

REMIGIO MARASIGAN, PETITIONER, VS. PERFECTO R. PALACIO AND JOSE N. LEUTERIO, JUDGES OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, AND FAUSTO NORTE, RESPONDENTS.*G.R. No. L-3911. December 29, 1950*

Ponente: REYES, J.

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This is a petition for mandamus and certiorari.

Petitioner was defendant in a case of forcible entry and detainer filed in the justice of the peace court of Libmanan, Camarines Sur by Fausto Norte, one of the herein respondents. Having been sentenced in that court to vacate the land in litigation and to pay damages and costs, defendant in due time took steps to perfect an appeal to the Court of First Instance of the province by filing his notice of appeal, an appeal bond and a supersedeas bond and at the same time depositing with the justice of the peace court the sum of P8 to cover the docketing fee in the Court of First Instance for which he was issued the corresponding receipt. Thereafter the justice of the peace gave course to the appeal by certifying the record to the Court of First Instance. Some three months thereafter, plaintiff filed a motion in the Court of First Instance asking that the appeal be declared abandoned on the ground that defendant had not paid within the 15-day period fixed by the Rules the full amount of the docketing fee, which in accordance with Rule 130, section 5, paragraph 12, should be P10 instead of P8, the amount actually paid by defendant. Defendant objected to the motion, explaining under oath that if he had paid only P8 for the docketing fee it was because that was the amount he was required to pay by the clerk of the justice of the peace; that being ignorant, he relied on the word of said clerk; and that if the said amount was not enough, he was willing to pay what was lacking. Overruling the objection, the Court of First Instance, in its order dated April 29, 1950, granted the motion and declared the appeal abandoned, whereupon defendant gave notice of his intention to appeal to the Supreme Court and perfected the corresponding record on appeal. But the Court of First Instance disapproved the said record on appeal on the ground that the order declaring the appeal abandoned was not appealable.

The prayer for mandamus to compel approval of the record on appeal is meritorious. But the granting of it would not result in speedy justice, for once the record is elevated here briefs will have to be filed and the question of whether or not the appeal from the justice of the peace court was properly declared abandoned under the circumstances above set forth, which is already discussed in this instance, will again be argued. Far better it would be, we think, to have that question decided now by entertaining petitioner's alternative prayer for a writ of certiorari. This we now propose to do in line with counsel for respondent's own suggestion.

In principle we find the present case identical with that of *Segovia vs. Barrios et al.*, 42 O. G., 1233; 75 Phil., 764. In that case the court of first instance dismissed an appeal from the municipal court in a case of *desahucio* on the ground that the appellant had paid only P8 as docketing fee, and appellant petitioned for a writ of certiorari to have the order of dismissal annulled. In annulling the order this Court said:

"We find the petition meritorious. It was a grave abuse of discretion amounting to an excess of jurisdiction on

the part of Judges Rillorasa and Barrios to set aside the order of Judge Davila, which appeared to be in harmony with law and equity. The very same day he was notified of the decisions the petitioner filed notice of appeal and five days thereafter paid the docket fee required by the clerk of the appellate court. It appears to have been the practice of the said clerk to collect only the sum of P8 as fee for docketing an appeal from the municipal or justice of the peace court in a desahucio case, basing his action on item (1) of section 5, Rule 130 of the Rules of Court, according to which the clerks of the Courts of First Instance shall collect a fee of P8 'for filing an action or proceeding and for all services in the same, if the sum claimed, exclusive of interest and damages, or the value of the property in litigation, or the value of the estate, is less than P200.' On the other hand the respondents contend that the provision of said section 5 of Rule 130 that is applicable to a desahucio case is item (11), which says: 'When the case does not concern property (naturalization, adoption, divorce, etc.) * * * P16.' There is plenty of room for a difference of opinion as to which of these two items, if at all, is applicable; so much so that the members of this Court are in disagreement on this point and deem it necessary to promulgate hereafter amendatory rule to do away with the controversy.

"The fact remains that the petitioner, as appellant from the judgment of the Municipal Court of Iloilo, duly paid the docket fee to the clerk of Court of First Instance in the amount required by the latter in accordance with his practice based on his bona fide understanding of the statute on the subject; and when the judge required the appellant to pay P8 more he did so without delay. Under the circumstances, to dismiss his appeal would be whimsical, unjust, and unwarranted. Every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with the law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice."

It is contended, however, that after the clarification made in the above decision as to the amount of the docketing fee for an appeal to the court of first instance in a desahucio case, there is no longer any excuse for making the same mistake as that committed in that case, and that in any event ignorance of the law does not excuse any one from complying with it. But it appears that herein petitioner was from the beginning ready and willing to pay into court the correct amount of the docketing fee and that if the correct amount was not paid it was because of the error of the clerk of the justice of the peace court, who, believing P8 to be the correct fee, required petitioner to pay that amount only. In the circumstances and there being no question that petitioner has acted in good faith, it would be unjust to penalize him for the mistake of the Government clerk. As was said in the Segovia case, supra, "Every citizen has the right to assume and trust that the public officer charged by law with certain duties know his duties and performs them in accordance with the law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice."

It is true that in the earlier case of *Lázaro vs. Endencia*, 157 Phil. 552, this Court has laid down a more strict rule in regard to this same matter. But that rule should not be followed blindly to the extent of causing a manifest injustice.

In view of the foregoing, the petition for certiorari is granted, and the order declaring petitioner's appeal from the justice of the peace court abandoned is set aside. The Republic of the Philippines vs. Encarnación said appeal should, therefore, be docketed and allowed to take its course upon payment by the petitioner of the amount necessary to complete the docketing fee for the appeal. With costs. So ordered.

Moran, C.J., Pablo, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

MORAN, C.J.:

Mr. Justice Paras and Mr. Justice Feria voted to grant the writ.

Petition granted.

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