrer to his complaint was "temporarily overruled," asserting it was "simply a waste of time and expense." Judgment was entered dsimissing the action with prejudice; affirmed.

[36] See, *e.g.,* Arneman v. Arneman, 43 Wn.2d 787, 264 P.2d 256 (1953).

[37] 46 Wn.2d 62, 65, 278 P.2d 395, 397 (1955).

plaintiff had not established a prima facie case, *findings of fact are unnecessary*. The review is limited to determining the sufficiency of the evidence to establish a prima facie case.

(2) If it appears from the opinion or findings that the trial court has *weighed* the evidence and has found either:

(a) that the evidence in support of plaintiff's prima facie case is *not credible*, or

(b) that plaintiff's credible evidence establishes facts which prevent plaintiff from recovering,

then the trial court has established *as a matter of fact* that plaintiff has not established a prima facie case and *findings of fact are necessary* to apprise the supreme court as to what facts the trial court has found.[38]

Probably the greatest amount of confusion lies in those cases where the trial court enters a judgment of dismissal upon the merits after defendant has rested. A review of several cases will illustrate the confusion.

State ex. rel. Eilers Music House v. French[39] was a proceeding involving an application for writ of mandamus to compel the superior court to proceed to final judgment. The relator had brought an action against *A* and *B* to recover possession of a piano delivered to *A* under a conditional sale contract. The possession of the piano had been transferred to *B* in satisfaction of an indebtedness due him from *A*. The cause was tried to the court which orally announced its decision, which was in effect a finding for defendants, but no formal findings of fact, conclusions of law, or judgment was entered. The supreme court stated that *"findings and conclusions are just as essential on the dismissal of an action as where an affirmative judgment is entered"*.[40] However, in *Cochran v. Nelson*[41] one of the questions on appeal was whether the trial court, in view of its dismissal of the case after a trial on the merits, erred in refusing to make and enter findings of fact. The supreme court said, "We are of the opinion the trial court did not commit error . . . ,"[42] and quoted *Lamar v. Anderson*,[43] "Error is predicated upon the failure of the lower court to make findings. *The judg-*

[38] For a recent statement of the rule, see Youngkin v. McMillin, 148 Wash. Dec. 401 (1956). Also see Robertson v. Ephrata, 148 Wash. Dec. 267 (1956).
[39] 100 Wash. 552, 171 Pac. 527 (1918).
[40] *Id.* at 554, 171 Pac. at 528.
[41] 26 Wn.2d 82, 173 P.2d 769 (1946).
[42] *Id.* at 84, 173 P.2d at 770.
[43] 71 Wash. 314, 128 Pac. 672 (1912).

ment being one of dismissal, no findings were required."[44] The case of *Wise v. Vaughan*[45] also cites with approval the *Lamar* case which, if examined closely, may contain the key to clarification in this area. The *Lamar* case was an action to recover upon a contract for sale of lands. At the conclusion of the hearing, the court dismissed the action, ruling that the appellants, who had elected to ask judgment for commissions rather than for damages for breach of contract, had previously abandoned their action for commissions. On appeal the supreme court stated, "If appellants' contention as to the reason of the lower court's ruling is correct, we do not know what finding of fact the court could have made upon which to base its judgment, since it would appear that *the ruling was upon a point of law rather than a decision of facts.*"[46] In the *Vaughan* case, an action upon an attachment bond where the holding was that there simply was no liability on the bond, the supreme court could also have stated that the ruling was upon a point of law rather than a decision of facts. The same is true as to the *Cochran* case, which was an action to recover for an alleged violation of the Emergency Price Control Act. The holding of that case was that the act did not apply to the defendant under the circumstances, and that therefore the defendant plainly was not liable for the penalties prescribed by the act. At this point it may be noted that the judgment of dismissal in the *Eilers Music House* case required a decision of fact and not merely a ruling upon a point of law; hence, the case can be distinguished from the *Lamar, Cochran,* and *Vaughan* cases. (The controversy preceding the mandamus proceeding in the *Eilers Music House* case involved a contested issue of fact. The trial court erred in refusing to make, sign, and enter findings because of the failure of the litigants to present them to it for action until the lapse of one year and a half after his oral decision of the cause.) This analysis indicates the rule to be that in cases tried on the merits to the court, where a judgment of dismissal is thereafter entered, findings of fact and conclusions of law are necessary unless the ruling was upon a point of law rather than a decision of facts.[47] This rule is consistent with the rules laid down in

---

[44] *Id.* at 315, 128 Pac. at 672. (emphasis added.)

[45] 160 Wash. 505, 295 Pac. 126 (1931).

[46] Lamar v. Anderson, 71 Wash. 314, 315, 128 Pac. 672 (1912). (emphasis added.)

