

**JACINTA ESCAÑO, WITH HER HUSBAND, NICANOR MARTINEZ,
PLAINTIFF AND APPELLANT, VS. THE HEIRS OF THE DECEASED
FERNANDO ESCAÑO, NAMED AGUSTINA FAELNAR, NEMESIO,
TERESA, MARCIANA, AG...**

G.R. No. 8421. September 25, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action to recover a sum of money. The plaintiff alleges that the defendants are indebted to her in the sum of P20,791.81. The plaintiff alleges that said sum (P20,791.81) is made up of her portion of the estate of the said Fernando Escano, and of the sum of P3,500 as the price of a certain parcel of land sold by her to the defendants in the year 1910.

The plaintiff alleges that by reason of a judgment rendered against her in favor of the defendants, amounting to P16,739.89, she is justly indebted to the said defendants in that sum and indicates her willingness to allow said claim to stand as an offset of her claim against the defendants. She alleges that the defendants refuse to accept her offer. The plaintiff alleges, in a way which does not clearly appear, that the defendants have been threatening her with an execution for the sum of P6,944. For the constant threats and menaces on the part of the sheriff to execute said execution upon her property, she claims that she has been damaged in the sum of P5,000. The plaintiff prays for judgment for the difference between the sum of P20,791.81 and P16,739.89, or the sum of P4,051.92, together with damages in the sum of P5,000, and costs.

The defendants presented a general denial, denying each and all of the allegations of the petitioner's complaint.

At the close of the trial, the Honorable Ramon Avancena, judge, rendered a decision in which he dismissed the complaint upon the ground that the plaintiff had shown no cause of action against the defendants, with costs against the plaintiff. From that judgment the plaintiff appealed to this court and made the following assignments of error:

"I. The court erred in finding that the defendants are not indebted to the plaintiff.

"II. The court erred in holding that compensation cannot be awarded, because the firm 'Viuda e Hijos de Escano' is the trustee of said credits.

"III. The court erred in holding that some of the sums claimed by the plaintiff are not net, nor owing.

"IV. The court erred in not decreeing the compensation requested by the plaintiff.

"V. The court erred in not making permanent the injunction issued by the court at the beginning of the action."

With reference to the first assignment of error, it may be said that the lower court found, as a fact, that at the time of the settlement of the estate of Fernando Escano, there was due to the plaintiff, as her share of the estate, the

sum of P11,151.56, and that that sum was turned over to the association known as "Viuda e Hijos de Escaño" by the administrator; that later the plaintiff sold a certain piece or parcel of land to the said association, amounting to F3.500. The record does not show by what authority the said sum of P11,151.56 was turned over to the said society (Viuda e Hijos de Escaño). There is nothing in the record which shows that the defendants, as coheirs of the said Fernando Escaño, have, or ever have had, the share of the estate of Fernando Escano in their possession. The plaintiff herself, in her petition, alleges that after the partition of the estate of Fernando Escano, and when said society was organized, her share of the estate was turned over to the society. The plaintiff makes no allegation that the defendants were ever in possession of said sum. If they were never in possession of her interest in the estate of Fernando Escaño, the plaintiff certainly cannot be entitled to recover from them her interest in the said estate.

The plaintiff further admits that the sum of P3,500, which she is now attempting to recover of the defendants, was the result of the sale of a certain tract of land sold by her to the said society—"Viuda e Hijos de Escano." According to her own admissions, therefore, the said sum of P3,500 cannot be recovered of the defendants. The lower court held, and we believe rightly, that the action of the plaintiff should have been brought, in view of the allegations of the plaintiff, not against the coheirs, even though they individually constituted the said society, but against the society known as "Viuda e Hijos de Escaño." This conclusion seems to be sufficiently based upon the allegations of the plaintiff in her petition. Moreover, the record contains further proof showing that the society "Viuda e Hijos de Escaño" was, in fact, the entity which owed the plaintiff the sum mentioned in the complaint, and not the defendants. It will be remembered that the defendants had a judgment against the plaintiff for the sum of P16,739.89. The defendants had an execution issued upon that judgment. When the sheriff made an effort to execute the judgment, the plaintiff wrote him a letter in which she stated that the said society had in its possession the very sums of money which she is now seeking to recover from the defendants personally. (See Exhibit 5.) Said letter fully sustains the conclusions of the lower court, with reference to the first assignment of error. In accordance with said letter (Exhibit 5), the sheriff testified that he did attach a portion of the property in the hands of said society, mentioned in said letter, and did sell the same at public auction. In our judgment, the lower court did not commit the error alleged in the first assignment of error.

With reference to the second assignment of error above noted, it will be remembered that the petitioner alleged that the defendants had a judgment against her in the sum of P16,739.89 and that she desired to have that amount compensated against her claim of P20,791.81. The lower court denied her right to have that compensation made. It will be remembered that the judgment of the defendants was in their favor personally, as against the plaintiff. According to the admissions (see Exhibit 5) of the plaintiff in the present case, the indebtedness of P20,791.81 is not an indebtedness against the defendants, as such, or individually, but an indebtedness against the society known as "Viuda e Hijos de Escaño." This being true, one debt cannot be compensated against the other. An indebtedness of A against B cannot be compensated against an indebtedness in favor of B against C. Compensation can only take place when the respective claims are against the real parties to the action. Compensation shall take place only when two persons, in their own right, are mutually creditors and debtors of each other. (Art. 1195, Civil Code.) In the present case the plaintiff is attempting to have compensation of an indebtedness against her in favor of the defendants, in an action against the defendants for an indebtedness that exists between the plaintiff and a third party (Viuda e Hijos de Escaño). The present is not a proper case for compensation. (8 Manresa, 307.)

We believe that it is not necessary to discuss the other assignments of error, for the reason that it has been demonstrated that according to the allegations and admissions of the plaintiff herself, the present action cannot be maintained against the present defendants.

The plaintiff claims that she has been damaged by the sheriff, by reason of his threats to levy an execution upon her property, in the sum of P5,000. There is nothing in the record which justifies a judgment in favor of plaintiff for that sum.

After a careful examination of the record, we are persuaded that the judgment of the lower court should be affirmed. It is therefore ordered and decreed that a judgment be entered affirming the judgment of the lower court, with costs.

Arellano, C. J., Torres, Carson, and Araullo, J.J., concur.

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