

**LUENGO & MARTINEZ, PLAINTIFFS AND APPELLEES, VS.
ANTONIO HERRERO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 5745. September 12, 1910*

Ponente: TRENT, J.

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In 1904 Jose Guzman commenced an action in the Court of First Instance of the city of Manila against Behn, Meyer & Co., as owners, and against the captain, of the steamer Kudat to recover the value of a lorch lost while being towed by the Kudat from Manila to Iloilo, and employed as his counsel Antonio Herrero, agreeing to pay said counsel for his services one-third of the entire amount which he might recover from the said defendants. The plaintiff obtained judgment for the sum of P9,000, with interest and costs, which judgment was affirmed by the Supreme Court on the 24th of October, 1907.[1] Herrero, as counsel for the plaintiff, was entitled to P3,000, together with the corresponding amount of interest and costs.

Jose Guzman, by means of a public notarial document, executed on the 15th of June, 1906, ceded, transferred, and conveyed, for valuable consideration, all his right, title, and interest in said judgment to Juan Piñeyro, leaving in full force and effect the contract with reference to the fees of Herrero for his professional services.

In the same manner and under the same conditions (with reference to the fees of Herrero) Piñeyro transferred on November 29, 1907, all his right, title, and interest in the said judgment to the plaintiffs, Luengo & Martinez.

An execution having been issued by virtue of the said final judgment and placed in the hands of the sheriff, the defendants, Behn, Meyer & Co., instituted in the Court of First Instance, civil case No. 5964, against the sheriff and Jose Guzman, praying that upon bond being furnished a permanent injunction be granted restraining the sheriff of Manila, his deputies, and the other defendants from taking any steps for the purpose of carrying into effect or executing said final judgment. A preliminary injunction was issued as prayed for, and after final judgment in the Court of First Instance the case was appealed, and the Supreme Court, after a hearing, rendered its judgment dissolving the said preliminary injunction.[1] In this case Kinney & Lawrence appeared for the plaintiffs, Behn, Meyer & Co., and Marcelo Caringal for the defendants, one of whom was Jose Guzman.

Herrero, for valuable consideration and by means of a public document, executed on the 26th of October, 1907, sold and transferred to Robert Lienau all his interest in said judgment against Behn, Meyer & Co., and when said judgment became executory (which was after the dissolution of the preliminary injunction) against the defendants, Behn, Meyer & Co., Lienau and Caringal entered their appearances in the record, the first claiming to be the owner of one-third of said judgment, as the assignee of Herrero, and the second claiming to be entitled to one-half of that part of said judgment belonging to Herrero as fees for his (Caringal's) professional services rendered in connection with the injunction case. These same claims were also made to Luengo & Martinez. On the 21st of October, 1908, Behn, Meyer & Co. satisfied said judgment, interest, and costs by paying the sum of P10,199.64. One-third of this amount, under the original contract, belonged to Herrero.

On the 21st of September, 1908, Marcelo Caringal commenced civil case No. 6690 in the Court of First Instance

of Manila against Herrero to recover the sum of P2,200, which he claimed the defendant owed him, and obtained an order of attachment, which order was duly communicated to Luengo & Martinez. Likewise Jose Castaños instituted on October 24, 1908, in the same court, civil case No. 6769 against the said Herrero to recover the sum of P1,250, and he also obtained an order of attachment, which order was likewise communicated to Luengo & Martinez.

In view of these conflicting interests, the plaintiffs, Luengo & Martinez, commenced on December 2, 1908, this action of interpleading, alleging, among other things; that at the time Pineyro ceded to them his interest in the said final judgment against Behn, Meyer & Co. the defendant Herrero was justly indebted to them in various amounts which appeared in his account-current, and that they paid certain sums to Marcelo Caringal as a partner and representative of the said Herrero, not knowing that the said Herrero had transferred to Robert Lienau his interest in said final judgment, and that after deducting these amounts they had in their possession the sum of P1,197.05, balance in favor of the said Herrero. The plaintiffs, therefore, asked the court to order the defendants to appear and litigate among themselves and determine their respective rights in this sum of P1,197.05.

