

**ROBERTO SEGOVIA, PETITIONER, VS. CONRADO BARRIOS, JUDGE OF FIRST INSTANCE OF ILOILO, AND JACOBINA BRETANILDE;A, RESPONDENTS.***G.R. No. L-116. January 26, 1946*

Ponente: OZAETA, J.

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As plaintiff in an unlawful detainer case filed in the municipal court of the City of Iloilo, the petitioner appealed from the judgment of that court dismissing his complaint and, in due time, paid to the clerk of the Court of First Instance of Iloilo the sum of 18, which was the amount required of him by said clerk as docket fee. The respondent Jacobina Bretania, as defendant-appellee, moved the court to dismiss the appeal on the ground that the docket fee, which she claimed was P16, had not been paid in full within the reglementary period. Judge Pedro R. Davila, then presiding over the second branch of the Court of First Instance of Iloilo, denied the motion, although he was of the opinion that the docket fee, was P16, on the ground that it was due to an error in good faith on the part of the clerk of court in fixing the amount of the docket fee, and not to any fault of the appellant, that the latter had paid only P8. The said judge gave the appellant a period of one week within which to complete the payment of the docket fee, which the said appellant did.

Subsequently Judge Emilio Rilloraza, acting in the place of Judge Davila, upon motion for reconsideration filed by the appellee, set aside the said order and dismissed the appeal on the ground that it had not been perfected by paying the full amount of docket fee within the reglementary period of fifteen days. That order of Judge Rilloraza was, on October 24, 1945, maintained by the respondent Judge Conrado Barrios, who denied the motion for reconsideration filed by the appellant and ordered that the case be remanded to the municipal court "for the execution of its decision."

The present petition for certiorari has been filed by the petitioner to annul the said orders of Judges Rilloraza and Barrios.

We find the petition meritorious. It was a grave abuse of discretion amounting to an excess of jurisdiction on the part of Judges Rilloraza 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 decision 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 an amendatory rule to do away with the controversy.[1]

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 the 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 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 charges 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.

The orders complained of are set aside and those entered by Judge Pedro R. Davila on August 11 and August 25, 1945, are hereby reinstated and affirmed, with costs against the respondent Jacobina Bretaña.

Moran, C.J., Paras, Jaranilla, Feria, De joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ. concur.

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[1] Formerly the docket fee for all appeals from justice of the peace courts was fixed at P16 by section 76 of Act No. 190, as amended. Said section, however, was superseded by section 2 of Rule 40, which does not fix the docket fee.

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