[47] Is the rule inconsistent with State *ex rel.* Howland v. Olympia Veneer Co., 131 Wash. 209, 229 Pac. 529 (1924)? This was a mandamus proceeding to compel officers of a corporation to transfer stock on the books of the company. In reversing a judgment of dismissal for failure to make findings, the supreme court stated that the proceedings presented *nothing but legal questions* and RCW 4.44.050, required the trial judge to give his decision, dismissing the case, in writing, separately stating his conclusions of

Richards v. Kuppinger.[48]

(B) *Summary Judgment*

Since a proceeding for summary judgment cannot be regarded as a trial, in as much as issues of fact are not "tried", the conclusion is inescapable that no findings of fact and conclusions of law are required to be made by the court where a summary judgment is granted.[49]

(C) *Special Statutory Proceedings*

While some statutes specifically require findings,[50] others do not.[51] Findings of fact and conclusions of law may not be necessary in statutory proceedings where the applicable statute does not require findings of fact to be made. For example, when a trial court is required by statute either to affirm or set aside an administrative order, findings of fact and conclusions of law probably are not required.[52] Another example is Washington's arbitration statute[53] which apparently does not require the court to make findings and conclusions before entering judgment in conformity with the award. In *Hatch v. Cole*[54] the supreme court stated that:

> The hearing upon exceptions to an award is not the ordinary civil action. It is a special statutory proceeding and clearly does not contemplate that the courts should make findings of fact or conclusions of law and therefore we find no error in the court's refusing to make such.

The *Hatch* case is probably in force and effect today even though the arbitration statute under which it was decided has since been repealed

law and findings of fact. In Bowman v. Webster, 42 Wn.2d 129, 134, 253 P.2d 934, 937 (1953) the court categorically states the rule to be that findings of fact are required where judgment for the defendant (or the plaintiff) has been entered after a full trial.

[48] *Supra*, note 37.

[49] See RCW 4.44.050, note 4, *supra*, "Upon the *trial* of an *issue of fact* . . ." Also, see 8 F.R.D. 271, at 282 for a discussion of the necessity of findings where summary judgment is granted under the Federal Rules of Civil Procedure. Numerous cases are collected in 4 Federal Rules Digest (1939-1955) at 52 a.1.

[50] *E.g.*, RCW 26.08.110 ". . . Upon the conclusion of a divorce or annulment trial, the court must make and enter findings of fact and conclusions of law."

[51] RCW 80.04.170, 81.04.170, provide among other things, that upon a hearing before a court to review an order of the rate-making commission, the "court shall enter judgment either affirming or setting aside the order of the commission under review." See State, *ex rel.* Pacific County Bridge Co. v. Dept. of Public Welfare, 152 Wash. 234, 240, 277 Pac. 995, 997 (1929), "This statute does not require findings of fact to be made."

[52] *Ibid.*

[53] RCW 7.04.010—.220

[54] 128 Wash. 107, 109, 222 Pac. 463, 464 (1924). The case was decided under the old arbitration statute, R.R.S. § 422 which provided that if no exceptions were filed against the arbitration award, "judgment shall be entered *as upon the verdict of a jury*, and execution may issue thereon, and the same proceedings [may be had] upon said award, with like effect *as though said award were a verdict in a civil action*," (emphasis added.) *Cf.* RCW 7.04.190, "Upon the granting of an order confirming, modifying, correcting, or vacating an award, judgment or decree shall be entered in conformity therewith."

and replaced.[55] Under the old statute the arbitrators did not have to make findings and conclusions other than the award itself, and this has not been substantially changed.[56]

(D) *Trials — Criminal*

The case of *Seattle v. Silverman*[57] leaves no doubt that in view of RCW 4.44.050 (see note 4 and Rule 17, General Rules of Superior Court) and RCW 10.46.070 providing that, in a criminal case, the trial shall be conducted in the same manner as in civil actions, findings of fact and conclusions of law are necessary to support a judgment of guilty in a criminal case tried to the court.[58]

CONCLUSION

From this brief review it is apparent that the requirement for findings in Washington is limited to contested issues of fact where the trial court is obliged to weigh the evidence and base its ruling on a decision of fact. The system of findings in Washington should be changed and the requirement abolished, unless findings and conclusions are specifically requested by counsel before or after final order or judgment. Under this procedure, if no findings were requested by an appellant, the fact issues would be deemed found in accordance with the result reached. Since an appellant would be free to request findings even after judgment, it should not be feared that adoption of this suggestion might tend to restrict the scope of review and thus increase the power of the trial judge. If an appellant believed that the trial judge was arbitrary or that he arrived at his decision by extra-legal reasoning, he would, of course, request findings after judgment. If a party strongly feared that the trial court's decision would be adverse and wished to assure himself that the trial judge dealt meticulously with each principal fact issue, he might request findings before judgment. Occasionally, this might be done even though no appeal was contemplated. Except possibly in the last instance, the procedure suggested would transfer findings to the field of appellate practice and yet preserve all the advantages of the findings system. The result would eliminate a great deal of useless labor and expense in all cases where no appeal is to be prosecuted.

---

[55] RCW 7.04.010—.220.

[56] See old statute R.R.S. § 424 and compare with RCW 7.04.160.

[57] 35 Wn.2d 574, 214 P.2d 180 (1950).

[58] Findings are required to sustain a judgment of contempt. State *ex rel.* Dunn v. Plese, 134 Wash. 443, 235 Pac. 961 (1925).