During the pendency of this action in the court below Alfredo Balbas Buchipco appeared and asked permission of the court to intervene as an interested party, alleging that the Court of First Instance of the city of Manila rendered on the 28th of August, 1907, a judgment in his favor and against the defendant in said civil case, Herrero, for the sum of P585, with interest at 6 per cent from the 19th of February, 1907, and the costs of the cause, and prayed the court that this amount be paid first out of the funds in the possession of the plaintiffs, Luengo & Martinez. The petition of Buchipco was admitted by the court on the 27th of February, 1909, and the said Buchipco appeared and took part in the trial of this cause.

The trial judge, for the reasons which appear in his decision, rendered on the 31st of July, 1909, decreed that the following judgment be entered:

"1. That the counterclaim of the defendants Herrero and Lienau against the plaintiffs herein should be denied and the plaintiffs absolved therefrom;

"2. That Marcelo Caringal is not entitled to receive any part of the funds deposited in this court by the plaintiffs in the interpleading proceedings;

"3. That out of the P1,218.05, the balance of the account-current submitted by Messrs. Luengo & Martinez, after deducting the amounts collected and paid by them to Caringal, according to the statement Exhibit G, Alfredo Balbas Buchipco, whose claim against Herrero in the sum of P715.31 is evidenced by a final judgment according to execution issued January 12, 1909, in case No. 5358 in this court, with legal interest thereon at the rate of 6 per cent per annum from the said date until paid, should be given preference over the said Lienau;

"4. That there is nothing upon which to base a judgment in these proceedings with reference to the claim of Jose Castanos Remesal against the said Antonio Herrero; and

"5. That each of the defendants should pay his own costs, the plaintiffs to pay theirs pro rata."

From this sentence and judgment the defendants, Herrero and Lienau, appealed. Jose Castaños Remesal did not appeal.

In his oral argument before this court, Herrero, counsel for the appellants, admitted that the claim of Alfredo Balbas Buchipco, which is evidenced by a final judgment, should take priority over that of the appellant Lienau, and consented to its payment according to the judgment of the court below.

Counsel for the plaintiffs and appellees in his printed brief asks that this bill of exceptions be dismissed, first, because the appellants did not except to the decision which they seek to have reversed; second, because they did

not announce their intention to present a bill of exceptions; and, third, because they did not present this bill of exceptions for approval until twenty-four days after they were notified of the judgment rendered in this case. In his oral argument before this court counsel did not strongly Insist upon the first and third propositions.

On examination of this record it appears that the judgment was rendered on the 31st of July, 1908. The appellants were notified on the 2d of August of the same year. On the 12th of the same month (August) they presented a motion for a new trial, which was heard on the 14th of that month and denied. The appellants were notified of the order of the court denying their motion for a new trial on the 14th of August, served a copy of the bill of exceptions on the appellees on the 23d and presented the same for approval on the 24th of the same month.

These questions were presented to this court for the first time on the hearing of the case upon its merits. They should have been raised and determined by motion before the case was called for hearing. Before the hearing of the case upon its merits all preliminary questions should be disposed of, and when such questions as these are raised for the first time upon the hearing of the case on its merits they come too late. The presentation of a bill of exceptions for approval in due time is equivalent to or involves the announcement of an intention to appeal.

The transfer made by Guzman of his interest in the said final judgment against Behn, Meyer & Co. to Piñeyro is not questioned, but the appellants insist and discuss at length in their brief that as Pineyro did not obtain the consent of Herrero when he conveyed to the appellee the said judgment said conveyance was, therefore, null and void, counsel being of the opinion that Piñeyro was Herrero's debtor, and in order to constitute a valid novation by the substitution of a new debtor it was necessary to obtain the consent of the said Herrero in accordance with the provisions of article 1205 of the Civil Code.

