

dues personnellement par les héritiers (D. P. 55, 1, 118, spécialement note) ;

“ Considérant que le demandeur ne poursuit pas l'exécution du mandat tacite qu'il a pu donner à son frère en vertu de l'art. 913, mais l'exécution du testament en vertu de l'art. 916, C. civ. ;

“ Vu l'art. 920, C. civ. ;

“ Pour ces motifs : rejette le plaidoyer de compensation, maintient l'action du demandeur et condamne le défendeur *ès-qualité* à payer au demandeur ladite somme de \$337.98, avec intérêt à compter du 24 novembre 1910 et les dépens.

En revision :

*Mr. Justice Greenshields.* From the foregoing statement of facts, in this case, which are practically admitted, it will be seen that the plaintiff's demand is a demand in execution of the will of the late Jean Baptiste Resther. He seeks the recovery of a debt due him from his father's estate.

If J. Zephirin Resther were alive, the suit would have been directed against him, in his quality of testamentary executor to his father's estate, and if he filed the same plea, he would seek to compensate a debt due by him in his quality of testamentary executor by a debt due to him personally.

This is, in my opinion, a case where such compensation cannot be offered.

Art. 918 of the Civil Code considers a testamentary executor as a legal depository.

A depository cannot, when a deposit is claimed from him, against such a demand a claim due him personally.

I should confirm the judgment.