

**CONCEPCION CABIGAO, AS HEIR OF TOMAS CABIGAO, DECEASED,
PLAINTIFF AND APPELLANT, VS. PETRONA LIM AND HER HUSBAND,
EUGENIO EVANGELISTA, AND LUISA LIM, DEFENDANTS AND
APPELLEES.**

G.R. No. 31387. January 13, 1930

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse an order, or orders, of the Court of First Instance of the Province of Bulacan in the matter of an accounting between the defendant, Petrona Lim, and the appellant, Concepcion Cabigao,

The incident which furnished the basis of this appeal grows out of a judgment entered many years ago by Judge Jocson ordering Petrona Lim and husband to account to Tomas Cabigao, the predecessor in interest of the plaintiff, for one-half the proceeds of the sales of fishes in a fishery of which Petrona Lim and said Cabigao were owners in undivided interests. The order referred to was so worded as to require Petrona Lim and husband to pay Tomas Cabigao "the one-half belonging to the latter" of the sale of fishes in said fishery. The judgment entered by Judge Jocson was finally affirmed on appeal in this court; and" the case went back to the Court of First Instance for the accounting.

The question then arose as to whether the half of the income for which Petrona Lim should account was the gross income or the net income. The two Judges of First Instance before whom these proceedings have been conducted have held in turn that the liability of Petrona Lim was limited to half of the net income of the fishery. This conclusion has the merit of being not only just as applied to the particular facts of this case, but it is in conformity with the principle governing the accountancy as between tenants in common under article 393 of the Civil Code. It is also evidently in conformity with the understanding which Judge Jocson had of the effect of his own order, judging from subsequent interlocutory orders in which he declared that the question whether Cabigao should bear one-half the expenses of producing the fishes was pre-termitted and left over for subsequent determination.

The judgment appealed from is without error, and will be affirmed. So ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Ostrand, Johns and Villa-Real, JJ., concur.

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