We are unable to see how this question of novation by substitution can enter this case. Under the original contract between Guzman and Herrero they were coowners of the judgment against Behn, Meyer & Co. Guzman only transferred to Pineyro his interest in the said judgment, and after this transfer was made the coowners were then Piñeyro and Herrero. Herrero having transferred on the 26th of October, 1907, all of his right, title, and interest in the said judgment to the appellant Lienau, then Lienau and Piñeyro up to the time that Piñeyro made the transfer in favor of the appellees were coowners of the said judgment, and after the said Piñeyro transferred all his right, title, and interest to the appellees, then the codowners of the said judgment were Lienau and the appellees. Herrero had no interest in the said judgment when Pineyro conveyed his interest to the appellees. Herrero's interest was then owned by Lienau. The appellees acquired by purchase on the 29th of November, 1907, all of Piñeyro's interest, but did not acquire any interest whatever in that part of the judgment formerly owned by Herrero, as Piñeyro had no authority, being a coowner with Herrero, to sell, or in any way alienate Herrero's interest, neither did he have the right to sell or alienate the interest of Herrero's assignee. None of the parties, except the defendants in the original action, were Herrero's debtors. His interest was one-third of the judgment and his assignee acquired the same rights in said final judgment as Herrero, the assignor, had.

Where two or more persons own a thing jointly one is not necessarily the debtor of the others. This is especially true in the case at bar, as the defendants in the original action were the debtors and the coowners of the judgment were the creditors. According to the original record, Jose Guzman remained the plaintiff in that case. The style of the case was not changed after he transferred his interest to Pineyro; in fact, in the execution for the collection of the original judgment, which was issued by the Court of First Instance on the 21st of October, 1908, Jose Guzman is the plaintiff and Behn, Meyer & Co. et al., are the defendants. In compliance with this execution the sheriff on the 21st day of the same month collected from the defendants in that case the sum of P10,199.64, which was the amount of that judgment, together with interest and costs, and on the same day he turned this amount over to the appellees, Luengo & Martinez. According to this execution the sheriff was directed to collect this amount and turn it over to Jose Guzman through his representatives, Luengo & Martinez. This order of the court below to the

sheriff is evidently based upon the petition of Luengo & Martinez, dated the 28th of September, 1908. In this petition Luengo & Martinez set up the transfer made by Guzman to Pineyro and by Pineyro to them. They allege in the same petition that at the time Herrero made the transfer in favor of Lienau, he (Herrero) owed them the sum of P1,348, and that they had paid as fees to Caringal the sum of P600.

The court below in issuing the said order to the sheriff evidently overruled the motion of Lienau dated the 23d of September, 1908, in which motion Lienau set up the transfer made by Herrero to him and accompanied this motion by the public document executed by Herrero in his favor. In the public document of cession from Guzman to Piñeyro, Guzman specifically stated that he had entered into a contract with Herrero in which it was agreed that Herrero should receive for his professional services one-third of the amount of the judgment which they might obtain against Behn, Meyer & Co. After recognizing this interest of Herrero, he stated, as appears in this document, that he transferred to the said Piñeyro all of his (Guzman's) interest in the said suit. He did not transfer, nor attempt to transfer, to Piñeyro, Herrero's one-third interest. In the public document of transfer made by Piñeyro to the appellees, Luengo & Martinez, it is specifically stated that the said Piñeyro transferred all of his interest in said final judgment which he had acquired from Guzman. So it is clear that Luengo & Martinez knew that they were not purchasing from Piñeyro Herrero's one-third interest. They had no legal right to receive from the sheriff the one-third which belonged, according to the original contract, to Herrero, and when they did receive it under these conditions they thereby became the trustees or depositaries of this amount and not the owners. After they had received this one-third from the sheriff they attempted to deduct a certain amount which they claimed Herrero owed them. That they had no right to do this it is sufficient to say that when they acquired by purchase from Piñeyro the Guzman interest Herrero had no interest in the said judgment, he having transferred to Lienau all of his rights therein.

