

REGINO LLARENAS, PETITIONER, VS. MARCELIANO R. MONTEMAYOR, JUDGE OF FIRST INSTANCE OF LA UNION, AND ANDRES RIMANDO, RESPONDENTS.

G. R. No. 44908. March 06, 1936

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner instituted these proceedings to restrain the respondent judge from continuing to try civil case No. 1951 of the Court of First Instance of La Union, entitled Andres Rimando, plaintiff and appellant, vs. Regino Llarenas, defendant and appellee, and to definitively dismiss the appeal taken from the judgment rendered by the justice of the peace of Bauang, of said province, in said case, which was docketed as civil case No. 318, with the costs to said plaintiff-appellant now one of the respondents.

There is no question as to the facts. The respondent Rimando instituted civil case No. 318 in the justice of the peace court of Bauang, La Union, to recover the sum of P8 from the petitioner. Judgment was rendered in favor of the latter and Rimando appealed to the Court of First Instance. In addition to the notice of appeal and the appeal bond, the appellant deposited the sum of P8 as docket fee in the office of the clerk of the Court of First Instance, which amount together with the record was forwarded to the clerk of court who accepted and docketed the appeal. Before depositing the P8, the appellant asked the justice of the peace how much he had to deposit and said official informed him that he should deposit said amount. Sometime after the appeal had been docketed, the herein petitioner filed a motion to dismiss the case on the ground that the Court of First Instance had not acquired jurisdiction to try it on appeal, alleging that the then appellant had not perfected his appeal for not having deposited the sum of P16 required by section. 76 of the Code of Civil Procedure, as finally amended by Act No. 3615. The respondent judge, declaring himself competent, denied the motion, whereupon the petitioner instituted these proceedings.

Section 76 of the Code of Civil Procedure, as finally amended by Act No. 3615, provides that the party appealing from a judgment of a justice of the peace court should, upon giving a bond, deposit the sum of P16 as docket fee of the appeal in the office of the clerk of the Court of First Instance to which the appeal is taken. Paragraph 2 of section 788 of said Code of Civil Procedure, as amended by section 1 of Act No. 3395, provides that the docket fee of clerks of Courts of First Instance to be paid in cases wherein the sum claimed, exclusive of interest and damages, or the value of the property in litigation is less than P200, should be only P8. Therefore, the question to be decided is whether the respondent Rimando was obliged to pay the sum of P16 or only P8 for his appeal, which question calls for an interpretation of the above cited legal provisions.

Section 76 of Act No. 190 (Code of Civil Procedure) reads as follows:

"SEC. 76. Appeals, how perfected.—Within five days after the rendition of a judgment by a justice of the peace, the party desiring to appeal may file with the justice a written statement that he appeals to the Court of First Instance, and shall, within said period of five days, give a bond with sufficient surety to be approved by said

justice, payable to the opposite party, in the penal sum of one hundred dollars, conditioned for the payment of all such costs in the action as finally may be awarded against him. The filing of such statement and giving of such bond shall perfect the appeal."

It was later amended by section 16 of Act No. 1627, as follows:

"SEC. 76. An appeal in civil causes shall be perfected by filing with the justice of the peace, within fifteen days after the entry of the judgment complained of, a notice that the party intends to appeal, and by depositing with such justice the appellate court docket fee of sixteen pesos, and by filing with him a bond in the sum of fifty pesos, executed to the adverse party by the appellant and by at least one sufficient surety, conditioned that the appellant will pay all costs which the Court of First Instance may award against him. In lieu of such a bond, the appellant may file with the justice a certificate of the proper official that the appellant has deposited twenty-five pesos with the municipal treasurer (in Manila with the Collector of Internal Revenue) and that said sum is available for the satisfaction of any judgment for costs that may be rendered against appellant by the appellate court in said cause. In case judgment is rendered in appellant's favor the sum deposited in lieu of appeal bond shall be returned to him by the official with whom it was deposited. Judgments rendered by the Court of First Instance on appeal shall be final and conclusive except in cases involving the validity or constitutionality of a statute or municipal ordinance."

It was finally modified by section 1 of Act No. 3615 in the following manner:

"SEC. 76. Appeals, how perfected.—An appeal in civil causes shall be filed within fifteen days after notification of the party of the judgment complained of, and shall be perfected (a) by filing with the justice of the peace a notice that the party intends to appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the sum of sixteen pesos as appellate court docket fee, or, in Manila, by the delivery of said sum to the clerk of the court; and (c) by giving bond. It shall be the duty of the clerk of the Court of First Instance, upon receipt of the record, to deliver the deposit certificate within five days to the provincial treasurer, who shall immediately pay said sum of sixteen pesos, and the clerk, as soon as said sum shall be in his possession, shall enter the appeal upon the docket of the clerk's office. The bond to be given by the appellant shall be filed with the justice of the peace and shall be in the sum of fifty pesos, executed to the adverse party, with at least one sufficient surety, conditioned that the appellant will pay all costs which the Court of First Instance may award against him. In lieu of such a bond, the appellant may file with the justice a certificate of the proper official that the appellant has deposited twenty-five pesos with the municipal treasurer (in Manila with the Collector of Internal Revenue) and that said sum is available for the satisfaction of any judgment for costs that may be rendered against appellant by the Court of First Instance in said cause. In case judgment is rendered in appellant's favor the sum deposited in lieu of appeal bond shall be returned to him by the official with whom it was deposited. The expense of notification of the judgment appealed from shall be assessed as part of the costs."