The appellees insist that they have a right to deduct from the Herrero one-third interest, which one-third belongs to Lienau, P600 which they paid to Marcelo Caringal for his professional services in connection with the injunction case. It appears that after the judgment in favor of Guzman and against Behn, Meyer & Co. had been affirmed by the Supreme Court on the 24th of October, 1907,[1] and the record returned to the court below for execution of the said judgment, the defendants in that case instituted on the 3d day of December, 1907, in the Court of First Instance, an action against the sheriff et al. to prohibit the collection of that judgment. The court below rendered judgment in favor of the plaintiffs in this case, Behn, Meyer & Co., who were the defendants in the original case, enjoining the sheriff et al. from proceeding with the collection of said judgment. The case was appealed and the judgment of the lower court reversed. Marcelo Caringal represented the judgment creditors that is, the Guzman interest in said case, having been employed by Luengo & Martinez - and received for his services P600 from the said Luengo & Martinez. Both Herrero and Lienau knew that Caringal was representing the judgment creditors, but they made no objection. They now insist that Luengo & Martinez have no right to deduct this P600 from the one-third of the original judgment which they held in trust for the rightful owner. In this we fully agree with the appellants for two reasons; first, because Caringal's fees had not been liquidated; that is, the amount of his fees had not been agreed upon between Luengo & Martinez on the one hand and Herrero and Lienau on the other. No attempt had been made to liquidate this account. Herrero and Lienau had had no opportunity to be heard in the matter, the appellees having arbitrarily, without the intervention of Herrero and Lienau, paid Caringal P600 for his services and now seek to deduct this amount from the one-third of said judgment which they held in trust; and, second, because having received the one-third interest as trustees they are not authorized, under the law, to deduct the amount which they might have paid out as attorney's fees in said case.

Articles 1195, 1196, and 1200 of the Civil Code provide as follows:

"ART. 1195. Compensation shall take place when two persons, in their own right, are mutually creditors and debtors of each other.

"ART 1196. In order that compensation may be proper, it is required:

"1. That each of the persons bound should be so principally, and that he be at the same time the principal creditor of the other.

"2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same kind and also of the same Quality, if the latter should have been stipulated.

"3. That both debts be due.

"4. That they be determined and demandable.

"5. That none of them is subject to any retention or suit instituted by a third person, and of which due notice has been given the debtor."

"ART. 1200. Compensation shall not be proper when any of the debts arise from a deposit, or from the obligations of the depositary or borrower."

"Where two persons are indebted to each other simultaneously, for clear and liquidated debts, compensation takes place from the moment the two debts coexist, and they extinguish each other by the mere operation of law to the amount of their respective sums, without the act of either party, or even their knowledge, at the time, of the existence of such cross debts." (34 Cyc, 632, and numerous cases cited therein; also *Yap Unki vs. Chua Jamco*, 14 Phil. Rep., 602.)

As to whether or not the appellees have a right of action against either Herrero or Lienau, or both, to recover all or a part of the P600 paid by them to Caringal for his professional services this court does not decide.

For these reasons we are of the opinion, and so hold, that the judgment appealed from should be reversed and judgment rendered against the appellees for the sum of P3,399.88, together with interest at the rate of 6 per cent from the 21st of October, 1908 (the date this money was turned over to the appellees in trust), and in favor of the appellant Robert Lienau and the appellee Alfredo Balbas Buchipco, Buchipco receiving P715.31, together with legal interest from the date of the judgment in the court below. The clerk of the Court of First Instance of the city of Manila will pay out of the funds deposited by Luengo & Martinez the amount of this judgment in favor of Buchipco, together with interest, and turn the balance over to the appellant Lienau. On this judgment becoming final, execution may issue against Luengo & Martinez for the remainder. No special ruling as to costs. It is so ordered.

Arellano, C J., Torres, Johnson, and Moreland, JJ., concur.

[1] 9 Phil. Rep., 112.

[1] 11 Phil. Rep., 277.

[1] 9 Phil. Rep., 112.

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