The pertinent part of the original section 788 of said Code relative to fees that the clerk of the Court of First Instance should charge for causes docketed in his office reads as follows:

"SEC. 788. Clerks of Courts of First Instance.—For filing all complaints, answers, motions, amendments and pleadings, for making all entries upon proper dockets, for entering all appearances, for entering all judgments, orders, and decrees, for issuing all processes, preliminary and final, approving all bonds to be by him approved, filing same, for administering all oaths or affirmations, certifying the same, taxing costs, making necessary entries on indexes, and for all other services performed by him, his deputies, or assistants, in any one action, eight dollars. * * *"

Section 788 was later amended by section 1 of Act No. 3099, the pertinent part of which reads:

"SEC. 788. Fees shall be charged according to the following schedule:

- When the subject of litigation is not capable of pecuniary estimation, sixteen pesos.
- When the amount of the demand, exclusive of interest and damages, or the value of the subject-matter of the litigation is less than two hundred pesos, eight pesos.
- When the amount of the demand, exclusive of interest and damages, or the value of the subject-matter of the litigation is two hundred pesos or more, but less than six hundred pesos, twelve pesos.
- When the amount of the demand, exclusive of interest and damages, or the value of the subject-matter of the litigation is six hundred pesos or more, but less than one thousand pesos, sixteen pesos."

On December 5, 1927, the Legislature again amended section 788 by section 1 of Act No. 3395, the pertinent part of which is:

"SEC. 788. Fees of clerks of Courts of First Instance.— Fees shall be assessed in accordance with the following schedule:

- If the case does not directly or indirectly concern property and it is so stated under oath in the complaint, sixteen pesos.
- If the sum claimed, exclusive of interest and damages, or the value of the property in litigation is less than two hundred pesos, eight pesos.
- If the sum claimed, exclusive of interest and damages, or the value of the property in litigation is two hundred pesos or more, but less than six hundred pesos, twelve pesos.
- If the sum claimed, exclusive of interest and damages, or the value of the property in litigation is six hundred pesos or more, but less than one thousand pesos, sixteen pesos."

It will be seen that the original section 76 did not require the deposit by the appellant of the docket fee of the Court of First Instance to which the appeal was taken. Docket fees were then governed and charged in accordance with the provisions of section 788 which fixed them at \$8 or P16. The deposit of P16, as another requisite for an appeal, was first demanded upon the promulgation of Act No. 1627, section 16 of which entirely amended section 76. Act No. 3615 again amended certain details of section 76 and maintained the deposit of P16 for the same purpose. It would seem inferable from these last two amendments that the intention of the Legislature was to require a docket fee of P16 for appeals from the justice of the peace courts; but we should not, on the other hand, lose sight of the fact that the Legislature, by means of Acts Nos. 3099 and 3395, amended section 788 which from the beginning fixed the docket fees of cases filed in the Courts of First Instance, establishing in both amendatory laws gradual and uniform rates varying according to the amount claimed in the complaint or the value of the property in litigation. Taking into consideration these two laws, we are of the opinion that the clear intention of the Legislature was that the docket fee of the Court of First Instance, which an appellant should deposit for his appeal, is that fixed by Act No. 3395 which, in this case, should be P8. If the provision of section 76, as amended by Act No. 3615, were applied to the case at bar, the respondent Rimando, as a result, would have had to deposit P16 notwithstanding the fact that the amount claimed by him in his complaint is only ₱81 and, therefore, less than P200. Furthermore, if this respondent had filed a complaint "in the Court of First Instance to recover P199, the docket fee to have been paid by him would be only P8 under Act No. 3395. We do not believe that the Legislature has so intended to burden the litigants only because they appeal from a decision of the justice of the peace court, which they deem unjust. To harmonize the above quoted contradictory legal provisions and to enforce the evident intention of the Legislature to standardize the docket fees of the Courts of First Instance to be charged, It should be declared, and we so declare, that the bases thereof are those established in the gradual rates provided in section 788 of the Code of Civil Procedure, as finally amended by Act No. 3395.

The petitioner invokes the doctrine laid down in *Lazaro vs. Endencia and Andres* (57 Phil., 552), contending that in said case this court held that under section 76 of the Code of Civil Procedure, as amended by Act No. 3615, the appellant should deposit P16 as docket fee, not only P8. However, by reading the opinion it will be seen that the parties did not then raise the question now under consideration and the court neither discussed nor passed upon it as a controversy raised therein. In said case it was taken for granted that the appellant was obliged to deposit P16, it not having been disputed by the parties. It is clear, therefore, that the ruling laid down therein cannot be correctly invoked as doctrine or precedent.

For the foregoing considerations, it is held that the respondent Rimando deposited the docket fee required by law and the petition should be, as it is hereby denied, with the costs to the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Recto, and Laurel, JJ., concur.

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